

E AND R AMENDMENTS TO LB 752

Introduced by McKinney, 11, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. The State of Nebraska adopts the Licensed Professional
4 Counselors Interstate Compact in the form substantially as follows:

5 Licensed Professional Counselors Interstate Compact

6 SECTION 1: PURPOSE

7 The purpose of this Compact is to facilitate interstate practice of
8 Licensed Professional Counselors with the goal of improving public access
9 to Professional Counseling services. The practice of Professional
10 Counseling occurs in the State where the client is located at the time of
11 the counseling services. The Compact preserves the regulatory authority
12 of States to protect public health and safety through the current system
13 of State licensure.

14 This Compact is designed to achieve the following objectives:

15 A. Increase public access to Professional Counseling services by
16 providing for the mutual recognition of other Member State licenses;

17 B. Enhance the States' ability to protect the public's health and
18 safety;

19 C. Encourage the cooperation of Member States in regulating
20 multistate practice for Licensed Professional Counselors;

21 D. Support spouses of relocating Active Duty Military personnel;

22 E. Enhance the exchange of licensure, investigative, and
23 disciplinary information among Member States;

24 F. Allow for the use of Telehealth technology to facilitate
25 increased access to Professional Counseling services;

26 G. Support the uniformity of Professional Counseling licensure
27 requirements throughout the States to promote public safety and public

1 health benefits;

2 H. Invest all Member States with the authority to hold a Licensed
3 Professional Counselor accountable for meeting all State practice laws in
4 the State in which the client is located at the time care is rendered
5 through the mutual recognition of Member State licenses;

6 I. Eliminate the necessity for licenses in multiple States; and

7 J. Provide opportunities for interstate practice by Licensed
8 Professional Counselors who meet uniform licensure requirements.

9 SECTION 2. DEFINITIONS

10 As used in this Compact, and except as otherwise provided, the
11 following definitions shall apply:

12 A. "Active Duty Military" means full-time duty status in the active
13 uniformed service of the United States, including members of the National
14 Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters
15 1209 and 1211.

16 B. "Adverse Action" means any administrative, civil, equitable or
17 criminal action permitted by a State's laws which is imposed by a
18 licensing board or other authority against a Licensed Professional
19 Counselor, including actions against an individual's license or Privilege
20 to Practice such as revocation, suspension, probation, monitoring of the
21 licensee, limitation on the licensee's practice, or any other Encumbrance
22 on licensure affecting a Licensed Professional Counselor's authorization
23 to practice, including issuance of a cease and desist action.

24 C. "Alternative Program" means a nondisciplinary monitoring or
25 practice remediation process approved by a Professional Counseling
26 Licensing Board to address Impaired Practitioners.

27 D. "Continuing Competence/Education" means a requirement, as a
28 condition of license renewal, to provide evidence of participation in,
29 and/or completion of, educational and professional activities relevant to
30 practice or area of work.

31 E. "Counseling Compact Commission" or "Commission" means the

1 national administrative body whose membership consists of all States that
2 have enacted the Compact.

3 F. "Current Significant Investigative Information" means:

4 1. Investigative Information that a Licensing Board, after a
5 preliminary inquiry that includes notification and an opportunity for the
6 Licensed Professional Counselor to respond, if required by State law, has
7 reason to believe is not groundless and, if proved true, would indicate
8 more than a minor infraction; or

9 2. Investigative Information that indicates that the Licensed
10 Professional Counselor represents an immediate threat to public health
11 and safety regardless of whether the Licensed Professional Counselor has
12 been notified and had an opportunity to respond.

13 G. "Data System" means a repository of information about Licensees,
14 including, but not limited to, continuing education, examination,
15 licensure, investigative, Privilege to Practice and Adverse Action
16 information.

17 H. "Encumbered License" means a license in which an Adverse Action
18 restricts the practice of licensed Professional Counseling by the
19 Licensee and said Adverse Action has been reported to the National
20 Practitioners Data Bank (NPDB).

21 I. "Encumbrance" means a revocation or suspension of, or any
22 limitation on, the full and unrestricted practice of Licensed
23 Professional Counseling by a Licensing Board.

24 J. "Executive Committee" means a group of directors elected or
25 appointed to act on behalf of, and within the powers granted to them by,
26 the Commission.

27 K. "Home State" means the Member State that is the Licensee's
28 primary State of residence.

29 L. "Impaired Practitioner" means an individual who has a
30 condition(s) that may impair their ability to practice as a Licensed
31 Professional Counselor without some type of intervention and may include,

1 but are not limited to, alcohol and drug dependence, mental health
2 impairment, and neurological or physical impairments.

3 M. "Investigative Information" means information, records, and
4 documents received or generated by a Professional Counseling Licensing
5 Board pursuant to an investigation.

6 N. "Jurisprudence Requirement" if required by a Member State, means
7 the assessment of an individual's knowledge of the laws and Rules
8 governing the practice of Professional Counseling in a State.

9 O. "Licensed Professional Counselor" means a counselor licensed by a
10 Member State, regardless of the title used by that State, to
11 independently assess, diagnose, and treat behavioral health conditions.

12 P. "Licensee" means an individual who currently holds an
13 authorization from the State to practice as a Licensed Professional
14 Counselor.

15 Q. "Licensing Board" means the agency of a State, or equivalent,
16 that is responsible for the licensing and regulation of Licensed
17 Professional Counselors.

18 R. "Member State" means a State that has enacted the Compact.

19 S. "Privilege to Practice" means a legal authorization, which is
20 equivalent to a license, permitting the practice of Professional
21 Counseling in a Remote State.

22 T. "Professional Counseling" means the assessment, diagnosis, and
23 treatment of behavioral health conditions by a Licensed Professional
24 Counselor.

25 U. "Remote State" means a Member State other than the Home State,
26 where a Licensee is exercising or seeking to exercise the Privilege to
27 Practice.

28 V. "Rule" means a regulation promulgated by the Commission that has
29 the force of law.

30 W. "Single State License" means a Licensed Professional Counselor
31 license issued by a Member State that authorizes practice only within the

1 issuing State and does not include a Privilege to Practice in any other
2 Member State.

3 X. "State" means any state, commonwealth, district, or territory of
4 the United States of America that regulates the practice of Professional
5 Counseling.

6 Y. "Telehealth" means the application of telecommunication
7 technology to deliver Professional Counseling services remotely to
8 assess, diagnose, and treat behavioral health conditions.

9 Z. "Unencumbered License" means a license that authorizes a Licensed
10 Professional Counselor to engage in the full and unrestricted practice of
11 Professional Counseling.

12 SECTION 3. STATE PARTICIPATION IN THE COMPACT

13 A. To Participate in the Compact, a State must currently:

14 1. License and regulate Licensed Professional Counselors;

15 2. Require Licensees to pass a nationally recognized examination
16 approved by the Commission;

17 3. Require Licensees to have a sixty semester-hour (or ninety
18 quarter-hour) master's degree in counseling or sixty semester-hours (or
19 ninety quarter-hours) of graduate course work including the following
20 topic areas:

21 a. Professional Counseling Orientation and Ethical Practice;

22 b. Social and Cultural Diversity;

23 c. Human Growth and Development;

24 d. Career Development;

25 e. Counseling and Helping Relationships;

26 f. Group Counseling and Group Work;

27 g. Diagnosis and Treatment; Assessment and Testing;

28 h. Research and Program Evaluation; and

29 i. Other areas as determined by the Commission.

30 4. Require Licensees to complete a supervised postgraduate
31 professional experience as defined by the Commission;

1 5. Have a mechanism in place for receiving and investigating
2 complaints about Licensees.

3 B. A Member State shall:

4 1. Participate fully in the Commission's Data System, including
5 using the Commission's unique identifier as defined in Rules;

6 2. Notify the Commission, in compliance with the terms of the
7 Compact and Rules, of any Adverse Action or the availability of
8 Investigative Information regarding a Licensee;

9 3. Implement or utilize procedures for considering the criminal
10 history records of applicants for an initial Privilege to Practice. These
11 procedures shall include the submission of fingerprints or other
12 biometric-based information by applicants for the purpose of obtaining an
13 applicant's criminal history record information from the Federal Bureau
14 of Investigation and the agency responsible for retaining that State's
15 criminal records;

16 a. A Member State must fully implement a criminal background check
17 requirement, within a timeframe established by rule, by receiving the
18 results of the Federal Bureau of Investigation record search and shall
19 use the results in making licensure decisions.

20 b. Communication between a Member State, the Commission and among
21 Member States regarding the verification of eligibility for licensure
22 through the Compact shall not include any information received from the
23 Federal Bureau of Investigation relating to a federal criminal records
24 check performed by a Member State under Public Law 92-544.

25 4. Comply with the Rules of the Commission;

26 5. Require an applicant to obtain or retain a license in the Home
27 State and meet the Home State's qualifications for licensure or renewal
28 of licensure, as well as all other applicable State laws;

29 6. Grant the Privilege to Practice to a Licensee holding a valid
30 Unencumbered License in another Member State in accordance with the terms
31 of the Compact and Rules; and

1 7. Provide for the attendance of the State's commissioner to the
2 Counseling Compact Commission meetings.

3 C. Member States may charge a fee for granting the Privilege to
4 Practice.

5 D. Individuals not residing in a Member State shall continue to be
6 able to apply for a Member State's Single State License as provided under
7 the laws of each Member State. However, the Single State License granted
8 to these individuals shall not be recognized as granting a Privilege to
9 Practice Professional Counseling in any other Member State.

10 E. Nothing in this Compact shall affect the requirements established
11 by a Member State for the issuance of a Single State License.

12 F. A license issued to a Licensed Professional Counselor by a Home
13 State to a resident in that State shall be recognized by each Member
14 State as authorizing a Licensed Professional Counselor to practice
15 Professional Counseling, under a Privilege to Practice, in each Member
16 State.

17 SECTION 4. PRIVILEGE TO PRACTICE

18 A. To exercise the Privilege to Practice under the terms and
19 provisions of the Compact, the Licensee shall:

20 1. Hold a license in the Home State;

21 2. Have a valid United States social security number or national
22 practitioner identifier;

23 3. Be eligible for a Privilege to Practice in any Member State in
24 accordance with Section 4(D), (G) and (H);

25 4. Have not had any Encumbrance or restriction against any license
26 or Privilege to Practice within the previous two years;

27 5. Notify the Commission that the Licensee is seeking the Privilege
28 to Practice within a Remote State(s);

29 6. Pay any applicable fees, including any State fee, for the
30 Privilege to Practice;

31 7. Meet any Continuing Competence/Education requirements established

1 by the Home State;

2 8. Meet any Jurisprudence Requirements established by the Remote
3 State(s) in which the Licensee is seeking a Privilege to Practice; and

4 9. Report to the Commission any Adverse Action, Encumbrance, or
5 restriction on license taken by any non-Member State within thirty days
6 from the date the action is taken.

7 B. The Privilege to Practice is valid until the expiration date of
8 the Home State license. The Licensee must comply with the requirements of
9 Section 4(A) to maintain the Privilege to Practice in the Remote State.

10 C. A Licensee providing Professional Counseling in a Remote State
11 under the Privilege to Practice shall adhere to the laws and regulations
12 of the Remote State.

13 D. A Licensee providing Professional Counseling services in a Remote
14 State is subject to that State's regulatory authority. A Remote State
15 may, in accordance with due process and that State's laws, remove a
16 Licensee's Privilege to Practice in the Remote State for a specific
17 period of time, impose fines, and/or take any other necessary actions to
18 protect the health and safety of its citizens. The Licensee may be
19 ineligible for a Privilege to Practice in any Member State until the
20 specific time for removal has passed and all fines are paid.

21 E. If a Home State license is encumbered, the Licensee shall lose
22 the Privilege to Practice in any Remote State until the following occur:

23 1. The Home State license is no longer encumbered; and

24 2. Have not had any Encumbrance or restriction against any license
25 or Privilege to Practice within the previous two years.

26 F. Once an Encumbered License in the Home State is restored to good
27 standing, the Licensee must meet the requirements of Section 4(A) to
28 obtain a Privilege to Practice in any Remote State.

29 G. If a Licensee's Privilege to Practice in any Remote State is
30 removed, the individual may lose the Privilege to Practice in all other
31 Remote States until the following occur:

1 1. The specific period of time for which the Privilege to Practice
2 was removed has ended;

3 2. All fines have been paid; and

4 3. Have not had any Encumbrance or restriction against any license
5 or Privilege to Practice within the previous two years.

6 H. Once the requirements of Section 4(G) have been met, the Licensee
7 must meet the requirements in Section 4(A) to obtain a Privilege to
8 Practice in a Remote State.

9 SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE
10 TO PRACTICE

11 A. A Licensed Professional Counselor may hold a Home State license,
12 which allows for a Privilege to Practice in other Member States, in only
13 one Member State at a time.

14 B. If a Licensed Professional Counselor changes primary State of
15 residence by moving between two Member States:

16 1. The Licensed Professional Counselor shall file an application for
17 obtaining a new Home State license based on a Privilege to Practice, pay
18 all applicable fees, and notify the current and new Home State in
19 accordance with applicable Rules adopted by the Commission.

20 2. Upon receipt of an application for obtaining a new Home State
21 license by virtue of a Privilege to Practice, the new Home State shall
22 verify that the Licensed Professional Counselor meets the pertinent
23 criteria outlined in Section 4 via the Data System, without need for
24 primary source verification except for:

25 a. a Federal Bureau of Investigation fingerprint-based criminal
26 background check if not previously performed or updated pursuant to
27 applicable rules adopted by the Commission in accordance with Public Law
28 92-544;

29 b. other criminal background check as required by the new Home
30 State; and

31 c. completion of any requisite Jurisprudence Requirements of the new

1 Home State.

2 3. The former Home State shall convert the former Home State license
3 into a Privilege to Practice once the new Home State has activated the
4 new Home State license in accordance with applicable Rules adopted by the
5 Commission.

6 4. Notwithstanding any other provision of this Compact, if the
7 Licensed Professional Counselor cannot meet the criteria in Section 4,
8 the new Home State may apply its requirements for issuing a new Single
9 State License.

10 5. The Licensed Professional Counselor shall pay all applicable fees
11 to the new Home State in order to be issued a new Home State license.

12 C. If a Licensed Professional Counselor changes Primary State of
13 Residence by moving from a Member State to a non-Member State, or from a
14 non-Member State to a Member State, the State criteria shall apply for
15 issuance of a Single State License in the new State.

16 D. Nothing in this Compact shall interfere with a Licensee's ability
17 to hold a Single State License in multiple States, however for the
18 purposes of this Compact, a Licensee shall have only one Home State
19 license.

20 E. Nothing in this Compact shall affect the requirements established
21 by a Member State for the issuance of a Single State License.

22 SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

23 Active Duty Military personnel, or their spouse, shall designate a
24 Home State where the individual has a current license in good standing.
25 The individual may retain the Home State designation during the period
26 the service member is on active duty. Subsequent to designating a Home
27 State, the individual shall only change their Home State through
28 application for licensure in the new State, or through the process
29 outlined in Section 5.

30 SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

31 A. Member States shall recognize the right of a Licensed

1 Professional Counselor, licensed by a Home State in accordance with
2 Section 3 and under Rules promulgated by the Commission, to practice
3 Professional Counseling in any Member State via Telehealth under a
4 Privilege to Practice as provided in the Compact and Rules promulgated by
5 the Commission.

6 B. A Licensee providing Professional Counseling services in a Remote
7 State under the Privilege to Practice shall adhere to the laws and
8 regulations of the Remote State.

9 SECTION 8. ADVERSE ACTIONS

10 A. In addition to the other powers conferred by State law, a Remote
11 State shall have the authority, in accordance with existing State due
12 process law, to:

13 1. Take Adverse Action against a Licensed Professional Counselor's
14 Privilege to Practice within that Member State, and

15 2. Issue subpoenas for both hearings and investigations that require
16 the attendance and testimony of witnesses as well as the production of
17 evidence. Subpoenas issued by a Licensing Board in a Member State for the
18 attendance and testimony of witnesses or the production of evidence from
19 another Member State shall be enforced in the latter State by any court
20 of competent jurisdiction, according to the practice and procedure of
21 that court applicable to subpoenas issued in proceedings pending before
22 it. The issuing authority shall pay any witness fees, travel expenses,
23 mileage, and other fees required by the service statutes of the State in
24 which the witnesses or evidence are located.

25 3. Only the Home State shall have the power to take Adverse Action
26 against a Licensed Professional Counselor's license issued by the Home
27 State.

28 B. For purposes of taking Adverse Action, the Home State shall give
29 the same priority and effect to reported conduct received from a Member
30 State as it would if the conduct had occurred within the Home State. In
31 so doing, the Home State shall apply its own State laws to determine

1 appropriate action.

2 C. The Home State shall complete any pending investigations of a
3 Licensed Professional Counselor who changes primary State of residence
4 during the course of the investigations. The Home State shall also have
5 the authority to take appropriate action(s) and shall promptly report the
6 conclusions of the investigations to the administrator of the Data
7 System. The administrator of the coordinated licensure information system
8 shall promptly notify the new Home State of any Adverse Actions.

9 D. A Member State, if otherwise permitted by State law, may recover
10 from the affected Licensed Professional Counselor the costs of
11 investigations and dispositions of cases resulting from any Adverse
12 Action taken against that Licensed Professional Counselor.

13 E. A Member State may take Adverse Action based on the factual
14 findings of the Remote State, provided that the Member State follows its
15 own procedures for taking the Adverse Action.

16 F. Joint Investigations:

17 1. In addition to the authority granted to a Member State by its
18 respective Professional Counseling practice act or other applicable State
19 law, any Member State may participate with other Member States in joint
20 investigations of Licensees.

21 2. Member States shall share any investigative, litigation, or
22 compliance materials in furtherance of any joint or individual
23 investigation initiated under the Compact.

24 G. If Adverse Action is taken by the Home State against the license
25 of a Licensed Professional Counselor, the Licensed Professional
26 Counselor's Privilege to Practice in all other Member States shall be
27 deactivated until all Encumbrances have been removed from the State
28 license. All Home State disciplinary orders that impose Adverse Action
29 against the license of a Licensed Professional Counselor shall include a
30 Statement that the Licensed Professional Counselor's Privilege to
31 Practice is deactivated in all Member States during the pendency of the

1 order.

2 H. If a Member State takes Adverse Action, it shall promptly notify
3 the administrator of the Data System. The administrator of the Data
4 System shall promptly notify the Home State of any Adverse Actions by
5 Remote States.

6 I. Nothing in this Compact shall override a Member State's decision
7 that participation in an Alternative Program may be used in lieu of
8 Adverse Action.

9 SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

10 A. The Compact Member States hereby create and establish a joint
11 public agency known as the Counseling Compact Commission:

12 1. The Commission is an instrumentality of the Compact States.

13 2. Venue is proper and judicial proceedings by or against the
14 Commission shall be brought solely and exclusively in a court of
15 competent jurisdiction where the principal office of the Commission is
16 located. The Commission may waive venue and jurisdictional defenses to
17 the extent it adopts or consents to participate in alternative dispute
18 resolution proceedings.

19 3. Nothing in this Compact shall be construed to be a waiver of
20 sovereign immunity.

21 B. Membership, Voting, and Meetings

22 1. Each Member State shall have and be limited to one delegate
23 selected by that Member State's Licensing Board.

24 2. The delegate shall be either:

25 a. A current member of the Licensing Board at the time of
26 appointment, who is a Licensed Professional Counselor or public member;
27 or

28 b. An administrator of the Licensing Board.

29 3. Any delegate may be removed or suspended from office as provided
30 by the law of the State from which the delegate is appointed.

31 4. The Member State Licensing Board shall fill any vacancy occurring

1 on the Commission within sixty days.

2 5. Each delegate shall be entitled to one vote with regard to the
3 promulgation of Rules and creation of bylaws and shall otherwise have an
4 opportunity to participate in the business and affairs of the Commission.

5 6. A delegate shall vote in person or by such other means as
6 provided in the bylaws. The bylaws may provide for delegates'
7 participation in meetings by telephone or other means of communication.

8 7. The Commission shall meet at least once during each calendar
9 year. Additional meetings shall be held as set forth in the bylaws.

10 8. The Commission shall by Rule establish a term of office for
11 delegates and may by Rule establish term limits.

12 C. The Commission shall have the following powers and duties:

13 1. Establish the fiscal year of the Commission;

14 2. Establish bylaws;

15 3. Maintain its financial records in accordance with the bylaws;

16 4. Meet and take such actions as are consistent with the provisions
17 of this Compact and the bylaws;

18 5. Promulgate Rules which shall be binding to the extent and in the
19 manner provided for in the Compact;

20 6. Bring and prosecute legal proceedings or actions in the name of
21 the Commission, provided that the standing of any State Licensing Board
22 to sue or be sued under applicable law shall not be affected;

23 7. Purchase and maintain insurance and bonds;

24 8. Borrow, accept, or contract for services of personnel, including,
25 but not limited to, employees of a Member State;

26 9. Hire employees, elect or appoint officers, fix compensation,
27 define duties, grant such individuals appropriate authority to carry out
28 the purposes of the Compact, and establish the Commission's personnel
29 policies and programs relating to conflicts of interest, qualifications
30 of personnel, and other related personnel matters;

31 10. Accept any and all appropriate donations and grants of money,

1 equipment, supplies, materials, and services, and to receive, utilize,
2 and dispose of the same; provided that at all times the Commission shall
3 avoid any appearance of impropriety and/or conflict of interest;

4 11. Lease, purchase, accept appropriate gifts or donations of, or
5 otherwise to own, hold, improve or use, any property, real, personal or
6 mixed; provided that at all times the Commission shall avoid any
7 appearance of impropriety;

8 12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or
9 otherwise dispose of any property real, personal, or mixed;

10 13. Establish a budget and make expenditures;

11 14. Borrow money;

12 15. Appoint committees, including standing committees composed of
13 members, State regulators, State legislators or their representatives,
14 and consumer representatives, and such other interested persons as may be
15 designated in this Compact and the bylaws;

16 16. Provide and receive information from, and cooperate with, law
17 enforcement agencies;

18 17. Establish and elect an Executive Committee; and

19 18. Perform such other functions as may be necessary or appropriate
20 to achieve the purposes of this Compact consistent with the State
21 regulation of Professional Counseling licensure and practice.

22 D. The Executive Committee

23 1. The Executive Committee shall have the power to act on behalf of
24 the Commission according to the terms of this Compact.

25 2. The Executive Committee shall be composed of up to eleven
26 members:

27 a. Seven voting members who are elected by the Commission from the
28 current membership of the Commission; and

29 b. Up to four ex officio, nonvoting members from four recognized
30 national professional counselor organizations.

31 c. The ex officio members will be selected by their respective

1 organizations.

2 3. The Commission may remove any member of the Executive Committee
3 as provided in bylaws.

4 4. The Executive Committee shall meet at least annually.

5 5. The Executive Committee shall have the following duties and
6 responsibilities:

7 a. Recommend to the entire Commission changes to the Rules or
8 bylaws, changes to this Compact legislation, fees paid by Compact Member
9 States such as annual dues, and any Commission Compact fee charged to
10 Licensees for the Privilege to Practice;

11 b. Ensure Compact administration services are appropriately
12 provided, contractual or otherwise;

13 c. Prepare and recommend the budget;

14 d. Maintain financial records on behalf of the Commission;

15 e. Monitor Compact compliance of Member States and provide
16 compliance reports to the Commission;

17 f. Establish additional committees as necessary; and

18 g. Other duties as provided in Rules or bylaws.

19 E. Meetings of the Commission

20 1. All meetings shall be open to the public, and public notice of
21 meetings shall be given in the same manner as required under the
22 Rulemaking provisions in Section 11.

23 2. The Commission or the Executive Committee or other committees of
24 the Commission may convene in a closed, nonpublic meeting if the
25 Commission or Executive Committee or other committees of the Commission
26 must discuss:

27 a. Noncompliance of a Member State with its obligations under the
28 Compact;

29 b. The employment, compensation, discipline or other matters,
30 practices or procedures related to specific employees or other matters
31 related to the Commission's internal personnel practices and procedures;

- 1 c. Current, threatened, or reasonably anticipated litigation;
- 2 d. Negotiation of contracts for the purchase, lease, or sale of
- 3 goods, services, or real estate;
- 4 e. Accusing any person of a crime or formally censuring any person;
- 5 f. Disclosure of trade secrets or commercial or financial
- 6 information that is privileged or confidential;
- 7 g. Disclosure of information of a personal nature where disclosure
- 8 would constitute a clearly unwarranted invasion of personal privacy;
- 9 h. Disclosure of investigative records compiled for law enforcement
- 10 purposes;
- 11 i. Disclosure of information related to any investigative reports
- 12 prepared by or on behalf of or for use of the Commission or other
- 13 committee charged with responsibility of investigation or determination
- 14 of compliance issues pursuant to the Compact; or
- 15 j. Matters specifically exempted from disclosure by federal or
- 16 Member State statute.

17 3. If a meeting, or portion of a meeting, is closed pursuant to this
18 provision, the Commission's legal counsel or designee shall certify that
19 the meeting may be closed and shall reference each relevant exempting
20 provision.

21 4. The Commission shall keep minutes that fully and clearly describe
22 all matters discussed in a meeting and shall provide a full and accurate
23 summary of actions taken, and the reasons therefor, including a
24 description of the views expressed. All documents considered in
25 connection with an action shall be identified in such minutes. All
26 minutes and documents of a closed meeting shall remain under seal,
27 subject to release by a majority vote of the Commission or order of a
28 court of competent jurisdiction.

29 F. Financing of the Commission

30 1. The Commission shall pay, or provide for the payment of, the
31 reasonable expenses of its establishment, organization, and ongoing

1 activities.

2 2. The Commission may accept any and all appropriate revenue
3 sources, donations, and grants of money, equipment, supplies, materials,
4 and services.

5 3. The Commission may levy on and collect an annual assessment from
6 each Member State or impose fees on other parties to cover the cost of
7 the operations and activities of the Commission and its staff, which must
8 be in a total amount sufficient to cover its annual budget as approved
9 each year for which revenue is not provided by other sources. The
10 aggregate annual assessment amount shall be allocated based upon a
11 formula to be determined by the Commission, which shall promulgate a Rule
12 binding upon all Member States.

13 4. The Commission shall not incur obligations of any kind prior to
14 securing the funds adequate to meet the same; nor shall the Commission
15 pledge the credit of any of the Member States, except by and with the
16 authority of the Member State.

17 5. The Commission shall keep accurate accounts of all receipts and
18 disbursements. The receipts and disbursements of the Commission shall be
19 subject to the audit and accounting procedures established under its
20 bylaws. However, all receipts and disbursements of funds handled by the
21 Commission shall be audited yearly by a certified or licensed public
22 accountant, and the report of the audit shall be included in and become
23 part of the annual report of the Commission.

24 G. Qualified Immunity, Defense, and Indemnification

25 1. The members, officers, executive director, employees, and
26 representatives of the Commission shall have no greater liability, either
27 personally or in their official capacity, for any claim for damage to or
28 loss of property or personal injury or other civil liability caused by or
29 arising out of any actual or alleged act, error, or omission that
30 occurred, or that the person against whom the claim is made had a
31 reasonable basis for believing occurred, within the scope of Commission

1 employment, duties, or responsibilities, than a state employee would have
2 under the same or similar circumstances; provided that nothing in this
3 paragraph shall be construed to protect any such person from suit or
4 liability for any damage, loss, injury, or liability caused by the
5 intentional or willful or wanton misconduct of that person.

6 2. The Commission shall defend any member, officer, executive
7 director, employee or representative of the Commission in any civil
8 action seeking to impose liability arising out of any actual or alleged
9 act, error, or omission that occurred within the scope of Commission
10 employment, duties, or responsibilities, or that the person against whom
11 the claim is made had a reasonable basis for believing occurred within
12 the scope of Commission employment, duties, or responsibilities; provided
13 that nothing herein shall be construed to prohibit that person from
14 retaining his or her own counsel; and provided further, that the actual
15 or alleged act, error, or omission did not result from that person's
16 intentional or willful or wanton misconduct.

17 3. The Commission shall indemnify and hold harmless any member,
18 officer, executive director, employee, or representative of the
19 Commission for the amount of any settlement or judgment obtained against
20 that person arising out of any actual or alleged act, error, or omission
21 that occurred within the scope of Commission employment, duties, or
22 responsibilities, or that such person had a reasonable basis for
23 believing occurred within the scope of Commission employment, duties, or
24 responsibilities, provided that the actual or alleged act, error, or
25 omission did not result from the intentional or willful or wanton
26 misconduct of that person.

27 SECTION 10. DATA SYSTEM

28 A. The Commission shall provide for the development, maintenance,
29 operation, and utilization of a coordinated database and reporting system
30 containing licensure, Adverse Action, and Investigative Information on
31 all licensed individuals in Member States.

1 B. Notwithstanding any other provision of State law to the contrary,
2 a Member State shall submit a uniform data set to the Data System on all
3 individuals to whom this Compact is applicable as required by the Rules
4 of the Commission, including:

- 5 1. Identifying information;
- 6 2. Licensure data;
- 7 3. Adverse Actions against a license or Privilege to Practice;
- 8 4. Nonconfidential information related to Alternative Program
9 participation;
- 10 5. Any denial of application for licensure, and the reason(s) for
11 such denial;
- 12 6. Current Significant Investigative Information; and
- 13 7. Other information that may facilitate the administration of this
14 Compact, as determined by the Rules of the Commission.

15 C. Investigative Information pertaining to a Licensee in any Member
16 State will only be available to other Member States.

17 D. The Commission shall promptly notify all Member States of any
18 Adverse Action taken against a Licensee or an individual applying for a
19 license. Adverse Action information pertaining to a Licensee in any
20 Member State will be available to any other Member State.

21 E. Member States contributing information to the Data System may
22 designate information that may not be shared with the public without the
23 express permission of the contributing State.

24 F. Any information submitted to the Data System that is subsequently
25 required to be expunged by the laws of the Member State contributing the
26 information shall be removed from the Data System.

27 SECTION 11. RULEMAKING

28 A. The Commission shall promulgate reasonable Rules in order to
29 effectively and efficiently achieve the purpose of the Compact.
30 Notwithstanding the foregoing, in the event the Commission exercises its
31 Rulemaking authority in a manner that is beyond the scope of the purposes

1 of the Compact, or the powers granted hereunder, then such an action by
2 the Commission shall be invalid and have no force or effect.

3 B. The Commission shall exercise its Rulemaking powers pursuant to
4 the criteria set forth in this Section and the Rules adopted thereunder.
5 Rules and amendments shall become binding as of the date specified in
6 each Rule or amendment.

7 C. If a majority of the legislatures of the Member States rejects a
8 Rule, by enactment of a statute or resolution in the same manner used to
9 adopt the Compact within four years of the date of adoption of the Rule,
10 then such Rule shall have no further force and effect in any Member
11 State.

12 D. Rules or amendments to the Rules shall be adopted at a regular or
13 special meeting of the Commission.

14 E. Prior to promulgation and adoption of a final Rule or Rules by
15 the Commission, and at least thirty days in advance of the meeting at
16 which the Rule will be considered and voted upon, the Commission shall
17 file a Notice of Proposed Rulemaking:

18 1. On the website of the Commission or other publicly accessible
19 platform; and

20 2. On the website of each Member State Professional Counseling
21 Licensing Board or other publicly accessible platform or the publication
22 in which each State would otherwise publish proposed Rules.

23 F. The Notice of Proposed Rulemaking shall include:

24 1. The proposed time, date, and location of the meeting in which the
25 Rule will be considered and voted upon;

26 2. The text of the proposed Rule or amendment and the reason for the
27 proposed Rule;

28 3. A request for comments on the proposed Rule from any interested
29 person; and

30 4. The manner in which interested persons may submit notice to the
31 Commission of their intention to attend the public hearing and any

1 written comments.

2 G. Prior to adoption of a proposed Rule, the Commission shall allow
3 persons to submit written data, facts, opinions, and arguments, which
4 shall be made available to the public.

5 H. The Commission shall grant an opportunity for a public hearing
6 before it adopts a Rule or amendment if a hearing is requested by:

7 1. At least twenty-five persons;

8 2. A State or federal governmental subdivision or agency; or

9 3. An association having at least twenty-five members.

10 I. If a hearing is held on the proposed Rule or amendment, the
11 Commission shall publish the place, time, and date of the scheduled
12 public hearing. If the hearing is held via electronic means, the
13 Commission shall publish the mechanism for access to the electronic
14 hearing.

15 1. All persons wishing to be heard at the hearing shall notify the
16 executive director of the Commission or other designated member in
17 writing of their desire to appear and testify at the hearing not less
18 than five business days before the scheduled date of the hearing.

19 2. Hearings shall be conducted in a manner providing each person who
20 wishes to comment a fair and reasonable opportunity to comment orally or
21 in writing.

22 3. All hearings will be recorded. A copy of the recording will be
23 made available on request.

24 4. Nothing in this section shall be construed as requiring a
25 separate hearing on each Rule. Rules may be grouped for the convenience
26 of the Commission at hearings required by this section.

27 J. Following the scheduled hearing date, or by the close of business
28 on the scheduled hearing date if the hearing was not held, the Commission
29 shall consider all written and oral comments received.

30 K. If no written notice of intent to attend the public hearing by
31 interested parties is received, the Commission may proceed with

1 promulgation of the proposed Rule without a public hearing.

2 L. The Commission shall, by majority vote of all members, take final
3 action on the proposed Rule and shall determine the effective date of the
4 Rule, if any, based on the Rulemaking record and the full text of the
5 Rule.

6 M. Upon determination that an emergency exists, the Commission may
7 consider and adopt an emergency Rule without prior notice, opportunity
8 for comment, or hearing, provided that the usual Rulemaking procedures
9 provided in the Compact and in this section shall be retroactively
10 applied to the Rule as soon as reasonably possible, in no event later
11 than ninety days after the effective date of the Rule. For the purposes
12 of this provision, an emergency Rule is one that must be adopted
13 immediately in order to:

- 14 1. Meet an imminent threat to public health, safety, or welfare;
- 15 2. Prevent a loss of Commission or Member State funds;
- 16 3. Meet a deadline for the promulgation of an administrative Rule
17 that is established by federal law or Rule; or
- 18 4. Protect public health and safety.

19 N. The Commission or an authorized committee of the Commission may
20 direct revisions to a previously adopted Rule or amendment for purposes
21 of correcting typographical errors, errors in format, errors in
22 consistency, or grammatical errors. Public notice of any revisions shall
23 be posted on the website of the Commission. The revision shall be subject
24 to challenge by any person for a period of thirty days after posting. The
25 revision may be challenged only on grounds that the revision results in a
26 material change to a Rule. A challenge shall be made in writing and
27 delivered to the chair of the Commission prior to the end of the notice
28 period. If no challenge is made, the revision will take effect without
29 further action. If the revision is challenged, the revision may not take
30 effect without the approval of the Commission.

31 SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

1 A. Oversight

2 1. The executive, legislative, and judicial branches of State
3 government in each Member State shall enforce this Compact and take all
4 actions necessary and appropriate to effectuate the Compact's purposes
5 and intent. The provisions of this Compact and the Rules promulgated
6 hereunder shall have standing as statutory law.

7 2. All courts shall take judicial notice of the Compact and the
8 Rules in any judicial or administrative proceeding in a Member State
9 pertaining to the subject matter of this Compact which may affect the
10 powers, responsibilities, or actions of the Commission.

11 3. The Commission shall be entitled to receive service of process in
12 any such proceeding and shall have standing to intervene in such a
13 proceeding for all purposes. Failure to provide service of process to the
14 Commission shall render a judgment or order void as to the Commission,
15 this Compact, or promulgated Rules.

16 B. Default, Technical Assistance, and Termination

17 1. If the Commission determines that a Member State has defaulted in
18 the performance of its obligations or responsibilities under this Compact
19 or the promulgated Rules, the Commission shall:

20 a. Provide written notice to the defaulting State and other Member
21 States of the nature of the default, the proposed means of curing the
22 default and/or any other action to be taken by the Commission; and

23 b. Provide remedial training and specific technical assistance
24 regarding the default.

25 C. If a State in default fails to cure the default, the defaulting
26 State may be terminated from the Compact upon an affirmative vote of a
27 majority of the Member States, and all rights, privileges and benefits
28 conferred by this Compact may be terminated on the effective date of
29 termination. A cure of the default does not relieve the offending State
30 of obligations or liabilities incurred during the period of default.

31 D. Termination of membership in the Compact shall be imposed only

1 after all other means of securing compliance have been exhausted. Notice
2 of intent to suspend or terminate shall be given by the Commission to the
3 governor, the majority and minority leaders of the defaulting State's
4 legislature, and each of the Member States.

5 E. A State that has been terminated is responsible for all
6 assessments, obligations, and liabilities incurred through the effective
7 date of termination, including obligations that extend beyond the
8 effective date of termination.

9 F. The Commission shall not bear any costs related to a State that
10 is found to be in default or that has been terminated from the Compact,
11 unless agreed upon in writing between the Commission and the defaulting
12 State.

13 G. The defaulting State may appeal the action of the Commission by
14 petitioning the United States District Court for the District of Columbia
15 or the federal district where the Commission has its principal offices.
16 The prevailing member shall be awarded all costs of such litigation,
17 including reasonable attorney's fees.

18 H. Dispute Resolution

19 1. Upon request by a Member State, the Commission shall attempt to
20 resolve disputes related to the Compact that arise among Member States
21 and between Member and non-Member States.

22 2. The Commission shall promulgate a Rule providing for both
23 mediation and binding dispute resolution for disputes as appropriate.

24 I. Enforcement

25 1. The Commission, in the reasonable exercise of its discretion,
26 shall enforce the provisions and Rules of this Compact.

27 2. By majority vote, the Commission may initiate legal action in the
28 United States District Court for the District of Columbia or the federal
29 district where the Commission has its principal offices against a Member
30 State in default to enforce compliance with the provisions of the Compact
31 and its promulgated Rules and bylaws. The relief sought may include both

1 injunctive relief and damages. In the event judicial enforcement is
2 necessary, the prevailing member shall be awarded all costs of such
3 litigation, including reasonable attorney's fees.

4 3. The remedies herein shall not be the exclusive remedies of the
5 Commission. The Commission may pursue any other remedies available under
6 federal or State law.

7 SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT
8 COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

9 A. The Compact shall come into effect on the date on which the
10 Compact statute is enacted into law in the tenth Member State. The
11 provisions, which become effective at that time, shall be limited to the
12 powers granted to the Commission relating to assembly and the
13 promulgation of Rules. Thereafter, the Commission shall meet and exercise
14 Rulemaking powers necessary to the implementation and administration of
15 the Compact.

16 B. Any State that joins the Compact subsequent to the Commission's
17 initial adoption of the Rules shall be subject to the Rules as they exist
18 on the date on which the Compact becomes law in that State. Any Rule that
19 has been previously adopted by the Commission shall have the full force
20 and effect of law on the day the Compact becomes law in that State.

21 C. Any Member State may withdraw from this Compact by enacting a
22 statute repealing the same.

23 1. A Member State's withdrawal shall not take effect until six
24 months after enactment of the repealing statute.

25 2. Withdrawal shall not affect the continuing requirement of the
26 withdrawing State's Professional Counseling Licensing Board to comply
27 with the investigative and Adverse Action reporting requirements of the
28 Compact prior to the effective date of withdrawal.

29 D. Nothing contained in this Compact shall be construed to
30 invalidate or prevent any Professional Counseling licensure agreement or
31 other cooperative arrangement between a Member State and a non-Member

1 State that does not conflict with the provisions of this Compact.

2 E. This Compact may be amended by the Member States. No amendment to
3 this Compact shall become effective and binding upon any Member State
4 until it is enacted into the laws of all Member States.

5 SECTION 14. CONSTRUCTION AND SEVERABILITY

6 This Compact shall be liberally construed so as to effectuate the
7 purposes thereof. The provisions of this Compact shall be severable and
8 if any phrase, clause, sentence or provision of this Compact is declared
9 to be contrary to the constitution of any Member State or of the United
10 States or the applicability thereof to any government, agency, person or
11 circumstance is held invalid, the validity of the remainder of this
12 Compact and the applicability thereof to any government, agency, person
13 or circumstance shall not be affected thereby. If this Compact shall be
14 held contrary to the constitution of any Member State, the Compact shall
15 remain in full force and effect as to the remaining Member States and in
16 full force and effect as to the Member State affected as to all severable
17 matters.

18 SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

19 A. A Licensee providing Professional Counseling services in a Remote
20 State under the Privilege to Practice shall adhere to the laws and
21 regulations, including scope of practice, of the Remote State.

22 B. Nothing herein prevents the enforcement of any other law of a
23 Member State that is not inconsistent with the Compact.

24 C. Any laws in a Member State in conflict with the Compact are
25 superseded to the extent of the conflict.

26 D. Any lawful actions of the Commission, including all Rules and
27 bylaws properly promulgated by the Commission, are binding upon the
28 Member States.

29 E. All permissible agreements between the Commission and the Member
30 States are binding in accordance with their terms.

31 F. In the event any provision of the Compact exceeds the

1 constitutional limits imposed on the legislature of any Member State, the
2 provision shall be ineffective to the extent of the conflict with the
3 constitutional provision in question in that Member State.

4 Sec. 2. The State of Nebraska adopts the Occupational Therapy
5 Practice Interstate Compact in the form substantially as follows:

6 ARTICLE 1. PURPOSE.

7 The purpose of the Occupational Therapy Practice Interstate Compact
8 is to facilitate interstate practice of occupational therapy with the
9 goal of improving public access to occupational therapy services. The
10 practice of occupational therapy occurs in the state where the patient or
11 client is located at the time of the patient or client encounter. This
12 Compact preserves the regulatory authority of states to protect public
13 health and safety through the current system of state licensure.

14 This Compact is designed to achieve the following objectives:

15 A. Increase public access to occupational therapy services by
16 providing for the mutual recognition of other Member State licenses;

17 B. Enhance the states' ability to protect the public health and
18 safety;

19 C. Encourage the cooperation of Member States in regulating
20 multistate occupational therapy practice;

21 D. Support spouses of relocating military members;

22 E. Enhance the exchange of licensure, investigative, and
23 disciplinary information between Member States;

24 F. Allow a Remote State to hold a provider of services with a
25 Compact Privilege in that state accountable to that state's practice
26 standards; and

27 G. Facilitate the use of telehealth technology in order to increase
28 access to occupational therapy services.

29 ARTICLE 2. DEFINITIONS.

30 As used in the Occupational Therapy Practice Interstate Compact, and
31 except as otherwise provided, the following definitions apply:

1 A. Active duty military means full-time duty status in the active
2 uniformed service of the United States, including members of the National
3 Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters
4 1209 and 1211.

5 B. Adverse action means any administrative, civil, equitable, or
6 criminal action permitted by a state's laws which is imposed by a
7 licensing board or other authority against an occupational therapist or
8 occupational therapy assistant, including actions against an individual's
9 license or Compact Privilege such as revocation, suspension, probation,
10 monitoring of the Licensee, or restriction on the Licensee's practice.

11 C. Alternative program means a nondisciplinary monitoring process
12 approved by an occupational therapy licensing board to address Impaired
13 Practitioners.

14 D. Compact Privilege means the authorization, which is equivalent to
15 a license, granted by a Remote State to allow a Licensee from another
16 Member State to practice as an occupational therapist or practice as an
17 occupational therapy assistant in the Remote State under its laws and
18 rules. The practice of occupational therapy occurs in the Member State
19 where the patient or client is located at the time of the patient or
20 client encounter.

21 E. Continuing Competence/Education means a requirement, as a
22 condition of license renewal, to provide evidence of participation in,
23 and completion of, educational and professional activities relevant to
24 practice or area of work.

25 F. Current significant investigative information means investigative
26 information that a licensing board, after an inquiry or investigation
27 that includes notification and an opportunity for the occupational
28 therapist or occupational therapy assistant to respond, if required by
29 state law, has reason to believe is not groundless and, if proved true,
30 would indicate more than a minor infraction.

31 G. Data system means a repository of information about Licensees,

1 including, but not limited to, licensure, investigative information,
2 Compact Privilege, and adverse action.

3 H. Encumbered License means a license in which an adverse action
4 restricts the practice of occupational therapy by the Licensee and the
5 adverse action has been reported to the National Practitioner Data Bank.

6 I. Executive Committee means a group of directors elected or
7 appointed to act on behalf of, and within the powers granted to them by,
8 the Commission.

9 J. Home State means the Member State that is the Licensee's primary
10 state of residence.

11 K. Impaired Practitioner means an individual whose professional
12 practice is adversely affected by substance abuse, addiction, or other
13 health-related conditions.

14 L. Investigative information means information, records, or
15 documents received or generated by an occupational therapy licensing
16 board pursuant to an investigation.

17 M. Jurisprudence requirement means the assessment of an individual's
18 knowledge of the laws and rules governing the practice of occupational
19 therapy in a state.

20 N. Licensee means an individual who currently holds an authorization
21 from the state to practice as an occupational therapist or as an
22 occupational therapy assistant.

23 O. Member State means a state that has enacted this Compact.

24 P. Occupational therapist means an individual who is licensed by a
25 state to practice occupational therapy.

26 Q. Occupational therapy assistant means an individual who is
27 licensed by a state to assist in the practice of occupational therapy.

28 R. Occupational therapy, occupational therapy practice, and the
29 practice of occupational therapy mean the care and services provided by
30 an occupational therapist or an occupational therapy assistant as set
31 forth in the Member State's statutes and regulations.

1 S. Occupational Therapy Interstate Compact Commission or Commission
2 means the national administrative body whose membership consists of all
3 states that have enacted this Compact.

4 T. Occupational therapy licensing board or licensing board means the
5 agency of a state that is responsible for the licensing and regulation of
6 occupational therapists and occupational therapy assistants.

7 U. Primary state of residence means the state, also known as the
8 Home State, in which an occupational therapist or occupational therapy
9 assistant who is not active duty military declares a primary residence
10 for legal purposes as verified by: Driver's license, federal income tax
11 return, lease, deed, mortgage or voter registration or other verifying
12 documentation as further defined by Commission Rules.

13 V. Remote State means a Member State other than the Home State,
14 where a Licensee is exercising or seeking to exercise the Compact
15 Privilege.

16 W. Rule means a regulation promulgated by the Commission that has
17 the force of law.

18 X. State means any state, commonwealth, district, or territory of
19 the United States of America that regulates the practice of occupational
20 therapy.

21 Y. Single-State License means an occupational therapist or
22 occupational therapy assistant license issued by a Member State that
23 authorizes practice only within the issuing state and does not include a
24 Compact Privilege in any other Member State.

25 Z. Telehealth means the application of telecommunication technology
26 to deliver occupational therapy services for assessment, intervention, or
27 consultation.

28 ARTICLE 3. STATE PARTICIPATION IN THIS COMPACT.

29 A. To participate in this Compact, a Member State shall:

30 1. License occupational therapists and occupational therapy
31 assistants;

1 2. Participate fully in the data system, including, but not limited
2 to, using the Commission's unique identifier as defined in Rules of the
3 Commission;

4 3. Have a mechanism in place for receiving and investigating
5 complaints about Licensees;

6 4. Notify the Commission, in compliance with the terms of this
7 Compact and Rules, of any adverse action or the availability of
8 investigative information regarding a Licensee;

9 5. Implement or utilize procedures for considering the criminal
10 history records of applicants for an initial Compact Privilege. These
11 procedures shall include the submission of fingerprints or other
12 biometric-based information by applicants for the purpose of obtaining an
13 applicant's criminal history record information from the Federal Bureau
14 of Investigation and the agency responsible for retaining that state's
15 criminal records.

16 a. A Member State shall, within a timeframe established by the
17 Commission, require a criminal background check for a Licensee seeking or
18 applying for a Compact Privilege whose primary state of residence is that
19 Member State, by receiving the results of the Federal Bureau of
20 Investigation criminal record search, and shall use the results in making
21 licensure decisions.

22 b. Communication between a Member State, the Commission, and among
23 Member States regarding the verification of eligibility for licensure
24 through this Compact shall not include any information received from the
25 Federal Bureau of Investigation relating to a federal criminal records
26 check performed by a Member State under Public Law 92-544.

27 6. Comply with the Rules of the Commission;

28 7. Utilize only a recognized national examination as a requirement
29 for licensure pursuant to the Rules of the Commission; and

30 8. Have Continuing Competence/Education requirements as a condition
31 for license renewal.

1 B. A Member State shall grant the Compact Privilege to a Licensee
2 holding a valid unencumbered license in another Member State in
3 accordance with the terms of this Compact and Rules.

4 C. Member States may charge a fee for granting a Compact Privilege.

5 D. A Member State shall provide for the state's delegate to attend
6 all Commission meetings.

7 E. Individuals not residing in a Member State shall continue to be
8 able to apply for a Member State's Single-State License as provided under
9 the laws of each Member State. However, the Single-State License granted
10 to these individuals shall not be recognized as granting the Compact
11 Privilege in any other Member State.

12 F. Nothing in this Compact shall affect the requirements established
13 by a Member State for the issuance of a Single-State License.

14 ARTICLE 4. COMPACT PRIVILEGE.

15 A. To exercise the Compact Privilege under the terms and provisions
16 of this Compact, the Licensee shall:

17 1. Hold a license in the Home State;

18 2. Have a valid United States social security number or national
19 practitioner identification number;

20 3. Have no encumbrance on any state license;

21 4. Be eligible for a Compact Privilege in any Member State in
22 accordance with sections D, F, and H of this Article 4;

23 5. Have paid all fines and completed all requirements resulting from
24 any adverse action against any license or Compact Privilege, and two
25 years have elapsed from the date of such completion;

26 6. Notify the Commission that the Licensee is seeking the Compact
27 Privilege within a Remote State(s);

28 7. Pay any applicable fees, including any state fee, for the Compact
29 Privilege;

30 8. Complete a criminal background check in accordance with
31 subsection A5 of Article 3. The Licensee shall be responsible for the

1 payment of any fee associated with the completion of such criminal
2 background check;

3 9. Meet any jurisprudence requirements established by the Remote
4 State(s) in which the Licensee is seeking a Compact Privilege; and

5 10. Report to the Commission adverse action taken by any non-Member
6 State within thirty days from the date the adverse action is taken.

7 B. The Compact Privilege is valid until the expiration date of the
8 Home State license. The Licensee must comply with the requirements of
9 section A of this Article 4 to maintain this Compact Privilege in the
10 Remote State.

11 C. A Licensee providing occupational therapy in a Remote State under
12 the Compact Privilege shall function within the laws and regulations of
13 the Remote State.

14 D. Occupational therapy assistants practicing in a Remote State
15 shall be supervised by an occupational therapist licensed or holding a
16 Compact Privilege in that Remote State.

17 E. A Licensee providing occupational therapy in a Remote State is
18 subject to that state's regulatory authority. A Remote State may, in
19 accordance with due process and that state's laws, remove a Licensee's
20 Compact Privilege in the Remote State for a specific period of time,
21 impose fines, or take any other necessary actions to protect the health
22 and safety of its citizens. The Licensee may be ineligible for a Compact
23 Privilege in any state until the specific time for removal has passed and
24 all fines are paid.

25 F. If a Home State license is encumbered, the Licensee shall lose
26 the Compact Privilege in any Remote State until the following occur:

27 1. The Home State license is no longer encumbered; and

28 2. Two years have elapsed from the date on which the Home State
29 license is no longer encumbered in accordance with subsection F1 of this
30 Article 4.

31 G. Once an Encumbered License in the Home State is restored to good

1 standing, the Licensee must meet the requirements of section A of this
2 Article 4 to obtain a Compact Privilege in any Remote State.

3 H. If a Licensee's Compact Privilege in any Remote State is removed,
4 the individual may lose the Compact Privilege in any other Remote State
5 until the following occur:

6 1. The specific period of time for which the Compact Privilege was
7 removed has ended;

8 2. All fines have been paid and all conditions have been met;

9 3. Two years have elapsed from the date of completing requirements
10 for subsections H1 and 2 of this Article 4; and

11 4. The Compact Privileges are reinstated by the Commission, and the
12 compact data system is updated to reflect reinstatement.

13 I. If a Licensee's Compact Privilege in any Remote State is removed
14 due to an erroneous charge, privileges shall be restored through the
15 compact data system.

16 J. Once the requirements of section H of this Article 4 have been
17 met, the license must meet the requirements in section A of this Article
18 4 to obtain a Compact Privilege in a Remote State.

19 ARTICLE 5. OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT
20 PRIVILEGE.

21 A. An occupational therapist and an occupational therapy assistant
22 may hold a Home State license, issued by the Home State which allows for
23 Compact Privileges, in only one Member State at a time.

24 B. If an occupational therapist or occupational therapy assistant
25 changes primary state of residence by moving between two Member States:

26 1. The occupational therapist or occupational therapy assistant
27 shall file an application for obtaining a new Home State license by
28 virtue of a Compact Privilege, pay all applicable fees, and notify the
29 current and new Member States in accordance with applicable Rules adopted
30 by the Commission.

31 2. Upon receipt of an application for obtaining a new Home State

1 license by virtue of compact privilege, the new Home State shall verify
2 that the occupational therapist or occupational therapy assistant meets
3 the pertinent criteria outlined in Article 4 via the data system, without
4 need for primary source verification except for:

5 a. A Federal Bureau of Investigation fingerprint-based criminal
6 background check if not previously performed or updated pursuant to
7 applicable Rules adopted by the Commission in accordance with Public Law
8 92-544;

9 b. Other criminal background check as required by the new Home
10 State; and

11 c. Submission of any requisite jurisprudence requirements of the new
12 Home State.

13 3. The former Home State shall convert the former Home State license
14 into a Compact Privilege once the new Home State has activated the new
15 Home State license in accordance with applicable Rules adopted by the
16 Commission.

17 4. Notwithstanding any other provision of this Compact, if the
18 occupational therapist or occupational therapy assistant cannot meet the
19 criteria in Article 4, the new Home State shall apply its requirements
20 for issuing a new Single-State License.

21 5. The occupational therapist or the occupational therapy assistant
22 shall pay all applicable fees to the new Home State in order to be issued
23 a new Home State license.

24 C. If an occupational therapist or occupational therapy assistant
25 changes primary state of residence by moving from a Member State to a
26 non-Member State, or from a non-Member State to a Member State, the state
27 criteria shall apply for issuance of a Single-State License in the new
28 state.

29 D. Nothing in this Compact shall interfere with a Licensee's ability
30 to hold a Single-State License in multiple states, however, for the
31 purposes of this Compact, a Licensee shall have only one Home State

1 license.

2 E. Nothing in this Compact shall affect the requirements established
3 by a Member State for the issuance of a Single-State License.

4 ARTICLE 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES.

5 Active duty military personnel, or their spouse, shall designate a
6 Home State where the individual has a current license in good standing.
7 The individual may retain the Home State designation during the period
8 the service member is on active duty. Subsequent to designating a Home
9 State, the individual shall only change their Home State through
10 application for licensure in the new state.

11 ARTICLE 7. ADVERSE ACTIONS.

12 A. A Home State shall have exclusive power to impose adverse action
13 against a license issued by the Home State.

14 B. In addition to the other powers conferred by state law, a Remote
15 State shall have the authority, in accordance with existing state due
16 process law, to:

17 1. Take adverse action against an occupational therapist's or
18 occupational therapy assistant's Compact Privilege within that Member
19 State.

20 2. Issue subpoenas for both hearings and investigations that require
21 the attendance and testimony of witnesses as well as the production of
22 evidence. Subpoenas issued by a licensing board in a Member State for the
23 attendance and testimony of witnesses or the production of evidence from
24 another Member State shall be enforced in the latter state by any court
25 of competent jurisdiction, according to the practice and procedure of
26 that court applicable to subpoenas issued in proceedings pending before
27 it. The issuing authority shall pay any witness fees, travel expenses,
28 mileage, and other fees required by the service statutes of the state in
29 which the witnesses or evidence are located.

30 C. For purposes of taking adverse action, the Home State shall give
31 the same priority and effect to reported conduct received from a Member

1 State as it would if the conduct had occurred within the Home State. In
2 so doing, the Home State shall apply its own state laws to determine
3 appropriate action.

4 D. The Home State shall complete any pending investigations of an
5 occupational therapist or occupational therapy assistant who changes
6 primary state of residence during the course of the investigations. The
7 Home State, where the investigations were initiated, shall also have the
8 authority to take appropriate action and shall promptly report the
9 conclusions of the investigations to the Commission data system. The
10 Commission data system administrator shall promptly notify the new Home
11 State of any adverse actions.

12 E. A Member State, if otherwise permitted by state law, may recover
13 from the affected occupational therapist or occupational therapy
14 assistant the costs of investigations and disposition of cases resulting
15 from any adverse action taken against that occupational therapist or
16 occupational therapy assistant.

17 F. A Member State may take adverse action based on the factual
18 findings of the Remote State, provided that the Member State follows its
19 own procedures for taking the adverse action.

20 G. Joint Investigations.

21 1. In addition to the authority granted to a Member State by its
22 respective state occupational therapy laws and regulations or other
23 applicable State law, any Member State may participate with other Member
24 States in joint investigations of Licensees.

25 2. Member States shall share any investigative, litigation, or
26 compliance materials in furtherance of any joint or individual
27 investigation initiated under this Compact.

28 H. If an adverse action is taken by the Home State against an
29 occupational therapist's or occupational therapy assistant's license, the
30 occupational therapist's or occupational therapy assistant's Compact
31 Privilege in all other Member States shall be deactivated until all

1 encumbrances have been removed from the state license. All Home State
2 disciplinary orders that impose adverse action against an occupational
3 therapist's or occupational therapy assistant's license shall include a
4 statement that the occupational therapist's or occupational therapy
5 assistant's Compact Privilege is deactivated in all Member States during
6 the pendency of the order.

7 I. If a Member State takes adverse action, it shall promptly notify
8 the administrator of the data system. The administrator of the data
9 system shall promptly notify the Home State of any adverse actions by
10 Remote States.

11 J. Nothing in this Compact shall override a Member State's decision
12 that participation in an alternative program may be used in lieu of
13 adverse action.

14 ARTICLE 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT
15 COMMISSION.

16 A. The Member States hereby create and establish a joint public
17 agency known as the Occupational Therapy Interstate Compact Commission:

18 1. The Commission is an instrumentality of the Compact States.

19 2. Venue is proper and judicial proceedings by or against the
20 Commission shall be brought solely and exclusively in a court of
21 competent jurisdiction where the principal office of the Commission is
22 located. The Commission may waive venue and jurisdictional defenses to
23 the extent it adopts or consents to participate in alternative dispute
24 resolution proceedings.

25 3. Nothing in this Compact shall be construed to be a waiver of
26 sovereign immunity.

27 B. Membership, Voting, and Meetings.

28 1. Each Member State shall have and be limited to one delegate
29 selected by that Member State's licensing board.

30 2. The delegate shall be either:

31 a. A current member of the licensing board, who is an occupational

1 therapist, occupational therapy assistant, or public member; or

2 b. An administrator of the licensing board.

3 3. Any delegate may be removed or suspended from office as provided
4 by the law of the state from which the delegate is appointed.

5 4. The Member State board shall fill any vacancy occurring in the
6 Commission within ninety days.

7 5. Each delegate shall be entitled to one vote with regard to the
8 promulgation of Rules and creation of bylaws and shall otherwise have an
9 opportunity to participate in the business and affairs of the Commission.
10 A delegate shall vote in person or by such other means as provided in the
11 bylaws. The bylaws may provide for delegates' participation in meetings
12 by telephone or other means of communication.

13 6. The Commission shall meet at least once during each calendar
14 year. Additional meetings shall be held as set forth in the bylaws.

15 7. The Commission shall establish by Rule a term of office for
16 delegates.

17 C. The Commission shall have the following powers and duties:

18 1. Establish a Code of Ethics for the Commission;

19 2. Establish the fiscal year of the Commission;

20 3. Establish bylaws;

21 4. Maintain its financial records in accordance with the bylaws;

22 5. Meet and take such actions as are consistent with the provisions
23 of this Compact and the bylaws;

24 6. Promulgate uniform Rules to facilitate and coordinate
25 implementation and administration of this Compact. The Rules shall have
26 the force and effect of law and shall be binding in all Member States;

27 7. Bring and prosecute legal proceedings or actions in the name of
28 the Commission, provided that the standing of any state licensing board
29 to sue or be sued under applicable law shall not be affected;

30 8. Purchase and maintain insurance and bonds;

31 9. Borrow, accept, or contract for services of personnel, including,

1 but not limited to, employees of a Member State;

2 10. Hire employees, elect or appoint officers, fix compensation,
3 define duties, grant such individuals appropriate authority to carry out
4 the purposes of this Compact, and to establish the Commission's personnel
5 policies and programs relating to conflicts of interest, qualifications
6 of personnel, and other related personnel matters;

7 11. Accept any and all appropriate donations and grants of money,
8 equipment, supplies, materials, and services, and to receive, utilize,
9 and dispose of the same; provided that at all times the Commission shall
10 avoid any appearance of impropriety or conflict of interest;

11 12. Lease, purchase, accept appropriate gifts or donations of, or
12 otherwise to own, hold, improve, or use, any property, real, personal, or
13 mixed; provided that at all times the Commission shall avoid any
14 appearance of impropriety;

15 13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or
16 otherwise dispose of any property real, personal, or mixed;

17 14. Establish a budget and make expenditures;

18 15. Borrow money;

19 16. Appoint committees, including standing committees composed of
20 members, state regulators, state legislators or their representatives,
21 and consumer representatives, and such other interested persons as may be
22 designated in this Compact and the bylaws;

23 17. Provide and receive information from, and cooperate with, law
24 enforcement agencies;

25 18. Establish and elect an executive committee; and

26 19. Perform such other functions as may be necessary or appropriate
27 to achieve the purposes of this Compact consistent with the state
28 regulation of occupational therapy licensure and practice.

29 D. The Executive Committee.

30 The executive committee shall have the power to act on behalf of the
31 Commission according to the terms of this Compact.

1 1. The executive committee shall be composed of nine members:

2 a. Seven voting members who are elected by the Commission from the
3 current membership of the Commission;

4 b. One ex officio, nonvoting member from a recognized national
5 occupational therapy professional association; and

6 c. One ex officio, nonvoting member from a recognized national
7 occupational therapy certification organization.

8 2. The ex officio members will be selected by their respective
9 organizations.

10 3. The Commission may remove any member of the executive committee
11 as provided in bylaws.

12 4. The executive committee shall meet at least annually.

13 5. The executive committee shall have the following duties and
14 responsibilities:

15 a. Recommend to the entire Commission changes to the Rules or
16 bylaws, changes to this Compact, fees paid by Member States such as
17 annual dues, and any Commission Compact fee charged to Licensees for the
18 Compact Privilege;

19 b. Ensure Compact administration services are appropriately
20 provided, contractual or otherwise;

21 c. Prepare and recommend the budget;

22 d. Maintain financial records on behalf of the Commission;

23 e. Monitor Compact compliance of Member States and provide
24 compliance reports to the Commission;

25 f. Establish additional committees as necessary; and

26 g. Other duties as provided in Rules or bylaws.

27 E. Meetings of the Commission.

28 1. All meetings shall be open to the public, and public notice of
29 meetings shall be given in the same manner as required under the
30 Rulemaking provisions in Article 10.

31 2. The Commission or the executive committee or other committees of

1 the Commission may convene in a closed, nonpublic meeting if the
2 Commission or executive committee or other committees of the Commission
3 must discuss:

4 a. Noncompliance of a Member State with its obligations under this
5 Compact;

6 b. The employment, compensation, discipline, or other matters,
7 practices, or procedures related to specific employees or other matters
8 related to the Commission's internal personnel practices and procedures;

9 c. Current, threatened, or reasonably anticipated litigation;

10 d. Negotiation of contracts for the purchase, lease, or sale of
11 goods, services, or real estate;

12 e. Accusing any person of a crime or formally censuring any person;

13 f. Disclosure of trade secrets or commercial or financial
14 information that is privileged or confidential;

15 g. Disclosure of information of a personal nature where disclosure
16 would constitute a clearly unwarranted invasion of personal privacy;

17 h. Disclosure of investigative records compiled for law enforcement
18 purposes;

19 i. Disclosure of information related to any investigative reports
20 prepared by or on behalf of or for use of the Commission or other
21 committee charged with responsibility of investigation or determination
22 of compliance issues pursuant to this Compact; or

23 j. Matters specifically exempted from disclosure by federal or
24 Member State statute.

25 3. If a meeting, or portion of a meeting, is closed pursuant to this
26 provision, the Commission's legal counsel or designee shall certify that
27 the meeting may be closed and shall reference each relevant exempting
28 provision.

29 4. The Commission shall keep minutes that fully and clearly describe
30 all matters discussed in a meeting and shall provide a full and accurate
31 summary of actions taken, and the reasons therefor, including a

1 description of the views expressed. All documents considered in
2 connection with an action shall be identified in such minutes. All
3 minutes and documents of a closed meeting shall remain under seal,
4 subject to release by a majority vote of the Commission or order of a
5 court of competent jurisdiction.

6 F. Financing of the Commission.

7 1. The Commission shall pay, or provide for the payment of, the
8 reasonable expenses of its establishment, organization, and ongoing
9 activities.

10 2. The Commission may accept any and all appropriate revenue
11 sources, donations, and grants of money, equipment, supplies, materials,
12 and services.

13 3. The Commission may levy on and collect an annual assessment from
14 each Member State or impose fees on other parties to cover the cost of
15 the operations and activities of the Commission and its staff, which must
16 be in a total amount sufficient to cover its annual budget as approved by
17 the Commission each year for which revenue is not provided by other
18 sources. The aggregate annual assessment amount shall be allocated based
19 upon a formula to be determined by the Commission, which shall promulgate
20 a Rule binding upon all Member States.

21 4. The Commission shall not incur obligations of any kind prior to
22 securing the funds adequate to meet the same; nor shall the Commission
23 pledge the credit of any of the Member States, except by and with the
24 authority of the Member State.

25 5. The Commission shall keep accurate accounts of all receipts and
26 disbursements. The receipts and disbursements of the Commission shall be
27 subject to the audit and accounting procedures established under its
28 bylaws. However, all receipts and disbursements of funds handled by the
29 Commission shall be audited yearly by a certified or licensed public
30 accountant, and the report of the audit shall be included in and become
31 part of the annual report of the Commission.

1 G. Qualified Immunity, Defense, and Indemnification.

2 1. The members, officers, executive director, employees, and
3 representatives of the Commission shall have no greater liability than a
4 state employee would have under the same or similar circumstances, either
5 personally or in their official capacity, for any claim for damage to or
6 loss of property or personal injury or other civil liability caused by or
7 arising out of any actual or alleged act, error, or omission that
8 occurred, or that the person against whom the claim is made had a
9 reasonable basis for believing occurred, within the scope of Commission
10 employment, duties, or responsibilities; provided that nothing in this
11 paragraph shall be construed to protect any such person from suit or
12 liability for any damage, loss, injury, or liability caused by the
13 intentional or willful or wanton misconduct of that person.

14 2. The Commission shall defend any member, officer, executive
15 director, employee, or representative of the Commission in any civil
16 action seeking to impose liability arising out of any actual or alleged
17 act, error, or omission that occurred within the scope of Commission
18 employment, duties, or responsibilities, or that the person against whom
19 the claim is made had a reasonable basis for believing occurred within
20 the scope of Commission employment, duties, or responsibilities; provided
21 that nothing herein shall be construed to prohibit that person from
22 retaining his or her own counsel; and provided further, that the actual
23 or alleged act, error, or omission did not result from that person's
24 intentional or willful or wanton misconduct.

25 3. The Commission shall indemnify and hold harmless any member,
26 officer, executive director, employee, or representative of the
27 Commission for the amount of any settlement or judgment obtained against
28 that person arising out of any actual or alleged act, error, or omission
29 that occurred within the scope of Commission employment, duties, or
30 responsibilities, or that such person had a reasonable basis for
31 believing occurred within the scope of Commission employment, duties, or

1 responsibilities; provided that the actual or alleged act, error, or
2 omission did not result from the intentional or willful or wanton
3 misconduct of that person.

4 ARTICLE 9. DATA SYSTEM.

5 A. The Commission shall provide for the development, maintenance,
6 and utilization of a coordinated database and reporting system containing
7 licensure, adverse action, and investigative information on all licensed
8 individuals in Member States.

9 B. A Member State shall submit a uniform data set to the data system
10 on all individuals to whom this Compact is applicable utilizing a unique
11 identifier as required by the Rules of the Commission, including:

12 1. Identifying information;

13 2. Licensure data;

14 3. Adverse actions against a license or Compact Privilege;

15 4. Nonconfidential information related to alternative program
16 participation;

17 5. Any denial of application for licensure, and the reason for such
18 denial;

19 6. Other information that may facilitate the administration of this
20 Compact, as determined by the Rules of the Commission; and

21 7. Current significant investigative information.

22 C. Current significant investigative information and other
23 investigative information pertaining to a Licensee in any Member State
24 will only be available to other Member States.

25 D. The Commission shall promptly notify all Member States of any
26 adverse action taken against a Licensee or an individual applying for a
27 license. Adverse action information pertaining to a Licensee in any
28 Member State will be available to any other Member State.

29 E. Member States contributing information to the data system may
30 designate information that may not be shared with the public without the
31 express permission of the contributing state.

1 F. Any information submitted to the data system that is subsequently
2 required to be expunged by the laws of the Member State contributing the
3 information shall be removed from the data system.

4 ARTICLE 10. RULEMAKING.

5 A. The Commission shall exercise its Rulemaking powers pursuant to
6 the criteria set forth in this Article and the Rules adopted thereunder.
7 Rules and amendments shall become binding as of the date specified in
8 each Rule or amendment.

9 B. The Commission shall promulgate reasonable rules in order to
10 effectively and efficiently achieve the purposes of the Compact.
11 Notwithstanding the foregoing, in the event the Commission exercises its
12 rulemaking authority in a manner that is beyond the scope of the purposes
13 of the Compact, or the powers granted hereunder, then such an action by
14 the Commission shall be invalid and have no force and effect.

15 C. If a majority of the legislatures of the Member States rejects a
16 Rule, by enactment of a statute or resolution in the same manner used to
17 adopt this Compact within four years of the date of adoption of the Rule,
18 then such Rule shall have no further force and effect in any Member
19 State.

20 D. Rules or amendments to the Rules shall be adopted at a regular or
21 special meeting of the Commission.

22 E. Prior to promulgation and adoption of a final Rule or Rules by
23 the Commission, and at least thirty days in advance of the meeting at
24 which the Rule will be considered and voted upon, the Commission shall
25 file a Notice of Proposed Rulemaking:

26 1. On the website of the Commission or other publicly accessible
27 platform; and

28 2. On the website of each Member State occupational therapy
29 licensing board or other publicly accessible platform or the publication
30 in which each State would otherwise publish proposed Rules.

31 F. The Notice of Proposed Rulemaking shall include:

1 1. The proposed time, date, and location of the meeting in which the
2 Rule will be considered and voted upon;

3 2. The text of the proposed Rule or amendment and the reason for the
4 proposed Rule;

5 3. A request for comments on the proposed Rule from any interested
6 person; and

7 4. The manner in which interested persons may submit notice to the
8 Commission of their intention to attend the public hearing and any
9 written comments.

10 G. Prior to adoption of a proposed Rule, the Commission shall allow
11 persons to submit written data, facts, opinions, and arguments, which
12 shall be made available to the public.

13 H. The Commission shall grant an opportunity for a public hearing
14 before it adopts a Rule or amendment if a hearing is requested by:

15 1. At least twenty-five persons;

16 2. A State or federal governmental subdivision or agency; or

17 3. An association or organization having at least twenty-five
18 members.

19 I. If a hearing is held on the proposed Rule or amendment, the
20 Commission shall publish the place, time, and date of the scheduled
21 public hearing. If the hearing is held via electronic means, the
22 Commission shall publish the mechanism for access to the electronic
23 hearing.

24 1. All persons wishing to be heard at the hearing shall notify the
25 executive director of the Commission or other designated member in
26 writing of their desire to appear and testify at the hearing not less
27 than five business days before the scheduled date of the hearing.

28 2. Hearings shall be conducted in a manner providing each person who
29 wishes to comment a fair and reasonable opportunity to comment orally or
30 in writing.

31 3. All hearings will be recorded. A copy of the recording will be

1 made available on request.

2 4. Nothing in this Article shall be construed as requiring a
3 separate hearing on each Rule.

4 Rules may be grouped for the convenience of the Commission at
5 hearings required by this Article.

6 J. Following the scheduled hearing date, or by the close of business
7 on the scheduled hearing date if the hearing was not held, the Commission
8 shall consider all written and oral comments received.

9 K. If no written notice of intent to attend the public hearing by
10 interested parties is received, the Commission may proceed with
11 promulgation of the proposed Rule without a public hearing.

12 L. The Commission shall, by majority vote of all members, take final
13 action on the proposed Rule and shall determine the effective date of the
14 Rule, if any, based on the Rulemaking record and the full text of the
15 Rule.

16 M. Upon determination that an emergency exists, the Commission may
17 consider and adopt an emergency Rule without prior notice, opportunity
18 for comment, or hearing; provided that the usual Rulemaking procedures
19 provided in this Compact and in this Article shall be retroactively
20 applied to the Rule as soon as reasonably possible, in no event later
21 than ninety days after the effective date of the Rule. For the purposes
22 of this provision, an emergency Rule is one that must be adopted
23 immediately in order to:

- 24 1. Meet an imminent threat to public health, safety, or welfare;
25 2. Prevent a loss of Commission or Member State funds;
26 3. Meet a deadline for the promulgation of an administrative Rule
27 that is established by federal law or Rule; or
28 4. Protect public health and safety.

29 N. The Commission or an authorized committee of the Commission may
30 direct revisions to a previously adopted Rule or amendment for purposes
31 of correcting typographical errors, errors in format, errors in

1 consistency, or grammatical errors. Public notice of any revisions shall
2 be posted on the website of the Commission. The revision shall be subject
3 to challenge by any person for a period of thirty days after posting. The
4 revision may be challenged only on grounds that the revision results in a
5 material change to a Rule. A challenge shall be made in writing and
6 delivered to the chair of the Commission prior to the end of the notice
7 period. If no challenge is made, the revision will take effect without
8 further action. If the revision is challenged, the revision may not take
9 effect without the approval of the Commission.

10 ARTICLE 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT.

11 A. Oversight.

12 1. The executive, legislative, and judicial branches of state
13 government in each Member State shall enforce this Compact and take all
14 actions necessary and appropriate to effectuate this Compact's purposes
15 and intent. The provisions of this Compact and the Rules promulgated
16 hereunder shall have standing as statutory law.

17 2. All courts shall take judicial notice of this Compact and the
18 Rules in any judicial or administrative proceeding in a Member State
19 pertaining to the subject matter of this Compact which may affect the
20 powers, responsibilities, or actions of the Commission.

21 3. The Commission shall be entitled to receive service of process in
22 any such proceeding and shall have standing to intervene in such a
23 proceeding for all purposes. Failure to provide service of process to the
24 Commission shall render a judgment or order void as to the Commission,
25 this Compact, or promulgated Rules.

26 B. Default, Technical Assistance, and Termination.

27 1. If the Commission determines that a Member State has defaulted in
28 the performance of its obligations or responsibilities under this Compact
29 or the promulgated Rules, the Commission shall:

30 a. Provide written notice to the defaulting state and other Member
31 States of the nature of the default, the proposed means of curing the

1 default, and any other action to be taken by the Commission; and

2 b. Provide remedial training and specific technical assistance
3 regarding the default.

4 2. If a state in default fails to cure the default, the defaulting
5 state may be terminated from this Compact upon an affirmative vote of a
6 majority of the Member States, and all rights, privileges, and benefits
7 conferred by this Compact may be terminated on the effective date of
8 termination. A cure of the default does not relieve the offending state
9 of obligations or liabilities incurred during the period of default.

10 3. Termination of membership in this Compact shall be imposed only
11 after all other means of securing compliance have been exhausted. Notice
12 of intent to suspend or terminate shall be given by the Commission to the
13 governor, the majority and minority leaders of the defaulting State's
14 legislature, and each of the Member States.

15 4. A state that has been terminated is responsible for all
16 assessments, obligations, and liabilities incurred through the effective
17 date of termination, including obligations that extend beyond the
18 effective date of termination.

19 5. The Commission shall not bear any costs related to a state that
20 is found to be in default or that has been terminated from this Compact,
21 unless agreed upon in writing between the Commission and the defaulting
22 state.

23 6. The defaulting state may appeal the action of the Commission by
24 petitioning the United States District Court for the District of Columbia
25 or the federal district where the Commission has its principal offices.
26 The prevailing member shall be awarded all costs of such litigation,
27 including reasonable attorney's fees.

28 C. Dispute Resolution.

29 1. Upon request by a Member State, the Commission shall attempt to
30 resolve disputes related to this Compact that arise among Member States
31 and between Member and non-Member States.

1 2. The Commission shall promulgate a Rule providing for both
2 mediation and binding dispute resolution for disputes as appropriate.

3 D. Enforcement.

4 1. The Commission, in the reasonable exercise of its discretion,
5 shall enforce the provisions and Rules of this Compact.

6 2. By majority vote, the Commission may initiate legal action in the
7 United States District Court for the District of Columbia or the federal
8 district where the Commission has its principal offices against a Member
9 State in default to enforce compliance with the provisions of this
10 Compact and its promulgated Rules and bylaws. The relief sought may
11 include both injunctive relief and damages. In the event judicial
12 enforcement is necessary, the prevailing member shall be awarded all
13 costs of such litigation, including reasonable attorney's fees.

14 3. The remedies herein shall not be the exclusive remedies of the
15 Commission. The Commission may pursue any other remedies available under
16 federal or State law.

17 ARTICLE 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR
18 OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND
19 AMENDMENT.

20 A. This Compact shall come into effect on the date on which this
21 Compact statute is enacted into law in the tenth Member State. The
22 provisions, which become effective at that time, shall be limited to the
23 powers granted to the Commission relating to assembly and the
24 promulgation of Rules. Thereafter, the Commission shall meet and exercise
25 Rulemaking powers necessary to the implementation and administration of
26 this Compact.

27 B. Any state that joins this Compact subsequent to the Commission's
28 initial adoption of the Rules shall be subject to the Rules as they exist
29 on the date on which this Compact becomes law in that state. Any Rule
30 that has been previously adopted by the Commission shall have the full
31 force and effect of law on the day this Compact becomes law in that

1 State.

2 C. Any Member State may withdraw from this Compact by enacting a
3 statute repealing the same.

4 1. A Member State's withdrawal shall not take effect until six
5 months after enactment of the repealing statute.

6 2. Withdrawal shall not affect the continuing requirement of the
7 withdrawing state's occupational therapy licensing board to comply with
8 the investigative and adverse action reporting requirements of this
9 Compact prior to the effective date of withdrawal.

10 D. Nothing contained in this Compact shall be construed to
11 invalidate or prevent any occupational therapy licensure agreement or
12 other cooperative arrangement between a Member State and a non-Member
13 State that does not conflict with the provisions of this Compact.

14 E. This Compact may be amended by the Member States. No amendment to
15 this Compact shall become effective and binding upon any Member State
16 until it is enacted into the laws of all Member States.

17 ARTICLE 13. CONSTRUCTION AND SEVERABILITY.

18 This Compact shall be liberally construed so as to effectuate the
19 purposes thereof. The provisions of this Compact shall be severable and
20 if any phrase, clause, sentence, or provision of this Compact is declared
21 to be contrary to the constitution of any Member State or of the United
22 States or the applicability thereof to any government, agency, person, or
23 circumstance is held invalid, the validity of the remainder of this
24 Compact and the applicability thereof to any government, agency, person,
25 or circumstance shall not be affected thereby. If this Compact shall be
26 held contrary to the constitution of any Member State, this Compact shall
27 remain in full force and effect as to the remaining Member States and in
28 full force and effect as to the Member State affected as to all severable
29 matters.

30 ARTICLE 14. BINDING EFFECT OF COMPACT AND OTHER LAWS.

31 A. A Licensee providing occupational therapy in a Remote State under

1 the Compact Privilege shall function within the laws and regulations of
2 the Remote State.

3 B. Nothing herein prevents the enforcement of any other law of a
4 Member State that is not inconsistent with this Compact.

5 C. Any laws in a Member State in conflict with this Compact are
6 superseded to the extent of the conflict.

7 D. Any lawful actions of the Commission, including all Rules and
8 bylaws promulgated by the Commission, are binding upon the Member States.

9 E. All agreements between the Commission and the Member States are
10 binding in accordance with their terms.

11 F. In the event any provision of this Compact exceeds the
12 constitutional limits imposed on the legislature of any Member State, the
13 provision shall be ineffective to the extent of the conflict with the
14 constitutional provision in question in that Member State.

15 Sec. 3. Section 28-327, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

17 28-327 No abortion shall be performed except with the voluntary and
18 informed consent of the woman upon whom the abortion is to be performed.
19 Except in the case of an emergency situation, consent to an abortion is
20 voluntary and informed only if:

21 (1) The woman is told the following by the physician who is to
22 perform the abortion, by the referring physician, or by a physician
23 assistant or registered nurse licensed under the Uniform Credentialing
24 Act who is an agent of either physician, at least twenty-four hours
25 before the abortion:

26 (a) The particular medical risks associated with the particular
27 abortion procedure to be employed including, when medically accurate, the
28 risks of infection, hemorrhage, perforated uterus, danger to subsequent
29 pregnancies, and infertility;

30 (b) The probable gestational age of the unborn child at the time the
31 abortion is to be performed;

1 (c) The medical risks associated with carrying her child to term;

2 (d) That she cannot be forced or required by anyone to have an
3 abortion and is free to withhold or withdraw her consent for an abortion;
4 and

5 (e) Research indicates that mifepristone alone is not always
6 effective in ending a pregnancy. You may still have a viable pregnancy
7 after taking mifepristone. If you change your mind and want to continue
8 your pregnancy after taking mifepristone, information on finding
9 immediate medical assistance is available on the website of the
10 Department of Health and Human Services.

11 The person providing the information specified in this subdivision
12 to the person upon whom the abortion is to be performed shall be deemed
13 qualified to so advise and provide such information only if, at a
14 minimum, he or she has had training in each of the following subjects:
15 Sexual and reproductive health; abortion technology; contraceptive
16 technology; short-term counseling skills; community resources and
17 referral; and informed consent. The physician or the physician's agent
18 may provide this information by telephone without conducting a physical
19 examination or tests of the patient, in which case the information
20 required to be supplied may be based on facts supplied by the patient and
21 whatever other relevant information is reasonably available to the
22 physician or the physician's agent;

23 (2) The woman is informed by telephone or in person, by the
24 physician who is to perform the abortion, by the referring physician, or
25 by an agent of either physician, at least twenty-four hours before the
26 abortion:

27 (a) The name of the physician who will perform the abortion;

28 (b) That medical assistance benefits may be available for prenatal
29 care, childbirth, and neonatal care;

30 (c) That the father is liable to assist in the support of her child,
31 even in instances in which the father has offered to pay for the

1 abortion;

2 (d) That she has the right to review the printed materials described
3 in section 28-327.01. The physician or his or her agent shall orally
4 inform the woman that the materials have been provided by the Department
5 of Health and Human Services and that they describe the unborn child,
6 list agencies which offer alternatives to abortion, and include
7 information on finding immediate medical assistance if she changes her
8 mind after taking mifepristone and wants to continue her pregnancy. If
9 the woman chooses to review the materials, they shall either be given to
10 her at least twenty-four hours before the abortion or mailed to her at
11 least seventy-two hours before the abortion by certified mail, restricted
12 delivery to addressee, which means the postal employee can only deliver
13 the mail to the addressee. The physician and his or her agent may
14 disassociate themselves from the materials and may comment or refrain
15 from commenting on them as they choose; and

16 (e) That she has the right to request a comprehensive list, compiled
17 by the Department of Health and Human Services, of health care providers,
18 facilities, and clinics that offer to have ultrasounds performed by a
19 person at least as qualified as a registered nurse licensed under the
20 Uniform Credentialing Act, including and specifying those that offer to
21 perform such ultrasounds free of charge. The list shall be arranged
22 geographically and shall include the name, address, hours of operation,
23 and telephone number of each entity. If requested by the woman, the
24 physician who is to perform the abortion, the referring physician, or his
25 or her agent shall provide such a list as compiled by the department;

26 (3) If an ultrasound is used prior to the performance of an
27 abortion, the physician who is to perform the abortion, the referring
28 physician, or a physician assistant or registered nurse licensed under
29 the Uniform Credentialing Act who is an agent of either physician, or any
30 qualified agent of either physician, shall:

31 (a) Perform an ultrasound of the woman's unborn child of a quality

1 consistent with standard medical practice in the community at least one
2 hour prior to the performance of the abortion;

3 (b) Simultaneously display the ultrasound images so that the woman
4 may choose to view the ultrasound images or not view the ultrasound
5 images. The woman shall be informed that the ultrasound images will be
6 displayed so that she is able to view them. Nothing in this subdivision
7 shall be construed to require the woman to view the displayed ultrasound
8 images; and

9 (c) If the woman requests information about the displayed ultrasound
10 image, her questions shall be answered. If she requests a detailed,
11 simultaneous, medical description of the ultrasound image, one shall be
12 provided that includes the dimensions of the unborn child, the presence
13 of cardiac activity, if present and viewable, and the presence of
14 external members and internal organs, if present and viewable;

15 (4) At least one hour prior to the performance of an abortion, a
16 physician, psychiatrist, psychologist, mental health practitioner,
17 physician assistant, registered nurse, or social worker licensed under
18 the Uniform Credentialing Act or a professional counselor holding a
19 privilege to practice in Nebraska under the Licensed Professional
20 Counselors Interstate Compact has:

21 (a) Evaluated the pregnant woman to identify if the pregnant woman
22 had the perception of feeling pressured or coerced into seeking or
23 consenting to an abortion;

24 (b) Evaluated the pregnant woman to identify the presence of any
25 risk factors associated with abortion;

26 (c) Informed the pregnant woman and the physician who is to perform
27 the abortion of the results of the evaluation in writing. The written
28 evaluation shall include, at a minimum, a checklist identifying both the
29 positive and negative results of the evaluation for each risk factor
30 associated with abortion and both the licensed person's written
31 certification and the woman's written certification that the pregnant

1 woman was informed of the risk factors associated with abortion as
2 discussed; and

3 (d) Retained a copy of the written evaluation results in the
4 pregnant woman's permanent record;

5 (5) If any risk factors associated with abortion were identified,
6 the pregnant woman was informed of the following in such manner and
7 detail that a reasonable person would consider material to a decision of
8 undergoing an elective medical procedure:

9 (a) Each complication associated with each identified risk factor;
10 and

11 (b) Any quantifiable risk rates whenever such relevant data exists;

12 (6) The physician performing the abortion has formed a reasonable
13 medical judgment, documented in the permanent record, that:

14 (a) The preponderance of statistically validated medical studies
15 demonstrates that the physical, psychological, and familial risks
16 associated with abortion for patients with risk factors similar to the
17 patient's risk factors are negligible risks;

18 (b) Continuance of the pregnancy would involve risk of injury to the
19 physical or mental health of the pregnant woman greater than if the
20 pregnancy were terminated by induced abortion; or

21 (c) Continuance of the pregnancy would involve less risk of injury
22 to the physical or mental health of the pregnant woman than if the
23 pregnancy were terminated by an induced abortion;

24 (7) The woman certifies in writing, prior to the abortion, that:

25 (a) The information described in subdivisions (1) and (2)(a), (b),
26 and (c) of this section has been furnished her;

27 (b) She has been informed of her right to review the information
28 referred to in subdivision (2)(d) of this section; and

29 (c) The requirements of subdivision (3) of this section have been
30 performed if an ultrasound is performed prior to the performance of the
31 abortion; and

1 (8) Prior to the performance of the abortion, the physician who is
2 to perform the abortion or his or her agent receives a copy of the
3 written certification prescribed by subdivision (7) of this section. The
4 physician or his or her agent shall retain a copy of the signed
5 certification form in the woman's medical record.

6 Sec. 4. Section 29-2261, Revised Statutes Cumulative Supplement,
7 2020, is amended to read:

8 29-2261 (1) Unless it is impractical to do so, when an offender has
9 been convicted of a felony other than murder in the first degree, the
10 court shall not impose sentence without first ordering a presentence
11 investigation of the offender and according due consideration to a
12 written report of such investigation. When an offender has been convicted
13 of murder in the first degree and (a) a jury renders a verdict finding
14 the existence of one or more aggravating circumstances as provided in
15 section 29-2520 or (b)(i) the information contains a notice of
16 aggravation as provided in section 29-1603 and (ii) the offender waives
17 his or her right to a jury determination of the alleged aggravating
18 circumstances, the court shall not commence the sentencing determination
19 proceeding as provided in section 29-2521 without first ordering a
20 presentence investigation of the offender and according due consideration
21 to a written report of such investigation.

22 (2) A court may order a presentence investigation in any case,
23 except in cases in which an offender has been convicted of a Class IIIA
24 misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic
25 infraction, or any corresponding city or village ordinance.

26 (3) The presentence investigation and report shall include, when
27 available, an analysis of the circumstances attending the commission of
28 the crime, the offender's history of delinquency or criminality, physical
29 and mental condition, family situation and background, economic status,
30 education, occupation, and personal habits, and any other matters that
31 the probation officer deems relevant or the court directs to be included.

1 All local and state police agencies and Department of Correctional
2 Services adult correctional facilities shall furnish to the probation
3 officer copies of such criminal records, in any such case referred to the
4 probation officer by the court of proper jurisdiction, as the probation
5 officer shall require without cost to the court or the probation officer.

6 Such investigation shall also include:

7 (a) Any written statements submitted to the county attorney by a
8 victim; and

9 (b) Any written statements submitted to the probation officer by a
10 victim.

11 (4) If there are no written statements submitted to the probation
12 officer, he or she shall certify to the court that:

13 (a) He or she has attempted to contact the victim; and

14 (b) If he or she has contacted the victim, such officer offered to
15 accept the written statements of the victim or to reduce such victim's
16 oral statements to writing.

17 For purposes of subsections (3) and (4) of this section, the term
18 victim shall be as defined in section 29-119.

19 (5) Before imposing sentence, the court may order the offender to
20 submit to psychiatric observation and examination for a period of not
21 exceeding sixty days or such longer period as the court determines to be
22 necessary for that purpose. The offender may be remanded for this purpose
23 to any available clinic or mental hospital, or the court may appoint a
24 qualified psychiatrist to make the examination. The report of the
25 examination shall be submitted to the court.

26 (6)(a) Any presentence report, substance abuse evaluation, or
27 psychiatric examination shall be privileged and shall not be disclosed
28 directly or indirectly to anyone other than a judge; probation officers
29 to whom an offender's file is duly transferred; the probation
30 administrator or his or her designee; alcohol and drug counselors, mental
31 health practitioners, psychiatrists, and psychologists licensed or

1 certified under the Uniform Credentialing Act to conduct substance abuse
2 evaluations and treatment; or others entitled by law to receive such
3 information, including personnel and mental health professionals for the
4 Nebraska State Patrol specifically assigned to sex offender registration
5 and community notification for the sole purpose of using such report,
6 evaluation, or examination for assessing risk and for community
7 notification of registered sex offenders.

8 (b) For purposes of this subsection, mental health professional
9 means (i) a practicing physician licensed to practice medicine in this
10 state under the Medicine and Surgery Practice Act, (ii) a practicing
11 psychologist licensed to engage in the practice of psychology in this
12 state as provided in section 38-3111 or as provided under similar
13 provisions of the Psychology Interjurisdictional Compact, ~~or~~ (iii) a
14 practicing mental health professional licensed or certified in this state
15 as provided in the Mental Health Practice Act, or (iv) a practicing
16 professional counselor holding a privilege to practice in Nebraska under
17 the Licensed Professional Counselors Interstate Compact.

18 (7) The court shall permit inspection of the presentence report,
19 substance abuse evaluation, or psychiatric examination or parts of the
20 report, evaluation, or examination, as determined by the court, by the
21 prosecuting attorney and defense counsel. Beginning July 1, 2016, such
22 inspection shall be by electronic access only unless the court determines
23 such access is not available to the prosecuting attorney or defense
24 counsel. The State Court Administrator shall determine and develop the
25 means of electronic access to such presentence reports, evaluations, and
26 examinations. Upon application by the prosecuting attorney or defense
27 counsel, the court may order that addresses, telephone numbers, and other
28 contact information for victims or witnesses named in the report,
29 evaluation, or examination be redacted upon a showing by a preponderance
30 of the evidence that such redaction is warranted in the interests of
31 public safety. The court may permit inspection of the presentence report,

1 substance abuse evaluation, or psychiatric examination or examination of
2 parts of the report, evaluation, or examination by any other person
3 having a proper interest therein whenever the court finds it is in the
4 best interest of a particular offender. The court may allow fair
5 opportunity for an offender to provide additional information for the
6 court's consideration.

7 (8) If an offender is sentenced to imprisonment, a copy of the
8 report of any presentence investigation, substance abuse evaluation, or
9 psychiatric examination shall be transmitted immediately to the
10 Department of Correctional Services. Upon request, the Board of Parole or
11 the Division of Parole Supervision may receive a copy of the report from
12 the department.

13 (9) Notwithstanding subsections (6) and (7) of this section, the
14 Supreme Court or an agent of the Supreme Court acting under the direction
15 and supervision of the Chief Justice shall have access to psychiatric
16 examinations, substance abuse evaluations, and presentence investigations
17 and reports for research purposes. The Supreme Court and its agent shall
18 treat such information as confidential, and nothing identifying any
19 individual shall be released.

20 Sec. 5. Section 38-101, Revised Statutes Supplement, 2021, is
21 amended to read:

22 38-101 Sections 38-101 to 38-1,146 and section 6 of this act and the
23 following practice acts shall be known and may be cited as the Uniform
24 Credentialing Act:

- 25 (1) The Advanced Practice Registered Nurse Practice Act;
- 26 (2) The Alcohol and Drug Counseling Practice Act;
- 27 (3) The Athletic Training Practice Act;
- 28 (4) The Audiology and Speech-Language Pathology Practice Act;
- 29 (5) The Certified Nurse Midwifery Practice Act;
- 30 (6) The Certified Registered Nurse Anesthetist Practice Act;
- 31 (7) The Chiropractic Practice Act;

- 1 (8) The Clinical Nurse Specialist Practice Act;
- 2 (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and
- 3 Body Art Practice Act;
- 4 (10) The Dentistry Practice Act;
- 5 (11) The Dialysis Patient Care Technician Registration Act;
- 6 (12) The Emergency Medical Services Practice Act;
- 7 (13) The Environmental Health Specialists Practice Act;
- 8 (14) The Funeral Directing and Embalming Practice Act;
- 9 (15) The Genetic Counseling Practice Act;
- 10 (16) The Hearing Instrument Specialists Practice Act;
- 11 (17) The Licensed Practical Nurse-Certified Practice Act until
- 12 November 1, 2017;
- 13 (18) The Massage Therapy Practice Act;
- 14 (19) The Medical Nutrition Therapy Practice Act;
- 15 (20) The Medical Radiography Practice Act;
- 16 (21) The Medicine and Surgery Practice Act;
- 17 (22) The Mental Health Practice Act;
- 18 (23) The Nurse Practice Act;
- 19 (24) The Nurse Practitioner Practice Act;
- 20 (25) The Nursing Home Administrator Practice Act;
- 21 (26) The Occupational Therapy Practice Act;
- 22 (27) The Optometry Practice Act;
- 23 (28) The Perfusion Practice Act;
- 24 (29) The Pharmacy Practice Act;
- 25 (30) The Physical Therapy Practice Act;
- 26 (31) The Podiatry Practice Act;
- 27 (32) The Psychology Practice Act;
- 28 (33) The Respiratory Care Practice Act;
- 29 (34) The Surgical First Assistant Practice Act; and
- 30 (35) The Veterinary Medicine and Surgery Practice Act.

31 If there is any conflict between any provision of sections 38-101 to

1 38-1,146 and section 6 of this act and any provision of a practice act,
2 the provision of the practice act shall prevail except as otherwise
3 specifically provided in section 38-129.02.

4 Sec. 6. (1) For purposes of this section:

5 (a) Health care practitioner means a person licensed or certified
6 under the Uniform Credentialing Act;

7 (b) Human stem cells means human cells, tissues, or cellular or
8 tissue-based products, as defined in 21 C.F.R. 1271.3 as amended August
9 31, 2016, as published in the Federal Register at 81 Fed. Reg. 60223;

10 (c) Informed written consent related to stem-cell-based therapy
11 means a signed writing executed by a patient that confirms that (i) a
12 health care practitioner has explained the treatment, (ii) the treatment
13 has not received the approval of the United States Food and Drug
14 Administration, including for experimental use, and (iii) the patient
15 understands that the treatment has not received such approval; and

16 (d) Stem-cell-based therapy means treatment using products derived
17 from human stem cells.

18 (2) Any health care practitioner who performs stem-cell-based
19 therapy shall, by informed written consent, communicate to any patient
20 seeking stem-cell-based therapy from such practitioner that it is not
21 approved by the United States Food and Drug Administration.

22 (3) This section does not apply to a health care practitioner using
23 stem-cell-based therapy products that are approved by the United States
24 Food and Drug Administration or stem-cell-based therapy for which the
25 health care practitioner obtained approval for an investigational new
26 drug or device from the United States Food and Drug Administration for
27 use of human cells, tissues, or cellular or tissue-based products.

28 Sec. 7. Section 38-178, Revised Statutes Cumulative Supplement,
29 2020, is amended to read:

30 38-178 Except as otherwise provided in sections 38-1,119 to
31 38-1,123, a credential to practice a profession may be denied, refused

1 renewal, or have other disciplinary measures taken against it in
2 accordance with section 38-185 or 38-186 on any of the following grounds:

3 (1) Misrepresentation of material facts in procuring or attempting
4 to procure a credential;

5 (2) Immoral or dishonorable conduct evidencing unfitness to practice
6 the profession in this state;

7 (3) Abuse of, dependence on, or active addiction to alcohol, any
8 controlled substance, or any mind-altering substance;

9 (4) Failure to comply with a treatment program or an aftercare
10 program, including, but not limited to, a program entered into under the
11 Licensee Assistance Program established pursuant to section 38-175;

12 (5) Conviction of (a) a misdemeanor or felony under Nebraska law or
13 federal law, or (b) a crime in any jurisdiction which, if committed
14 within this state, would have constituted a misdemeanor or felony under
15 Nebraska law and which has a rational connection with the fitness or
16 capacity of the applicant or credential holder to practice the
17 profession;

18 (6) Practice of the profession (a) fraudulently, (b) beyond its
19 authorized scope, (c) with gross incompetence or gross negligence, or (d)
20 in a pattern of incompetent or negligent conduct;

21 (7) Practice of the profession while the ability to practice is
22 impaired by alcohol, controlled substances, drugs, mind-altering
23 substances, physical disability, mental disability, or emotional
24 disability;

25 (8) Physical or mental incapacity to practice the profession as
26 evidenced by a legal judgment or a determination by other lawful means;

27 (9) Illness, deterioration, or disability that impairs the ability
28 to practice the profession;

29 (10) Permitting, aiding, or abetting the practice of a profession or
30 the performance of activities requiring a credential by a person not
31 credentialed to do so;

1 (11) Performing or offering to perform scleral tattooing as defined
2 in section 38-10,172 by a person not credentialed to do so;

3 (12) Having had his or her credential denied, refused renewal,
4 limited, suspended, revoked, or disciplined in any manner similar to
5 section 38-196 by another state or jurisdiction based upon acts by the
6 applicant or credential holder similar to acts described in this section;

7 (13) Use of untruthful, deceptive, or misleading statements in
8 advertisements, including failure to comply with section 38-124;

9 (14) Conviction of fraudulent or misleading advertising or
10 conviction of a violation of the Uniform Deceptive Trade Practices Act;

11 (15) Distribution of intoxicating liquors, controlled substances, or
12 drugs for any other than lawful purposes;

13 (16) Violations of the Uniform Credentialing Act or the rules and
14 regulations relating to the particular profession;

15 (17) Unlawful invasion of the field of practice of any profession
16 regulated by the Uniform Credentialing Act which the credential holder is
17 not credentialed to practice;

18 (18) Violation of the Uniform Controlled Substances Act or any rules
19 and regulations adopted pursuant to the act;

20 (19) Failure to file a report required by section 38-1,124,
21 38-1,125, or 71-552;

22 (20) Failure to maintain the requirements necessary to obtain a
23 credential;

24 (21) Violation of an order issued by the department;

25 (22) Violation of an assurance of compliance entered into under
26 section 38-1,108;

27 (23) Failure to pay an administrative penalty;

28 (24) Unprofessional conduct as defined in section 38-179;~~or~~

29 (25) Violation of the Automated Medication Systems Act;or ~~or~~

30 (26) Failure to comply with section 6 of this act.

31 Sec. 8. Section 38-318, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 38-318 (1) An individual who is licensed as a provisional alcohol
3 and drug counselor at the time of application for licensure as an alcohol
4 and drug counselor is deemed to have met the requirements of a high
5 school diploma or its equivalent, the two hundred seventy hours of
6 education related to alcohol and drug counseling, and the supervised
7 practical training requirement.

8 (2) An applicant who is licensed as a provisional mental health
9 practitioner or a mental health practitioner or who holds a privilege to
10 practice in Nebraska as a professional counselor under the Licensed
11 Professional Counselors Interstate Compact at the time of application for
12 licensure is deemed to have met the requirements of subdivisions (2)(a),
13 (b), (c), (d), and (f) of section 38-314.

14 Sec. 9. Section 38-2112, Revised Statutes Cumulative Supplement,
15 2020, is amended to read:

16 38-2112 Consultation means a professional collaborative relationship
17 which is between a licensed mental health practitioner and a consultant
18 who is a psychologist licensed to engage in the practice of psychology in
19 this state as provided in section 38-3111 or as provided in similar
20 provisions of the Psychology Interjurisdictional Compact, a qualified
21 physician, ~~or~~ a licensed independent mental health practitioner, or a
22 professional counselor holding a privilege to practice in Nebraska under
23 the Licensed Professional Counselors Interstate Compact and in which (1)
24 the consultant makes a diagnosis based on information supplied by the
25 licensed mental health practitioner and any additional assessment deemed
26 necessary by the consultant and (2) the consultant and the licensed
27 mental health practitioner jointly develop a treatment plan which
28 indicates the responsibility of each professional for implementing
29 elements of the plan, updating the plan, and assessing the client's
30 progress.

31 Sec. 10. Section 38-2115, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

2 38-2115 (1) Mental health practice means the provision of treatment,
3 assessment, psychotherapy, counseling, or equivalent activities to
4 individuals, couples, families, or groups for behavioral, cognitive,
5 social, mental, or emotional disorders, including interpersonal or
6 personal situations.

7 (2) Mental health practice does not include:

8 (a) The practice of psychology or medicine;

9 (b) Prescribing drugs or electroconvulsive therapy;

10 (c) Treating physical disease, injury, or deformity;

11 (d) Diagnosing major mental illness or disorder except in
12 consultation with a qualified physician, a psychologist licensed to
13 engage in the practice of psychology in this state as provided in section
14 38-3111 or as provided in similar provisions of the Psychology
15 Interjurisdictional Compact, ~~or~~ a licensed independent mental health
16 practitioner, or a professional counselor holding a privilege to practice
17 in Nebraska under the Licensed Professional Counselors Interstate
18 Compact;

19 (e) Measuring personality or intelligence for the purpose of
20 diagnosis or treatment planning;

21 (f) Using psychotherapy with individuals suspected of having major
22 mental or emotional disorders except in consultation with a qualified
23 physician, a licensed psychologist, or a licensed independent mental
24 health practitioner; or

25 (g) Using psychotherapy to treat the concomitants of organic illness
26 except in consultation with a qualified physician or licensed
27 psychologist.

28 (3) Mental health practice includes the initial assessment of
29 organic mental or emotional disorders for the purpose of referral or
30 consultation.

31 (4) Nothing in sections 38-2114, 38-2118, and 38-2119 shall be

1 deemed to constitute authorization to engage in activities beyond those
2 described in this section. Persons who are certified under the Mental
3 Health Practice Act but who do not hold a license licensed under section
4 38-2122 or a privilege to practice in Nebraska as a professional
5 counselor under the Licensed Professional Counselors Interstate Compact
6 shall not engage in mental health practice.

7 Sec. 11. Section 38-2116, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 38-2116 (1)(a) ~~(1)~~ Mental health practitioner means a person who
10 holds himself or herself out as a person qualified to engage in mental
11 health practice or a person who offers or renders mental health practice
12 services.

13 (b) Independent mental health practitioner means a person who holds
14 himself or herself out as a person qualified to engage in independent
15 mental health practice or a person who offers or renders independent
16 mental health practice services.

17 (2)(a) ~~(2)~~ A person who is licensed as a mental health practitioner
18 and certified as a master social worker may use the title licensed
19 clinical social worker.

20 (b) A person who is licensed as a mental health practitioner and
21 certified as a professional counselor may use the title licensed
22 professional counselor.

23 (c) A person who is licensed as a mental health practitioner and
24 certified as a marriage and family therapist may use the title licensed
25 marriage and family therapist.

26 (d) No person shall use the title licensed clinical social worker,
27 licensed professional counselor, or licensed marriage and family
28 therapist unless he or she is licensed and certified as provided in this
29 subsection.

30 (3)(a) ~~(3)~~ A person who is licensed as an independent mental health
31 practitioner and certified as a master social worker may use the title

1 licensed independent clinical social worker.

2 (b) A person who is licensed as an independent mental health
3 practitioner and certified as a professional counselor or who holds a
4 privilege to practice in Nebraska as a professional counselor under the
5 Licensed Professional Counselors Interstate Compact may use the title
6 licensed independent professional counselor.

7 (c) A person who is licensed as an independent mental health
8 practitioner and certified as a marriage and family therapist may use the
9 title licensed independent marriage and family therapist.

10 (d) No person shall use the title licensed independent clinical
11 social worker, licensed independent professional counselor, or licensed
12 independent marriage and family therapist unless he or she is licensed
13 and certified or holds a privilege as provided in this subsection.

14 (4) A mental health practitioner shall not represent himself or
15 herself as a physician or psychologist and shall not represent his or her
16 services as being medical or psychological in nature. An independent
17 mental health practitioner shall not represent himself or herself as a
18 physician or psychologist.

19 Sec. 12. Section 38-2121, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 38-2121 The requirement to be licensed as a mental health
22 practitioner pursuant to the Uniform Credentialing Act in order to engage
23 in mental health practice shall not be construed to prevent:

24 (1) Qualified members of other professions who are licensed,
25 certified, or registered by this state from practice of any mental health
26 activity consistent with the scope of practice of their respective
27 professions;

28 (2) Alcohol and drug counselors who are licensed by the Division of
29 Public Health of the Department of Health and Human Services and problem
30 gambling counselors who are certified by the Department of Health and
31 Human Services prior to July 1, 2013, or by the Nebraska Commission on

1 Problem Gambling beginning on July 1, 2013, from practicing their
2 profession. Such exclusion shall include students training and working
3 under the supervision of an individual qualified under section 38-315;

4 (3) Any person employed by an agency, bureau, or division of the
5 federal government from discharging his or her official duties, except
6 that if such person engages in mental health practice in this state
7 outside the scope of such official duty or represents himself or herself
8 as a licensed mental health practitioner, he or she shall be licensed;

9 (4) Teaching or the conduct of research related to mental health
10 services or consultation with organizations or institutions if such
11 teaching, research, or consultation does not involve the delivery or
12 supervision of mental health services to individuals or groups of
13 individuals who are themselves, rather than a third party, the intended
14 beneficiaries of such services;

15 (5) The delivery of mental health services by:

16 (a) Students, interns, or residents whose activities constitute a
17 part of the course of study for medicine, psychology, nursing, school
18 psychology, social work, clinical social work, counseling, marriage and
19 family therapy, or other health care or mental health service
20 professions; or

21 (b) Individuals seeking to fulfill postgraduate requirements for
22 licensure when those individuals are supervised by a licensed
23 professional consistent with the applicable regulations of the
24 appropriate professional board;

25 (6) Duly recognized members of the clergy from providing mental
26 health services in the course of their ministerial duties and consistent
27 with the codes of ethics of their profession if they do not represent
28 themselves to be mental health practitioners;

29 (7) The incidental exchange of advice or support by persons who do
30 not represent themselves as engaging in mental health practice, including
31 participation in self-help groups when the leaders of such groups receive

1 no compensation for their participation and do not represent themselves
2 as mental health practitioners or their services as mental health
3 practice;

4 (8) Any person providing emergency crisis intervention or referral
5 services or limited services supporting a service plan developed by and
6 delivered under the supervision of a licensed mental health practitioner,
7 licensed physician, or a psychologist licensed to engage in the practice
8 of psychology if such persons are not represented as being licensed
9 mental health practitioners or their services are not represented as
10 mental health practice;~~or~~

11 (9) Staff employed in a program designated by an agency of state
12 government to provide rehabilitation and support services to individuals
13 with mental illness from completing a rehabilitation assessment or
14 preparing, implementing, and evaluating an individual rehabilitation
15 plan; or -

16 (10) A person who holds a privilege to practice in Nebraska as a
17 professional counselor under the Licensed Professional Counselors
18 Interstate Compact from acting as authorized by such privilege.

19 Sec. 13. Section 38-2124, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 38-2124 (1) No person shall hold himself or herself out as an
22 independent mental health practitioner unless he or she is licensed as
23 such by the department or unless he or she holds a privilege to practice
24 in Nebraska as a professional counselor under the Licensed Professional
25 Counselors Interstate Compact. A person shall be qualified to be a
26 licensed independent mental health practitioner if he or she:

27 (a)(i)(A) Graduated with a master's or doctoral degree from an
28 educational program which is accredited, at the time of graduation or
29 within four years after graduation, by the Council for Accreditation of
30 Counseling and Related Educational Programs, the Commission on
31 Accreditation for Marriage and Family Therapy Education, or the Council

1 on Social Work Education or (B) graduated with a master's or doctoral
2 degree from an educational program deemed by the board to be equivalent
3 in didactic content and supervised clinical experience to an accredited
4 program;

5 (ii)(A) Is licensed as a licensed mental health practitioner or (B)
6 is licensed as a provisional mental health practitioner and has
7 satisfactorily passed an examination approved by the board pursuant to
8 subdivision (3) of section 38-2122; and

9 (iii) Has three thousand hours of experience supervised by a
10 licensed physician, a licensed psychologist, or a licensed independent
11 mental health practitioner, one-half of which is comprised of experience
12 with clients diagnosed under the major mental illness or disorder
13 category; or

14 (b)(i) Graduated from an educational program which does not meet the
15 requirements of subdivision (a)(i) of this subsection;

16 (ii)(A) Is licensed as a licensed mental health practitioner or (B)
17 is licensed as a provisional mental health practitioner and has
18 satisfactorily passed an examination approved by the board pursuant to
19 subdivision (3) of section 38-2122; and

20 (iii) Has seven thousand hours of experience obtained in a period of
21 not less than ten years and supervised by a licensed physician, a
22 licensed psychologist, or a licensed independent mental health
23 practitioner, one-half of which is comprised of experience with clients
24 diagnosed under the major mental illness or disorder category.

25 (2) The experience required under this section shall be documented
26 in a reasonable form and manner as prescribed by the board, which may
27 consist of sworn statements from the applicant and his or her employers
28 and supervisors. The board shall not in any case require the applicant to
29 produce individual case records.

30 (3) The application for an independent mental health practitioner
31 license shall include the applicant's social security number.

1 Sec. 14. Section 38-2125, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 38-2125 (1) The department, with the recommendation of the board,
4 may issue a license based on licensure in another jurisdiction to an
5 individual who:

6 (a) Meets ~~(1) meets~~ the licensure requirements of the Mental Health
7 Practice Act or substantially equivalent requirements as determined by
8 the department, with the recommendation of the board; ~~τ~~ or

9 (b) Has ~~(2) has~~ been in active practice in the appropriate
10 discipline for at least five years following initial licensure or
11 certification in another jurisdiction and has passed the Nebraska
12 jurisprudence examination.

13 (2) The department may issue a license based on a privilege to
14 practice in Nebraska under the Licensed Professional Counselors
15 Interstate Compact as provided in section 5 of such compact.

16 (3) An applicant for a license who is a military spouse may apply
17 for a temporary license as provided in section 38-129.01.

18 Sec. 15. Section 38-2136, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 38-2136 No person who is licensed or certified pursuant to the
21 Mental Health Practice Act or who holds a privilege to practice in
22 Nebraska as a professional counselor under the Licensed Professional
23 Counselors Interstate Compact shall disclose any information he or she
24 may have acquired from any person consulting him or her in his or her
25 professional capacity except:

26 (1) With the written consent of the person or, in the case of death
27 or disability, of the person's personal representative, any other person
28 authorized to sue on behalf of the person, or the beneficiary of an
29 insurance policy on the person's life, health, or physical condition.
30 When more than one person in a family receives therapy conjointly, each
31 such family member who is legally competent to execute a waiver shall

1 agree to the waiver referred to in this subdivision. Without such a
2 waiver from each family member legally competent to execute a waiver, a
3 practitioner shall not disclose information received from any family
4 member who received therapy conjointly;

5 (2) As such privilege against disclosure is limited by the laws of
6 the State of Nebraska or as the board may determine by rule and
7 regulation;

8 (3) When the person waives the privilege against disclosure by
9 bringing charges against the licensee; or

10 (4) When there is a duty to warn under the limited circumstances set
11 forth in section 38-2137.

12 Sec. 16. Section 38-2137, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 38-2137 (1) There shall be no monetary liability on the part of, and
15 no cause of action shall arise against, any person who is licensed or
16 certified pursuant to the Mental Health Practice Act or who holds a
17 privilege to practice in Nebraska as a professional counselor under the
18 Licensed Professional Counselors Interstate Compact for failing to warn
19 of and protect from a patient's threatened violent behavior or failing to
20 predict and warn of and protect from a patient's violent behavior except
21 when the patient has communicated to the mental health practitioner a
22 serious threat of physical violence against himself, herself, or a
23 reasonably identifiable victim or victims.

24 (2) The duty to warn of or to take reasonable precautions to provide
25 protection from violent behavior shall arise only under the limited
26 circumstances specified in subsection (1) of this section. The duty shall
27 be discharged by the mental health practitioner if reasonable efforts are
28 made to communicate the threat to the victim or victims and to a law
29 enforcement agency.

30 (3) No monetary liability and no cause of action shall arise under
31 section 38-2136 against a licensee or certificate or privilege holder for

1 information disclosed to third parties in an effort to discharge a duty
2 arising under subsection (1) of this section according to the provisions
3 of subsection (2) of this section.

4 Sec. 17. Section 38-2138, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 38-2138 (1) The board shall adopt a code of ethics which is
7 essentially in agreement with the current code of ethics of the national
8 and state associations of the specialty professions included in mental
9 health practice and which the board deems necessary to assure adequate
10 protection of the public in the provision of mental health services to
11 the public. A violation of the code of ethics shall be considered an act
12 of unprofessional conduct.

13 (2) The board shall ensure through the code of ethics and the rules
14 and regulations adopted and promulgated under the Mental Health Practice
15 Act that persons licensed or certified pursuant to the act or holding
16 privileges to practice in Nebraska as professional counselors under the
17 Licensed Professional Counselors Interstate Compact limit their practice
18 to demonstrated areas of competence as documented by relevant
19 professional education, training, and experience.

20 (3) Intentional failure by a mental health practitioner to report
21 known acts of unprofessional conduct by a mental health practitioner to
22 the department or the board shall be considered an act of unprofessional
23 conduct and shall be grounds for disciplinary action under appropriate
24 sections of the Uniform Credentialing Act unless the mental health
25 practitioner has acquired such knowledge in a professional relationship
26 otherwise protected by confidentiality.

27 Sec. 18. Section 38-2139, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 38-2139 In addition to the grounds for disciplinary action found in
30 sections 38-178 and 38-179, a credential or privilege to practice in
31 Nebraska subject to the Mental Health Practice Act may be denied, refused

1 renewal, limited, revoked, or suspended or have other disciplinary
2 measures taken against it in accordance with section 38-196 when the
3 applicant, ~~or~~ licensee, or privilege holder fails to disclose the
4 information required by section 38-2123 or 38-2129 or the Licensed
5 Professional Counselors Interstate Compact.

6 Sec. 19. Section 38-2516, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 38-2516 (1) No person may represent himself or herself to be a
9 licensed occupational therapist or occupational therapy assistant unless
10 the person ~~he or she~~ is licensed in accordance with the Occupational
11 Therapy Practice Act or has a compact privilege to practice in accordance
12 with the Occupational Therapy Practice Interstate Compact.

13 (2) Nothing in the Occupational Therapy Practice Act ~~Nothing in such~~
14 ~~act~~ shall be construed to prevent:

15 (a) ~~(1)~~ Any person licensed in this state pursuant to the Uniform
16 Credentialing Act from engaging in the profession or occupation for which
17 he or she is licensed;

18 (b) ~~(2)~~ The activities and services of any person employed as an
19 occupational therapist or occupational therapy assistant who serves in
20 the armed forces of the United States or the United States Public Health
21 Service or who is employed by the United States Department of Veterans
22 Affairs or other federal agencies, if their practice is limited to that
23 service or employment;

24 (c) ~~(3)~~ The activities and services of any person pursuing an
25 accredited course of study leading to a degree or certificate in
26 occupational therapy if such activities and services constitute a part of
27 a supervised course of study and if such a person is designated by a
28 title which clearly indicates his or her status as a student or trainee;

29 (d) ~~(4)~~ The activities and services of any person fulfilling the
30 supervised fieldwork experience requirements of sections 38-2518 and
31 38-2519 if such activities and services constitute a part of the

1 experience necessary to meet the requirements of such sections; or

2 (e) ~~(5)~~ Qualified members of other professions or occupations,
3 including, but not limited to, recreation specialists or therapists,
4 special education teachers, independent living specialists, work
5 adjustment trainers, caseworkers, and persons pursuing courses of study
6 leading to a degree or certification in such fields, from doing work
7 similar to occupational therapy which is consistent with their training
8 if they do not represent themselves by any title or description to be
9 occupational therapists.

10 Sec. 20. Section 38-2894, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 38-2894 (1) A registration to practice as a pharmacy technician may
13 be denied, refused renewal, removed, or suspended or have other
14 disciplinary measures taken against it by the department, with the
15 recommendation of the board, for failure to meet the requirements of or
16 for violation of any of the provisions of subdivisions (1) through (18)
17 and (20) through (26) ~~(25)~~ of section 38-178 and sections 38-2890 to
18 38-2897 or the rules and regulations adopted under such sections.

19 (2) If the department proposes to deny, refuse renewal of, or remove
20 or suspend a registration, it shall send the applicant or registrant a
21 notice setting forth the action to be taken and the reasons for the
22 determination. The denial, refusal to renew, removal, or suspension shall
23 become final thirty days after mailing the notice unless the applicant or
24 registrant gives written notice to the department of his or her desire
25 for an informal conference or for a formal hearing.

26 (3) Notice may be served by any method specified in section
27 25-505.01, or the department may permit substitute or constructive
28 service as provided in section 25-517.02 when service cannot be made with
29 reasonable diligence by any of the methods specified in section
30 25-505.01.

31 (4) Pharmacy technicians may participate in the Licensee Assistance

1 Program described in section 38-175.

2 Sec. 21. Section 38-3205, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 38-3205 Respiratory care means the health specialty responsible for
5 the treatment, management, diagnostic testing, ~~control~~, and care of
6 patients with deficiencies and abnormalities associated with the
7 cardiopulmonary system. Respiratory care ~~is~~ shall not be limited to a
8 hospital setting and includes ~~shall include~~ the therapeutic and
9 diagnostic management and maintenance use of medical gases, administering
10 apparatus, humidification and aerosols, ventilatory management ~~assistance~~
11 ~~and ventilatory control~~, postural drainage, chest physiotherapy and
12 breathing exercises, ~~respiratory rehabilitation~~, cardiopulmonary
13 resuscitation and rehabilitation, and maintenance and insertion of lines,
14 drains, and artificial and nonartificial airways without cutting tissues
15 ~~of nasal or oral endotracheal tubes~~. Respiratory care ~~shall~~ also includes
16 ~~include~~ the administration of all pharmacologic, diagnostic, and
17 therapeutic agents for the treatment and diagnosis of cardiopulmonary
18 disease for which the respiratory care practitioner has been
19 professionally trained or has obtained advance education or
20 certification, including specific testing techniques employed in
21 respiratory care to assist in diagnosis, monitoring, treatment, and
22 research of how specific cardiopulmonary disease affects the patient
23 ~~aerosol and inhalant medications to the cardiorespiratory system and~~
24 ~~specific testing techniques employed in respiratory care to assist in~~
25 ~~diagnosis, monitoring, treatment, and research~~. Such techniques shall
26 include management , ~~but not be limited to, measurement~~ of ventilatory
27 volumes, pressures, and flows, measurement of physiologic partial
28 pressures, pulmonary function testing, ~~and~~ hemodynamic insertion of
29 lines, and other related physiological monitoring of the cardiopulmonary
30 system.

31 Sec. 22. Section 43-281, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 43-281 (1) Following an adjudication of jurisdiction and prior to
3 final disposition, the court may place the juvenile with the Office of
4 Juvenile Services or the Department of Health and Human Services for
5 evaluation, except that on and after October 1, 2013, no juvenile
6 adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247
7 shall be placed with the office or the department. The office or
8 department shall arrange and pay for an appropriate evaluation if the
9 office or department determines that there are no parental funds or
10 private or public insurance available to pay for such evaluation, except
11 that on and after October 1, 2013, the office and the department shall
12 not be responsible for such evaluations of any juvenile adjudicated under
13 subdivision (1), (2), (3)(b), or (4) of section 43-247.

14 (2) On and after October 1, 2013, following an adjudication of
15 jurisdiction under subdivision (1), (2), (3)(b), or (4) of section 43-247
16 and prior to final disposition, the court may order an evaluation to be
17 arranged by the Office of Probation Administration. For a juvenile in
18 detention, the court shall order that such evaluation be completed and
19 the juvenile returned to the court within twenty-one days after the
20 evaluation. For a juvenile who is not in detention, the evaluation shall
21 be completed and the juvenile returned to the court within thirty days.
22 The physician, psychologist, licensed mental health practitioner,
23 professional counselor holding a privilege to practice in Nebraska under
24 the Licensed Professional Counselors Interstate Compact, licensed drug
25 and alcohol counselor, or other provider responsible for completing the
26 evaluation shall have up to ten days to complete the evaluation after
27 receiving the referral authorizing the evaluation.

28 (3) A juvenile pending evaluation ordered under subsection (1) or
29 (2) of this section shall not reside in a detention facility at the time
30 of the evaluation or while waiting for the completed evaluation to be
31 returned to the court unless detention of such juvenile is a matter of

1 immediate and urgent necessity for the protection of such juvenile or the
2 person or property of another or if it appears that such juvenile is
3 likely to flee the jurisdiction of the court.

4 (4) The court shall provide copies of predisposition reports and
5 evaluations of the juvenile to the juvenile's attorney and the county
6 attorney or city attorney prior to any hearing in which the report or
7 evaluation will be relied upon.

8 Sec. 23. Section 44-513, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 44-513 Whenever any insurer provides by contract, policy,
11 certificate, or any other means whatsoever for a service, or for the
12 partial or total reimbursement, payment, or cost of a service, to or on
13 behalf of any of its policyholders, group policyholders, subscribers, or
14 group subscribers or any person or group of persons, which service may be
15 legally performed by a person licensed in this state for the practice of
16 osteopathic medicine and surgery, chiropractic, optometry, psychology,
17 dentistry, podiatry, or mental health practice or by a person who holds a
18 privilege to practice in Nebraska as a professional counselor under the
19 Licensed Professional Counselors Interstate Compact, the person rendering
20 such service or such policyholder, subscriber, or other person shall be
21 entitled to such partial or total reimbursement, payment, or cost of such
22 service, whether the service is performed by a duly licensed medical
23 doctor or by a duly licensed osteopathic physician, chiropractor,
24 optometrist, psychologist, dentist, podiatrist, or mental health
25 practitioner or duly privileged professional counselor. This section
26 shall not limit the negotiation of preferred provider policies and
27 contracts under sections 44-4101 to 44-4113.

28 Sec. 24. Section 44-792, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 44-792 For purposes of sections 44-791 to 44-795:

31 (1) Health insurance plan means (a) any group sickness and accident

1 insurance policy, group health maintenance organization contract, or
2 group subscriber contract delivered, issued for delivery, or renewed in
3 this state and (b) any self-funded employee benefit plan to the extent
4 not preempted by federal law. Health insurance plan includes any group
5 policy, group contract, or group plan offered or administered by the
6 state or its political subdivisions. Health insurance plan does not
7 include group policies providing coverage for a specified disease,
8 accident-only coverage, hospital indemnity coverage, disability income
9 coverage, medicare supplement coverage, long-term care coverage, or other
10 limited-benefit coverage. Health insurance plan does not include any
11 policy, contract, or plan covering an employer group that covers fewer
12 than fifteen employees;

13 (2) Mental health condition means any condition or disorder
14 involving mental illness that falls under any of the diagnostic
15 categories listed in the Mental Disorders Section of the International
16 Classification of Disease;

17 (3) Mental health professional means (a) a practicing physician
18 licensed to practice medicine in this state under the Medicine and
19 Surgery Practice Act, (b) a practicing psychologist licensed to engage in
20 the practice of psychology in this state as provided in section 38-3111
21 or as provided in similar provisions of the Psychology
22 Interjurisdictional Compact, ~~or~~ (c) a practicing mental health
23 professional licensed or certified in this state as provided in the
24 Mental Health Practice Act, or (d) a professional counselor who holds a
25 privilege to practice in Nebraska as a professional counselor under the
26 Licensed Professional Counselors Interstate Compact;

27 (4) Rate, term, or condition means lifetime limits, annual payment
28 limits, and inpatient or outpatient service limits. Rate, term, or
29 condition does not include any deductibles, copayments, or coinsurance;
30 and

31 (5)(a) Serious mental illness means, prior to January 1, 2002, (i)

1 schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder,
2 (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive
3 compulsive disorder; and

4 (b) Serious mental illness means, on and after January 1, 2002, any
5 mental health condition that current medical science affirms is caused by
6 a biological disorder of the brain and that substantially limits the life
7 activities of the person with the serious mental illness. Serious mental
8 illness includes, but is not limited to (i) schizophrenia, (ii)
9 schizoaffective disorder, (iii) delusional disorder, (iv) bipolar
10 affective disorder, (v) major depression, and (vi) obsessive compulsive
11 disorder.

12 Sec. 25. Section 48-101.01, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 48-101.01 (1) The Legislature finds and declares:

15 (a) The occupations of first responders are recognized as stressful
16 occupations. Only our nation's combat soldiers endure more stress.
17 Similar to military personnel, first responders face unique and uniquely
18 dangerous risks in their sworn mission to keep the public safe. They rely
19 on each other for survival to protect the communities they serve;

20 (b) On any given day, first responders can be called on to make life
21 and death decisions, witness a young child dying with the child's grief-
22 stricken family, make a decision that will affect a community member for
23 the rest of such person's life, or be exposed to a myriad of communicable
24 diseases and known carcinogens;

25 (c) On any given day, first responders protect high-risk individuals
26 from themselves and protect the community from such individuals;

27 (d) First responders are constantly at significant risk of bodily
28 harm or physical assault while they perform their duties;

29 (e) Constant, cumulative exposure to horrific events make first
30 responders uniquely susceptible to the emotional and behavioral impacts
31 of job-related stressors;

1 (f) Trauma-related injuries can become overwhelming and manifest in
2 post-traumatic stress, which may result in substance use disorders and
3 even, tragically, suicide; and

4 (g) It is imperative for society to recognize occupational injuries
5 related to post-traumatic stress and to promptly seek diagnosis and
6 treatment without stigma. This includes recognizing that mental injury
7 and mental illness as a result of trauma is not disordered, but is a
8 normal and natural human response to trauma, the negative effects of
9 which can be ameliorated through diagnosis and effective treatment.

10 (2) Personal injury includes mental injuries and mental illness
11 unaccompanied by physical injury for an employee who is a first
12 responder, frontline state employee, or county correctional officer if
13 such employee:

14 (a) Establishes that the employee's employment conditions causing
15 the mental injury or mental illness were extraordinary and unusual in
16 comparison to the normal conditions of the particular employment; and

17 (b) Establishes, through a mental health professional, the medical
18 causation between the mental injury or mental illness and the employment
19 conditions by medical evidence.

20 (3) The employee bears the burden of establishing the matters
21 described in subsection (2) of this section by a preponderance of the
22 evidence.

23 (4) Until January 1, 2028, a first responder may establish prima
24 facie evidence of a personal injury that is a mental injury or mental
25 illness if the first responder:

26 (a) Presents evidence that the first responder underwent a mental
27 health examination by a mental health professional upon entry into such
28 service or subsequent to such entry and before the onset of the mental
29 injury or mental illness and such examination did not reveal the mental
30 injury or mental illness for which the first responder seeks
31 compensation;

1 (b) Presents testimony or an affidavit from a mental health
2 professional stating the first responder suffers from a mental injury or
3 mental illness caused by one or more events or series of events which
4 cumulatively produced the mental injury or mental illness which brought
5 about the need for medical attention and the interruption of employment;

6 (c) Presents evidence that such events or series of events arose out
7 of and in the course of the first responder's employment; and

8 (d) Presents evidence that, prior to the employment conditions which
9 caused the mental injury or mental illness, the first responder had
10 participated in resilience training and updated the training at least
11 annually thereafter.

12 (5) For purposes of this section, mental injuries and mental illness
13 arising out of and in the course of employment unaccompanied by physical
14 injury are not considered compensable if they result from any event or
15 series of events which are incidental to normal employer and employee
16 relations, including, but not limited to, personnel actions by the
17 employer such as disciplinary actions, work evaluations, transfers,
18 promotions, demotions, salary reviews, or terminations.

19 (6)(a) The Department of Health and Human Services shall reimburse a
20 first responder for the cost of annual resilience training not reimbursed
21 by the first responder's employer. The department shall pay reimbursement
22 at a rate determined by the Critical Incident Stress Management Program
23 under section 71-7104. Reimbursement shall be subject to the annual limit
24 set by such program under section 71-7104.

25 (b) To obtain reimbursement under this subsection, a first responder
26 shall submit an application to the Department of Health and Human
27 Services on a form and in a manner prescribed by the department.

28 (7) The Department of Health and Human Services shall maintain and
29 annually update records of first responders who have completed annual
30 resilience training.

31 (8) For purposes of this section:

1 (a) County correctional officer means a correctional officer
2 employed by a high-population county whose:

3 (i) Position obligates such employee to maintain order and custody
4 of inmates in a county jail; and

5 (ii) Duties involve regular and direct interaction with high-risk
6 individuals;

7 (b) Custody means:

8 (i) Under the charge or control of a state institution or state
9 agency and includes time spent outside of the state institution or state
10 agency; or

11 (ii) In the custody of a county jail in a high-population county or
12 in the process of being placed in the custody of a county jail in a high-
13 population county;

14 (c) First responder means a sheriff, a deputy sheriff, a police
15 officer, an officer of the Nebraska State Patrol, a volunteer or paid
16 firefighter, or a volunteer or paid individual licensed under a licensure
17 classification in subdivision (1) of section 38-1217 who provides medical
18 care in order to prevent loss of life or aggravation of physiological or
19 psychological illness or injury;

20 (d) Frontline state employee means an employee of the Department of
21 Correctional Services or the Department of Health and Human Services
22 whose duties involve regular and direct interaction with high-risk
23 individuals;

24 (e) High-population county means a county with more than three
25 hundred thousand inhabitants as determined by the most recent federal
26 decennial census or the most recent revised certified count by the United
27 States Bureau of the Census;

28 (f) High-risk individual means an individual in custody for whom
29 violent or physically intimidating behavior is common, including, but not
30 limited to, a committed offender as defined in section 83-170, a patient
31 at a regional center as defined in section 71-911, a juvenile committed

1 to a youth rehabilitation and treatment center, and a person in the
2 custody of a county jail in a high-population county or in the process of
3 being placed in the custody of a county jail in a high-population county;

4 (g) Mental health professional means:

5 (i) A practicing physician licensed to practice medicine in this
6 state under the Medicine and Surgery Practice Act;

7 (ii) A practicing psychologist licensed to engage in the practice of
8 psychology in this state as provided in section 38-3111 or as provided in
9 similar provisions of the Psychology Interjurisdictional Compact;~~or~~

10 (iii) A person licensed as an independent mental health practitioner
11 under the Mental Health Practice Act; or and

12 (iv) A professional counselor who holds a privilege to practice in
13 Nebraska as a professional counselor under the Licensed Professional
14 Counselors Interstate Compact; and

15 (h) Resilience training means training that meets the guidelines
16 established by the Critical Incident Stress Management Program under
17 section 71-7104 and that teaches how to adapt to, manage, and recover
18 from adversity, trauma, tragedy, threats, or significant sources of
19 stress.

20 (9) All other provisions of the Nebraska Workers' Compensation Act
21 apply to this section.

22 Sec. 26. Section 71-8402, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 71-8402 For purposes of sections 71-8401 to 71-8407:

25 (1) Medical records means a provider's record of a patient's health
26 history and treatment rendered;

27 (2) Mental health medical records means medical records or parts
28 thereof created by or under the direction or supervision of a licensed
29 psychiatrist, a licensed psychologist, ~~or~~ a mental health practitioner
30 licensed or certified pursuant to the Mental Health Practice Act, or a
31 professional counselor who holds a privilege to practice in Nebraska as a

1 professional counselor under the Licensed Professional Counselors
2 Interstate Compact;

3 (3) Patient includes a patient or former patient;

4 (4) Patient request or request of a patient includes the request of
5 a patient's guardian or other authorized representative; and

6 (5) Provider means a physician, psychologist, chiropractor, dentist,
7 hospital, clinic, and any other licensed or certified health care
8 practitioner or entity.

9 Sec. 27. Sections 27 to 33 of this act shall be known and may be
10 cited as the Alzheimer's Disease and Other Dementia Support Act.

11 Sec. 28. The Legislature hereby finds and declares that Alzheimer's
12 and other dementia are of significant concern to the State of Nebraska,
13 and that the Legislature and the state would benefit from a more
14 coordinated approach to addressing Alzheimer's disease and other
15 dementia.

16 Sec. 29. For purposes of the Alzheimer's Disease and Other Dementia
17 Support Act:

18 (1) Council means the Alzheimer's Disease and Other Dementia
19 Advisory Council; and

20 (2) Department means the Department of Health and Human Services.

21 Sec. 30. (1) The Alzheimer's Disease and Other Dementia Advisory
22 Council is created and shall include:

23 (a) Twelve voting members appointed by the Governor. The voting
24 members shall consist of: (i) An individual living with Alzheimer's
25 disease or another dementia or a family member of such an individual;
26 (ii) an individual who is the family caregiver of an individual living
27 with Alzheimer's disease or another dementia; (iii) an individual who
28 represents nursing homes; (iv) an individual who represents assisted-
29 living facilities; (v) an individual who represents providers of adult
30 day care services; (vi) an individual who represents home care providers;
31 (vii) a medical professional who has experience diagnosing and treating

1 Alzheimer's disease; (viii) an individual who conducts research regarding
2 Alzheimer's disease or other dementia; (ix) an individual who represents
3 a leading, nationwide organization that advocates on behalf of
4 individuals living with Alzheimer's disease or other dementia; (x) an
5 individual who represents an area agency on aging; (xi) an individual
6 representing an organization that advocates for older adults; and (xii)
7 an individual with experience or expertise in the area of the specific
8 needs of individuals with intellectual and developmental disabilities and
9 Alzheimer's disease or other dementia; and

10 (b) Five nonvoting members. The nonvoting members shall consist of:
11 (i) The Director of Public Health or the director's designee; (ii) the
12 Director of Medicaid and Long-Term Care or the director's designee; (iii)
13 a representative of the State Unit on Aging of the Division of Medicaid
14 and Long-Term Care designated by the Director of Medicaid and Long-Term
15 Care; (iv) a representative of the Nebraska Workforce Development Board
16 designated by the board; and (v) the state long-term care ombudsman or
17 the ombudsman's designee.

18 (2) The Governor shall make the appointments within ninety days
19 after the effective date of this act. Vacancies shall be filled in the
20 same manner as the original appointments.

21 (3) The voting members of the council shall serve for a term of four
22 years. A voting member may be reappointed to one additional term of four
23 years.

24 (4) Members of the council shall select the chairperson and vice-
25 chairperson who shall not be employees of the state and may serve in such
26 role for up to four consecutive years. The Director of Public Health or
27 the director's designee shall call and preside over the first meeting
28 until a chairperson is selected. Thereafter, the council shall meet at
29 least quarterly at the call of the chairperson. A majority of the voting
30 members shall constitute a quorum for the conduct of meetings.

31 (5) The council shall hold its first meeting not later than thirty

1 days after the appointment of its members and shall hold subsequent
2 meetings at least once every calendar quarter.

3 (6) Members shall serve on the council without compensation but
4 shall be compensated for expenses incurred for such service.

5 (7) The department shall provide staff and support to the council as
6 necessary to assist the council in the performance of its duties.

7 Sec. 31. (1) The purpose of the council shall be to examine (a) the
8 needs of individuals living with Alzheimer's disease or other dementia,
9 (b) the services available in the state for those individuals and their
10 family caregivers, and (c) the ability of health care providers and
11 facilities to meet the current and future needs of such individuals.

12 (2) The council shall collaborate with the department and other
13 state departments as needed to gather input on issues and strategies that
14 pertain to Alzheimer's disease and other dementia and identify proactive
15 approaches on public health, workforce, caregiver support, and care
16 delivery. The council shall monitor analysis, policy development, and
17 program implementation related to Alzheimer's disease and other dementia.

18 Sec. 32. The council shall consider and make findings and
19 recommendations on the following topics:

20 (1) Trends in the state's Alzheimer's disease and other dementia
21 populations and service needs, including:

22 (a) The state's role in providing or facilitating long-term care,
23 family caregiver support, and assistance to those with early-stage or
24 early-onset Alzheimer's disease or other dementia;

25 (b) The state's policies regarding individuals with Alzheimer's
26 disease or other dementia;

27 (c) The fiscal impact of Alzheimer's disease and other dementia on
28 publicly funded health care programs; and

29 (d) The establishment of a surveillance system to better determine
30 the number of individuals diagnosed with Alzheimer's disease or other
31 dementia and to monitor changes to such numbers;

1 (2) Existing resources, services, and capacity relating to the
2 diagnosis and care of individuals living with Alzheimer's disease or
3 other dementia, including:

4 (a) The type, cost, and availability of dementia care services;

5 (b) The availability of health care workers who can serve people
6 with dementia, including, but not limited to, neurologists,
7 geriatricians, and direct care workers;

8 (c) Dementia-specific training requirements for public and private
9 employees who interact with people living with Alzheimer's disease or
10 other dementia which shall include, but not be limited to, long-term care
11 workers, case managers, adult protective services, law enforcement, and
12 first responders;

13 (d) Home and community-based services, including respite care for
14 individuals exhibiting symptoms of Alzheimer's disease or other dementia
15 and their families;

16 (e) Quality care measures for home and community-based services and
17 residential care facilities; and

18 (f) State-supported Alzheimer's disease and other dementia research
19 conducted at universities located in this state; and

20 (3) Policies and strategies that address the following:

21 (a) Increasing public awareness of Alzheimer's disease and other
22 dementia;

23 (b) Educating providers to increase early detection and diagnosis of
24 Alzheimer's disease and other dementia;

25 (c) Improving the health care received by individuals diagnosed with
26 Alzheimer's disease or other dementia;

27 (d) Evaluating the capacity of the health care system in meeting the
28 growing number and needs of those with Alzheimer's disease and other
29 dementia;

30 (e) Increasing the number of health care professionals necessary to
31 treat the growing aging and Alzheimer's disease and dementia populations;

1 (f) Improving services provided in the home and community to delay
2 and decrease the need for institutionalized care for individuals with
3 Alzheimer's disease or other dementia;

4 (g) Improving long-term care, including assisted living, for those
5 with Alzheimer's disease or other dementia;

6 (h) Assisting unpaid Alzheimer's disease or dementia caregivers;

7 (i) Increasing and improving research on Alzheimer's disease and
8 other dementia;

9 (j) Promoting activities to maintain and improve brain health;

10 (k) Improving the collection of data and information related to
11 Alzheimer's disease and other dementia and the resulting public health
12 burdens;

13 (l) Improving public safety and addressing the safety-related needs
14 of those with Alzheimer's disease or other dementia;

15 (m) Addressing legal protections for, and legal issues faced by,
16 individuals with Alzheimer's disease or other dementia; and

17 (n) Improving the ways in which the government evaluates and adopts
18 policies to assist individuals diagnosed with Alzheimer's disease or
19 other dementia and their families.

20 Sec. 33. (1)(a) No later than eighteen months after the effective
21 date of this act, the council shall compile the findings and
22 recommendations under the Alzheimer's Disease and Other Dementia Support
23 Act and submit them as a State Alzheimer's Plan to the Legislature and
24 the Governor.

25 (b) Every four years thereafter, the council shall issue an updated
26 State Alzheimer's Plan addressing the items in sections 31 and 32 of this
27 act and any other issues the council deems necessary and relevant toward
28 addressing Alzheimer's disease and dementia in Nebraska.

29 (2) By October 1 of each year after the creation of the State
30 Alzheimer's Plan, the council shall electronically submit to the
31 Legislature and the Governor an annual report on the status of

1 implementation of the State Alzheimer's Plan recommendations and any
2 barriers to implementation.

3 Sec. 34. Original sections 38-318, 38-2116, 38-2121, 38-2136,
4 38-2137, 38-2138, 38-2139, 38-2516, 38-3205, 43-281, 44-513, 44-792,
5 48-101.01, and 71-8402, Reissue Revised Statutes of Nebraska, sections
6 28-327, 29-2261, 38-178, 38-2112, 38-2115, 38-2124, 38-2125, and 38-2894,
7 Revised Statutes Cumulative Supplement, 2020, and section 38-101, Revised
8 Statutes Supplement, 2021, are repealed.

9 2. On page 1, strike beginning with "the" in line 1 through line 3
10 and insert "public health; to amend sections 38-318, 38-2116, 38-2121,
11 38-2136, 38-2137, 38-2138, 38-2139, 38-2516, 38-3205, 43-281, 44-513,
12 44-792, 48-101.01, and 71-8402, Reissue Revised Statutes of Nebraska,
13 sections 28-327, 29-2261, 38-178, 38-2112, 38-2115, 38-2124, 38-2125, and
14 38-2894, Revised Statutes Cumulative Supplement, 2020, and section
15 38-101, Revised Statutes Supplement, 2021; to adopt the Licensed
16 Professional Counselors Interstate Compact, the Occupational Therapy
17 Practice Interstate Compact, and the Alzheimer's Disease and Other
18 Dementia Support Act; to define terms; to require notification regarding
19 stem cell therapy as prescribed; to provide for disciplinary action; to
20 redefine respiratory care under the Respiratory Care Practice Act; to
21 harmonize provisions; and to repeal the original sections."