

LEGISLATIVE BILL 398

Approved by the Governor April 30, 2001

Introduced by Suttle, 10

AN ACT relating to public health and welfare; to amend sections 28-409, 28-413, 28-417, 28-418, 28-429, 28-438, 28-442, 71-161.12, 71-161.16, 71-1,144.05, 71-1,145.01, 71-1,147.13, 71-1,147.27, 71-1,147.32, 71-1,147.36, 71-1,147.47, 71-1,147.52, 71-2501, 71-5405 to 71-5407, 71-6045, and 71-7420, Reissue Revised Statutes of Nebraska, and sections 28-401, 28-406 to 28-408, 28-410 to 28-412, 28-414 to 28-416, 71-101, 71-147, 71-155.01, 71-161.13, 71-172.01, 71-1,142, 71-1,143, 71-1,145, 71-1,147, 71-1,147.15, 71-1,147.31, 71-1,147.33, 71-1,147.34, 71-1,147.35, 71-1,147.42 to 71-1,147.46, 71-1,147.48, 71-1,147.50, 71-1,147.53, 71-1,147.55 to 71-1,147.57, 71-1,147.59, 71-401, 71-425, 71-15,139, 71-2407, 71-2411, 71-2413, 71-2417, 71-2419, 71-2421, 71-5402, 71-6721, 71-7409, 71-7416, and 71-7417, Revised Statutes Supplement, 2000; to change and eliminate provisions relating to pharmacies and pharmacists, controlled substances, health care examining boards, drug paraphernalia, emergency box drugs, drug product selection, drug dispensing permits, drug and poison labeling, and wholesale drug distribution; to change provisions relating to drug dispensing; to adopt the Mail Order Contact Lens Act; to define, redefine, and eliminate terms; to provide, change, and eliminate penalties; to provide for and change fees; to provide powers and duties; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 28-402 and 71-1,147.14, Reissue Revised Statutes of Nebraska, and sections 71-1,147.39 to 71-1,147.41, 71-1,147.49, 71-1,147.51, 71-1,147.58, 71-1,147.60, 71-1,147.61, and 71-462, Revised Statutes Supplement, 2000; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-401, Revised Statutes Supplement, 2000, is amended to read:

28-401. As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer shall mean ~~the direct application of a controlled substance, whether to directly apply a controlled substance by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject; by: (a) A practitioner or, in his or her presence, by his or her authorized agent; or (b) the patient or research subject at the direction and in the presence of the practitioner;~~

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of ~~a manufacturer, distributor, or dispenser. Agent another person but~~ shall not include a common or contract carrier, public warehouse keeper, or employee of ~~the a~~ carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on the operative date of this section, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health and Human Services Regulation and Licensure; ~~personnel who are responsible for the enforcement of the Uniform Controlled Substances Act in the areas assigned to it by the act;~~

(7) Division of Drug Control shall mean the personnel of the

Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to ~~the lawful order or prescription of a physician, physician assistant, dentist, veterinarian, or other medical~~ a medical order issued by a practitioner licensed under the laws of this state authorized to prescribe, ~~drugs,~~ including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery; ~~Dispenser shall mean the apothecary, pharmacist, or other practitioner, duly licensed, who dispenses a controlled substance to an ultimate user or a research subject;~~

(9) Distribute shall mean to deliver other than by administering or dispensing a controlled substance; ~~Distributor shall mean a person who so distributes a controlled substance;~~

(10) Prescribe shall mean the act of a ~~physician, physician assistant, surgeon, dentist, veterinarian, or other medical practitioner licensed under the laws of this state in issuing an order, prescription, or direction to a pharmacist or pharmacy to dispense a drug as required by the laws of this state to issue a medical order;~~

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or accessories;

(12) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container, except that manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate shall not include the dextrorotatory isomer of 3-methoxy-n

methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

(17) Opium poppy shall mean the plant of the species *Papaver somniferum* L., except the seeds thereof;

(18) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(19) Person shall mean any corporation, association, partnership, limited liability company, or one or more individuals;

(20) Practitioner shall mean a physician, physician assistant, dentist, veterinarian, pharmacist, podiatrist, optometrist, certified nurse midwife, advanced practice registered nurse, certified registered nurse anesthetist, scientific investigator, pharmacy, ~~or~~ hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state, ~~or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state including an emergency medical service as defined in section 71-5175;~~

(21) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State shall mean the State of Nebraska;

(24) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Physician shall mean a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state;

~~(26) Dentist shall mean a person authorized by law to practice dentistry in this state;~~

~~(27) Veterinarian shall mean a person authorized by law to practice veterinary medicine in this state;~~

~~(28) Hospital shall mean an institution for the care and treatment of sick and injured human beings and approved by the department have the same meaning as in section 71-419;~~

~~(29) Podiatrist shall mean a person authorized by law to practice podiatry and who has graduated from an accredited school of podiatry in or since 1935;~~

~~(30) Apothecary shall mean a licensed pharmacist as defined by the laws of this state and, when the context so requires, the owner of the store or other place of business where drugs are compounded or dispensed by a licensed pharmacist, but nothing in this subdivision shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him or her by the pharmacy laws of this state;~~

~~(31) Nothing in the Uniform Controlled Substances Act shall be construed as authority for a practitioner to perform an act for which he or she is not authorized by the laws of this state;~~

~~(32) (26) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;~~

~~(33) (27) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;~~

~~(34) (28) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, or (f) pentobarbital;~~

~~(35) (29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational~~

drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

~~(36)~~ (30)(a) Controlled substance analogue shall mean a substance ~~(a)~~ (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or ~~(b)~~ (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) ~~(b)~~ Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on the operative date of this section, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on the operative date of this section, to the extent conduct with respect to such substance is pursuant to such exemption;

~~(37)~~ (31) Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone, (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision; and

~~(38)~~ Physician assistant shall mean an individual licensed in accordance with sections 71-1,107.15 to 71-1,107.30

(32) Chart order shall mean an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order shall not include a prescription;

(33) Medical order shall mean a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription shall mean an order for a controlled substance issued by a practitioner. Prescription shall not include a chart order;

(35) Registrant shall mean any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor shall mean a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances; and

(37) Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-1701.

Sec. 2. Section 28-438, Reissue Revised Statutes of Nebraska, is amended to read:

~~28-438.~~ This article section, sections 28-401 to 28-445, and section 3 of this act shall be known and may be cited as the Uniform Controlled Substances Act.

Sec. 3. Nothing in the Uniform Controlled Substances Act shall be construed as authority for a practitioner to perform an act for which he or she is not authorized by the laws of this state.

Sec. 4. Section 28-406, Revised Statutes Supplement, 2000, is amended to read:

28-406. (1) The department shall issue registrations and reregistrations to manufacture, distribute, prescribe, ~~and~~ or dispense controlled substances within this state on a biennial basis.

(2) The various fees to be paid by applicants for registrations and reregistrations, as required under the Uniform Controlled Substances Act, shall be as follows:

(a) Registration or reregistration to manufacture controlled substances, not less than one hundred dollars and not more than three hundred dollars;

(b) Registration or reregistration to distribute controlled substances, not less than one hundred dollars and not more than three hundred dollars;

(c) Registration or reregistration to prescribe, administer, or dispense controlled substances, not less than twenty dollars and not more than one hundred fifty dollars;

(d) Registration or reregistration to engage in research on the use and effects of controlled substances, not less than fifty dollars and not more than two hundred dollars;

(e) Registration or reregistration to engage in laboratory and analytical analysis of controlled substances, not less than fifty dollars and not more than two hundred dollars; and

(f) Registration or reregistration to provide detoxification treatment or maintenance treatment, not less than twenty dollars and not more than one hundred fifty dollars.

(3) All registrations and reregistrations shall expire on August 31 of each odd-numbered year. Registration shall be automatically denied without a hearing for nonpayment of fees. Any registration or reregistration not renewed by payment of renewal fees by October 1 of odd-numbered years shall be automatically denied and canceled on October 2 of odd-numbered years without a hearing.

(4) The department is authorized to adopt and promulgate rules and regulations necessary to implement this section.

Sec. 5. Section 28-407, Revised Statutes Supplement, 2000, is amended to read:

28-407. (1) ~~Every~~ Except as otherwise provided in this section, every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a ~~lawful~~ medical order ~~of~~ issued by a practitioner authorized to prescribe.

(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within an institution pursuant to the provisions of the Emergency Box Drug Act.

(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.

Sec. 6. Section 28-408, Revised Statutes Supplement, 2000, is amended to read:

28-408. (1) The department shall register an applicant to manufacture or distribute controlled substances included in Schedules I to V of section 28-405 unless the department determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest the department shall consider the following factors:

(a) Maintenance of effective controls against diversion of particular controlled substances and any Schedule I or II substance compounded

therefrom into other than legitimate medical, scientific, or industrial channels;

(b) Compliance with applicable state and local law;

(c) Whether the applicant has been convicted of a felony under any law of the United States or of any state or has been convicted of a violation relating to any ~~substances~~ substance defined in the Uniform Controlled Substances Act as a controlled substance under any law of the United States or any state, except that such fact in itself shall not be an automatic bar to registration;

(d) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion; and

(e) Such other factors as may be relevant to and consistent with the public health and safety.

(2) Registration granted under subsection (1) of this section shall not entitle a registrant to manufacture ~~and~~ or distribute controlled substances in Schedule I or II of section 28-405 other than those specified in the registration.

(3) Except as otherwise provided in this section and section 28-409, practitioners shall be registered to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 if they are authorized to prescribe, administer, or dispense under the laws of this state. A registration application by a practitioner who wishes to conduct research with Schedule I substances shall be referred to the department for approval or disapproval. Registration to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 or registration for the purpose of bona fide research with Schedule I substances by a practitioner may be denied only on a ground specified in subsection (1) of section 28-409 or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his or her supply of such substances against diversion from legitimate medical or scientific use.

(4) Compliance by manufacturers and distributors with the ~~provisions of the Federal Controlled Dangerous Substances Act, 21 U.S.C. 801 et seq., as such act existed on the operative date of this section,~~ respecting registration, excluding fees, shall be deemed compliance with this section.

Sec. 7. Section 28-409, Reissue Revised Statutes of Nebraska, is amended to read:

28-409. (1) A registration pursuant to section 28-408 to prescribe, administer, manufacture, distribute, or dispense a controlled substance may be denied, suspended, revoked, or renewal refused by the department upon a finding that the applicant or registrant:

(a) Has falsified any application filed pursuant to the Uniform Controlled Substances Act or required by the act;

(b) Has been convicted of a felony subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state or has been convicted of a violation relating to any ~~substances~~ substance defined in the act as a controlled substance subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state;

(c) Has had his or her federal registration suspended or revoked by competent federal authority and is no longer authorized by federal law to engage in the prescribing, manufacturing, distribution, or dispensing of controlled substances;

(d) Is guilty of any of the acts or offenses listed in section 71-147 for which disciplinary measures may be taken against his or her license, certificate, or registration to practice and which have a rational connection with his or her fitness to prescribe, administer, or dispense a controlled substance. The department may automatically revoke or suspend the registration of a practitioner who has had his or her license, certificate, or registration to practice revoked or suspended and is no longer authorized to prescribe, administer, or dispense under the laws of this state or who has had his or her license, certificate, or registration to practice limited or restricted and is no longer authorized to prescribe, administer, or dispense controlled substances under the laws of this state;

(e) Is habitually intoxicated or is dependent upon or actively addicted to alcohol or any controlled substance or narcotic drug; or

(f) Has violated the Uniform Controlled Substances Act or any rules or regulations adopted and promulgated pursuant to the act.

(2) The department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) A person whose registration or renewal has been denied, revoked,

or suspended shall be afforded an opportunity for a hearing in accordance with the Administrative Procedure Act. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the ~~provisions of the~~ Uniform Controlled Substances Act or any law of the state, except that such proceedings may be consolidated with proceedings under section 71-155 or sections 71-161.12 to 71-161.18. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing, except in cases when the department finds that there is an imminent danger to the public health or safety.

(4) The department may suspend any registration simultaneously with the institution of proceedings under this section or when renewal of registration is refused in cases when the department finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

(5) In the event the department suspends or revokes a registration granted under section 28-408, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the department be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

(6) The administration shall be promptly notified of all orders limiting, suspending, or revoking registration.

Sec. 8. Section 28-410, Revised Statutes Supplement, 2000, is amended to read:

28-410. (1) Each registrant manufacturing, distributing, or dispensing controlled substances in Schedule I, II, III, IV, or V of section 28-405 shall keep and maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for ~~seven~~ five years.

(2) ~~During the month of April or May in odd-numbered years, each registrant manufacturing, distributing, storing, or dispensing such controlled substances shall prepare an inventory of each controlled substance in his or her possession. Records and inventories shall contain such information as shall be required by rules and regulations promulgated by the department. Such inventory shall (a) be taken within two years after the previous biennial inventory date, (b) contain such information as shall be required by the Board of Pharmacy, (c) be copied and such copy forwarded to the department within thirty days after completion, (d) be maintained at the location listed on the registration for a period of five years, (e) contain the name, address, and Drug Enforcement Administration number of the registrant, the date and time of day the inventory was completed, and the signature of the person responsible for taking the inventory, (f) list the exact count or measure of all controlled substances listed in Schedule I or II of section 28-405, (g) list an estimated count or measure of all controlled substances listed in Schedule III, IV, or V of section 28-405 unless the container holds more than one thousand tablets, capsules, or milliliters, in which case the inventory shall list an exact count, and (h) be maintained in permanent, read-only format separating the inventory for controlled substances listed in Schedule I or II of section 28-405 from the inventory for controlled substances listed in Schedule III, IV, or V of section 28-405. A registrant whose inventory fails to comply with this subsection shall be guilty of a Class IV misdemeanor.~~

(3) All registration and reregistration fees shall be remitted to the department and credited to the ~~Pharmacy~~ Nebraska Pharmaceutical Fund for the express purpose of the enforcement responsibilities of the department in accordance with the provisions of the Uniform Controlled Substances Act. This section shall not apply to practitioners who ~~lawfully prescribe, or administer, as a part of their practice, or occasionally dispense as a part of their professional practice,~~ controlled substances listed in Schedule II, III, IV, or V of section 28-405, unless such practitioner regularly engages in dispensing any such drug or drugs to his or her patients.

(4) Controlled substances shall be stored in accordance with the following:

(a) All controlled substances listed in Schedule I of section 28-405 must be stored in a locked cabinet; and

(b) All controlled substances listed in Schedule II, III, IV, or V

of section 28-405 must be stored in a locked cabinet or distributed throughout the inventory of noncontrolled substances in a manner which will obstruct theft or diversion of the controlled substances. ~~for which they are charged either separately or together with charges for other professional services.~~

Sec. 9. Section 28-411, Revised Statutes Supplement, 2000, is amended to read:

28-411. (1) Every ~~physician, dentist, podiatrist, veterinarian, or other person practitioner~~ who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances received by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order issued by a practitioner authorized to prescribe, in accordance with subsection (4) of this section. ~~otherwise than by prescription.~~

(2) ~~Manufacturers, and wholesalers, distributors, and reverse distributors~~ shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(3) ~~Apothecaries Pharmacies~~ shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(4) ~~The form of records shall be prescribed by the Department of Health and Human Services Regulation and Licensure.~~ The record of controlled substances received shall in every case show (a) the date of receipt, (b) the name, ~~and address, and Drug Enforcement Administration number~~ of the person ~~from whom received receiving~~ the controlled substances, (c) ~~the name, address, and Drug Enforcement Administration number of the person from whom received,~~ (d) the kind and quantity of controlled substances received, ~~(d)~~ (e) the kind and quantity of controlled substances produced or removed from process of manufacture, and ~~(e)~~ (f) the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. For any lost, destroyed, or stolen controlled substances, the record shall list the kind and quantity of such controlled substances and the discovery date of such loss, destruction, or theft. Every such record shall be kept for a period of ~~seven~~ five years from the date of the transaction recorded. ~~and shall contain a detailed list of controlled substances lost, destroyed, or stolen, if any, the kind and quantity of such controlled substances, and the date of the discovery of such loss, destruction, or theft.~~

Sec. 10. Section 28-412, Revised Statutes Supplement, 2000, is amended to read:

28-412. (1) It is unlawful to prescribe any narcotic drug listed in section 28-405 for the purpose of detoxification treatment or maintenance treatment except as provided in this section.

(2) A narcotic drug may be administered or dispensed to a narcotic-dependent person for detoxification treatment or maintenance treatment ~~as prescribed~~ by a practitioner who is registered to provide detoxification treatment or maintenance treatment pursuant to section 28-406.

(3) A narcotic drug may be administered or dispensed to a narcotic-dependent person when necessary to relieve acute withdrawal symptoms pending the referral of such person for detoxification treatment or maintenance treatment ~~as prescribed~~ by a physician who is not registered to provide detoxification treatment or maintenance treatment under section 28-406. Not more than one day's supply of narcotic drugs shall be administered or dispensed for such person's use at one time. Such treatment shall not be continued for more than three successive calendar days and may not be renewed or extended.

(4) A narcotic drug may be ~~prescribed,~~ administered, or dispensed in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment conditions other than dependence.

(5) Any person who violates this section is guilty of a Class IV felony.

(6) For purposes of this section:

(a) Detoxification treatment means the ~~prescribing,~~ administering, or dispensing of a narcotic drug in decreasing doses to a person for a specified period of time to alleviate adverse physiological or psychological

effects incident to withdrawal from the continuous or sustained use of a narcotic drug and to bring such person to a narcotic drug-free state within such period of time. Detoxification treatment includes short-term detoxification treatment and long-term detoxification treatment;

(b) Long-term detoxification treatment means detoxification treatment for a period of more than thirty days but not more than one hundred eighty days;

(c) Maintenance treatment means the ~~prescribing~~, administering, or dispensing of a narcotic drug in the treatment of a narcotic-dependent person for a period of more than twenty-one days; and

(d) Short-term detoxification treatment means detoxification treatment for a period of not more than thirty days.

Sec. 11. Section 28-413, Reissue Revised Statutes of Nebraska, is amended to read:

28-413. Controlled substances in Schedules I and II of section 28-405 shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of the ~~Federal~~ Controlled Dangerous Substances Act, 21 U.S.C. 801 et seq., as such act existed on the operative date of this section, respecting order forms shall be deemed compliance with this section.

Sec. 12. Section 28-414, Revised Statutes Supplement, 2000, is amended to read:

28-414. (1)(a) Except as otherwise provided in this subsection or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without the written prescription bearing the signature of a practitioner authorized to prescribe. No medical order for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(b) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription bearing the word "emergency" or pursuant to an oral prescription reduced to writing in accordance with subdivision (3)(b) of this section and filed by a pharmacist.

(c) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription if the original written, signed prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (1)(c)(ii) or (1)(c)(iii) of this section;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient in a hospice licensed under the Health Care Facility Licensure Act or certified under Title XVIII of the federal Social Security Act, as amended such title existed on the operative date of this section, and bearing the words "hospice patient";

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription for administration to a resident of a long-term care facility; and

(iv) For purposes of subdivisions (1)(c)(ii) and (1)(c)(iii) of this section, an authorized transmitted copy of a written, signed prescription shall serve as the original written prescription and shall be maintained in accordance with subdivision (3)(a) of this section.

(d)(i) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed prescription.

(ii) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words "terminally ill" or "long-term care facility patient" on its face. If there is any question

whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which ~~are~~ is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

(2)(a) Except as otherwise provided in this subsection or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written or oral ~~prescription~~ medical order. Such ~~prescription~~ medical order is valid for six months after the date of issuance. ~~Practitioner authorization~~ Authorization from a practitioner authorized to prescribe is required to refill ~~such a prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405~~. Such prescriptions shall not be refilled more than five times within six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to ~~subsection (5) of this section~~ section 36 of this act.

(b) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to an authorized transmitted copy of a written, signed prescription. The authorized transmitted copy of a written, signed prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with the provisions of subdivision (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (iii) each partial filling is dispensed within six months after the prescription was issued.

(3)(a) Prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. The practitioner filling such prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall also state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be filed separately from other prescriptions in a single file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(d) All prescriptions for controlled substances listed in Schedule III, IV, or V of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and for written prescriptions, the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the owner's name and address and species of the animal.

(e) A registrant who is the owner of ~~any~~ a controlled substance may transfer:

(i) Any controlled substance listed in Schedule I or II of section 28-405 may transfer such controlled substance to another registrant as provided by law or by rule and regulation of the department; and

(ii) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

(f)(i) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this subdivision when the need for such substances ceases. Complete records of controlled substances destruction pursuant to this subdivision shall be maintained by the registrant for five years from the date of destruction.

(ii) When the owner is a registrant:

(A) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed upon prior written approval of the Board of Pharmacy if witnessed by two responsible parties employed by or acting on behalf of the registrant, one of whom must be a member of the healing arts. Upon destruction, any forms required by the administration to document such destruction shall be completed; or

(B) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two members of the healing arts and recorded in accordance with subsection (4) of section 28-411.

(iii) When the owner is a patient, such owner may transfer the controlled substances to a pharmacy for immediate destruction by two responsible parties acting on behalf of the pharmacy, one of whom must be a member of the healing arts.

(iv) When the owner is a resident of a long-term care facility or hospital, the long-term care facility or hospital shall assure that controlled substances are destroyed as follows:

(A) If the controlled substance is listed in Schedule II or III of section 28-405, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and a member of the healing arts; or

(B) If the controlled substance is listed in Schedule IV or V of section 28-405, the destruction shall be witnessed by an employee pharmacist or a consultant pharmacist and another responsible adult.

(g) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription files, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original written prescription or so designates in an oral prescription, such label shall also bear the name of the controlled substance.

(4) For purposes of this section:

(a) Authorized transmitted copy means a paper copy of a written, signed medical order issued by a practitioner authorized to prescribe which is produced by an electronic or electromagnetic transmission or other means as authorized by rule and regulation of the department upon recommendation of the Board of Pharmacy; and

(b) Long-term care facility has the same meaning as long-term care hospital in section 71-422 and includes an intermediate care facility for the mentally retarded as defined in section 71-421. ~~7, authorized transmitted copy means a paper copy of a written, signed prescription produced by an electronic or electromagnetic transmission or other means as authorized by rule and regulation of the department upon recommendation of the Board of Pharmacy.~~

~~(5) Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis. Pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the face of the prescription.~~

Sec. 13. Section 28-415, Revised Statutes Supplement, 2000, is amended to read:

28-415. (1) A manufacturer, distributor, or packager who sells or dispenses a narcotic drug or a wholesaler who sells or dispenses a narcotic drug in a package prepared by him or her shall securely affix a label to each package in which such drug is contained showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except a pharmacy for the purpose of filling a prescription medical order under the Uniform Controlled Substances Act, shall

alter, deface, or remove any label so affixed.

(2) A pharmacy that sells or dispenses any narcotic drug on a prescription issued by a practitioner shall affix a label to the container in which such drug is sold or dispensed pursuant to subdivision ~~(3)(f)~~ (3)(g) of section 28-414. No person shall alter, deface, or remove any label so affixed.

Sec. 14. Section 28-416, Revised Statutes Supplement, 2000, is amended to read:

28-416. (1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a valid prescription or medical order ~~from~~ issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for

delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) Five hundred grams or more shall be guilty of a Class IB felony;

(b) One hundred grams or more but less than five hundred grams shall be guilty of a Class IC felony; or

(c) Twenty-eight grams or more but less than one hundred grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) Sixteen ounces or more shall be guilty of a Class IC felony;

(b) Seven ounces or more but less than sixteen ounces shall be guilty of a Class ID felony; or

(c) Three and one-half ounces or more but less than seven ounces shall be guilty of a Class II felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined two hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined three hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(15) Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory

attendance and completion of appropriate treatment and counseling on drug abuse, except that any person convicted of violating subsection (4), (5), (7), (8), (9), or (10) of this section shall not be eligible for parole prior to serving the mandatory minimum sentence.

(16) A person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section or while in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

Sec. 15. Section 28-417, Reissue Revised Statutes of Nebraska, is amended to read:

28-417. (1) It shall be unlawful for any person:

(a) To omit, remove, alter, or obliterate a symbol required by the ~~Federal~~ Dangerous Substances Act, 21 U.S.C. 801 et seq., as the act existed on the operative date of this section, or required by the laws of this state;

(b) To alter, deface, or remove any label affixed to a package of narcotic drugs;

(c) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this article the Uniform Controlled Substances Act;

(d) To refuse any entry into any premises for inspection authorized by this article the act;

(e) To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or ~~any~~ place whatever which such person knows or should know is resorted to by persons using controlled substances in violation of this article the Uniform Controlled Substances Act for the purpose of using such substances or which is used for the keeping or selling of the same in violation of this article the act;

(f) To whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner or the owner of any animal for which any such substance has been prescribed, sold, or dispensed by a veterinarian to possess it in a container other than which it was delivered to him or her by the practitioner; or

(g) To be under the influence of any controlled substance for a purpose other than the treatment of a sickness or injury as prescribed or administered by a ~~person duly authorized by law to treat sick and injured human beings~~ practitioner. In a prosecution under this subdivision, it shall not be necessary for the state to prove that the accused was under the influence of any specific controlled substance, but it shall be sufficient for a conviction under this subdivision for the state to prove that the accused was under the influence of some controlled substance by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled substance.

(2) Any person who violates this section shall be guilty of a Class III misdemeanor.

Sec. 16. Section 28-418, Reissue Revised Statutes of Nebraska, is amended to read:

28-418. (1) It shall be unlawful for any person knowingly or intentionally:

(a) Who is a registrant to distribute a controlled substance classified in Schedule I or II of section 28-405 in the course of his or her legitimate business except pursuant to an order form as required by section 28-413;

(b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To acquire or obtain or to attempt to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;

(d) To furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under this article the Uniform Controlled Substances Act or any record required to be kept by this article the act;

(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;

(f) Who is subject to sections 28-406 to 28-414 to distribute or dispense a controlled substance in violation of section 28-414;

(g) Who is a registrant to manufacture a controlled substance not authorized by his or her registration or to distribute or dispense a

controlled substance not authorized by his or her registration to another registrant or authorized person;

(h) To possess a false or forged ~~prescription~~ medical order for a controlled substance issued by a practitioner authorized to prescribe, except that this subdivision shall not apply to law enforcement officials, practitioners, or attorneys in the performance of their official lawful duties; or

(i) To communicate information to a practitioner in an effort to unlawfully procure a controlled substance, the administration of a controlled substance, or a ~~prescription~~ medical order for a controlled substance issued by a practitioner authorized to prescribe.

(2) Any person who violates this section shall be guilty of a Class IV felony.

Sec. 17. Section 28-429, Reissue Revised Statutes of Nebraska, is amended to read:

28-429. (1) There is hereby established in the Nebraska State Patrol a Division of Drug Control. The division shall consist of such personnel as may be designated by the Superintendent of Law Enforcement and Public Safety. It shall be the duty of the division to enforce all of the provisions of the Uniform Controlled Substances Act and any other provisions of the law dealing with controlled substances and to conduct drug education activities as directed by the superintendent. The Nebraska State Patrol shall cooperate with federal agencies, the department, other state agencies, elementary and secondary schools, and County Drug Law Enforcement and Education Fund Boards in discharging their responsibilities concerning traffic in controlled substances, in suppressing the abuse of controlled substances, and in conducting drug education activities. To this end the division is authorized to: (a) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; (b) coordinate and cooperate in training programs on controlled substance law enforcement and education at the local and state levels; (c) establish a centralized unit which will accept, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes on request; (d) cooperate in locating, eradicating, and destroying wild or illicit growth of plant species from which controlled substances may be extracted, and for these purposes a peace officer is hereby authorized to enter onto property upon which there are no buildings or upon which there are only uninhabited buildings without first obtaining a search warrant or consent; (e) develop a priority program so as to focus the bulk of its efforts on the reduction and elimination of the most damaging drugs including narcotic drugs, depressant and stimulant drugs, and hallucinogenic drugs; and (f) develop and conduct drug education activities in cooperation with elementary and secondary schools in Nebraska and with County Drug Law Enforcement and Education Fund Boards.

(2) There is hereby created the Nebraska State Patrol Drug Control and Education Cash Fund which shall be used for the purposes of (a) obtaining evidence for enforcement of any state law relating to the control of drug abuse and (b) drug education activities conducted pursuant to subsection (1) of this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) For the purpose of establishing and maintaining legislative oversight and accountability, the Appropriations Committee of the Legislature shall formulate record-keeping procedures to be adhered to by the Nebraska State Patrol for all expenditures, disbursements, and transfers of cash from the Nebraska State Patrol Drug Control and Education Cash Fund. Based on these record-keeping procedures, the Nebraska State Patrol shall prepare and deliver to the Clerk of the Legislature at the commencement of each succeeding session a detailed report which shall contain, but not be limited to: (a) Current total in the cash fund; (b) total amount of expenditures; (c) purpose of the expenditures to include: (i) Salaries and any expenses of all agents and informants; (ii) front money for drug purchases; (iii) names of drugs and quantity of purchases; (iv) amount of front money recovered; and (v) drug education activities; (d) total number of informers on payroll; (e) amounts delivered to patrol supervisors for distribution to agents and informants and the method of accounting for such transactions and the results procured through such transactions; and (f) a description of the drug education activities conducted since the date of the previous report. Each member of the Legislature shall receive a copy of such report by making a request for it to the ~~director~~ superintendent.

(4) The superintendent shall adopt and promulgate rules and

regulations to carry out this section.

Sec. 18. Section 28-442, Reissue Revised Statutes of Nebraska, is amended to read:

28-442. (1) It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances ~~where in which~~ one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale, or otherwise be used to introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) This section shall not apply to pharmacists who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

~~(2)~~ (3) Any person who violates this section shall be guilty of a Class II misdemeanor.

Sec. 19. Section 71-101, Revised Statutes Supplement, 2000, is amended to read:

71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343, 71-1301 to 71-1354, and 71-2801 to 71-2822 and sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board or professional board means one of the boards appointed by the State Board of Health;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, means a person licensed under the Uniform Licensing Law;

(3) Profession or health profession means any of the several groups named in section 71-102;

(4) Department means the Department of Health and Human Services Regulation and Licensure;

(5) Whenever a particular gender is used, it is construed to include both the masculine and the feminine, and the singular number includes the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure means permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, means a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate means a document issued by the department which designates particular credentials for an individual;

(8) Lapse means the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so; ~~and~~

(9) Credentialing means the totality of the process associated with obtaining state approval to provide health care services or human services or changing aspects of a current approval. Credentialing grants permission to use a protected title that signifies that a person is qualified to provide the services of a certain profession. Credential includes a license, certificate, or registration; and

(10) Dependence means a compulsive or chronic need for or an active addiction to alcohol or any controlled substance or narcotic drug.

Sec. 20. Section 71-147, Revised Statutes Supplement, 2000, is amended to read:

71-147. A license, certificate, or registration to practice a profession may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 71-155 when the applicant, licensee, certificate holder, or registrant is guilty of any of the following acts or offenses:

(1) Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license, certificate, or registration;

(2) Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state;

~~(3) Habitual intoxication or active dependency on or addiction to the use of alcohol or habituation or active dependency on or addiction to the use of any kind of controlled substance or narcotic drug~~ dependence or failure

to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to section 71-172.01;

(4) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's, licensee's, certificate holder's, or registrant's fitness or capacity to practice the profession;

(5) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or gross negligence, or (e) in a pattern of negligent conduct. Pattern of negligent conduct shall mean a continued course of negligent conduct in performing the duties of the profession;

(6) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability;

(7) Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means;

(8) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license, certificate, or registration by a person not licensed, certified, or registered to do so;

(9) Having had his or her license, certificate, or registration denied, refused renewal, limited, suspended, or revoked or having had such license, certificate, or registration disciplined in any other manner in accordance with section 71-155 by another state or jurisdiction to practice the particular profession involved, based upon acts by the applicant, licensee, certificate holder, or registrant similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence;

(10) Unprofessional conduct;

(11) Use of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims, concerning such licensee's, certificate holder's, or registrant's professional excellence or abilities, in advertisements;

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

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

(14) Willful or repeated violations of the Uniform Licensing Law or the rules and regulations of the department relating to the licensee's, certificate holder's, or registrant's profession, sanitation, quarantine, or school inspection;

(15) Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee, certificate holder, or registrant is not licensed, certified, or registered to practice;

(16) Failure to comply with sections 71-604, 71-605, and 71-606 relating to the signing of birth and death certificates;

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

(18) Purchasing or receiving any prescription drug from any source in violation of the Wholesale Drug Distributor Licensing Act;

(19) Violation of the Emergency Box Drug Act;

(20) Failure to file a report required by section 71-168;

(21) Failure to disclose the information required by section 71-1,314.01;

(22) Failure to disclose the information required by section 71-1,319.01; or

(23) Failure to disclose the information required by section 71-1,206.34.

A license, certificate, or registration to practice a profession may also be refused renewal or revoked when the licensee, certificate holder, or registrant is guilty of practicing such profession while his or her license, certificate, or registration to do so is suspended or is guilty of practicing such profession in contravention of any limitation placed upon his or her license, certificate, or registration.

This section shall not apply to revocation for nonrenewal as set out in subsection (1) of section 71-149 and sections 71-110 and 71-161.10.

Sec. 21. Section 71-155.01, Revised Statutes Supplement, 2000, is amended to read:

71-155.01. If a chief medical officer is appointed pursuant to

section 81-3201, he or she shall perform the duties of the Director of Regulation and Licensure for decisions in contested cases under sections 71-150, 71-153 to 71-155, 71-156, 71-161.02, 71-161.03, 71-161.07, 71-161.11 to 71-161.15, 71-161.17, 71-161.18, 71-161.20, 71-1,104, 71-1,142, ~~71-1,147.08, 71-1,147.10, 71-1,147.31, 71-1,147.44, 71-1,147.45, 71-1,147.48, 71-1,147.53, 71-1,147.59,~~ and 71-1,232.

Sec. 22. Section 71-161.12, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.12. In addition to the grounds for denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration as otherwise provided by law, a license, certificate, or registration to practice any profession or occupation regulated by the Department of Health and Human Services Regulation and Licensure pursuant to Chapter 71 shall be denied, refused renewal, limited, suspended, or revoked automatically by the Director of Regulation and Licensure when the applicant, licensee, certificate holder, or registrant is found to be not qualified to practice the particular profession or occupation for which he or she is applying, licensed, certified, or registered because of habitual intoxication or dependence, ~~on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or mental illness, or physical or mental deterioration or disability.

Sec. 23. Section 71-161.13, Revised Statutes Supplement, 2000, is amended to read:

71-161.13. When any complaint has been filed with the department by any person or any report has been made to the Director of Regulation and Licensure by the Licensee Assistance Program under section 71-172.01 alleging that an applicant for a credential or a person credentialed to practice any profession or occupation in the state regulated by the department pursuant to Chapter 71 is suffering from habitual intoxication or dependence, ~~on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or mental illness, or physical or mental deterioration or disability, the Director of Regulation and Licensure shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant or credentialed person to practice or to continue to practice such profession or occupation. If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant or credentialed person to practice such profession or occupation because of habitual intoxication or dependence, ~~on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or mental illness, or physical or mental deterioration or disability, the director shall report such finding and evidence supporting it to the appropriate professional board and if such board agrees that reasonable cause exists to question the qualification of such applicant or credentialed person, the board shall appoint a committee of three qualified physicians to examine the applicant or credentialed person and to report their findings and conclusions to the board. The board shall then consider the findings and the conclusions of the physicians and any other evidence or material which may be submitted to that board by the applicant or credentialed person, by the director, or by any other person and shall then determine if the applicant or credentialed person is qualified to practice or to continue to practice such profession or occupation in the State of Nebraska. If such board finds the applicant or credentialed person to be not qualified to practice or to continue to practice such profession or occupation because of habitual intoxication or dependence, ~~on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or mental illness, or physical or mental deterioration or disability, the board shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the credential or limit the credential of the credentialed person to practice such profession or occupation in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Sec. 24. Section 71-161.16, Reissue Revised Statutes of Nebraska, is amended to read:

71-161.16. Any applicant, licensee, certificate holder, or registrant shall have the right to appeal from an order denying, refusing renewal of, limiting, suspending, or revoking a license, certificate, or registration to practice a profession or occupation regulated by the Department of Health and Human Services Regulation and Licensure pursuant to Chapter 71 because of habitual intoxication or dependence, ~~on or active addiction to alcohol or any controlled substance or narcotic drug,~~ physical or

mental illness, or physical or mental deterioration or disability. Such appeal shall be in accordance with the Administrative Procedure Act.

Sec. 25. Section 71-172.01, Revised Statutes Supplement, 2000, is amended to read:

71-172.01. (1) The Department of Health and Human Services Regulation and Licensure may contract with the Department of Health and Human Services to provide a Licensee Assistance Program to licensees, certificate holders, and registrants regulated by the Department of Health and Human Services Regulation and Licensure. The program shall be limited to providing education, referral assistance, and monitoring of compliance with treatment of habitual intoxication or dependence ~~on or active addiction to alcohol or any controlled substance or narcotic drug~~ and shall be limited to voluntary participation by licensees, certificate holders, and registrants.

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the intoxication, or dependence, ~~or active addiction~~ may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply with any term or condition of a treatment plan, the program shall report the same to the Director of Regulation and Licensure.

(b) Participation in the program shall not preclude the investigation of alleged statutory violations which could result in disciplinary action against the person's license, certificate, or registration or criminal action against the person. Any report from any person or from the program to the department indicating that a licensee, certificate holder, or registrant is ~~habitually intoxicated or is dependent on or actively addicted to alcohol or any controlled substance or narcotic drug~~ suffering from habitual intoxication or dependence shall be treated as a complaint against such license, certificate, or registration and shall subject such licensee, certificate holder, or registrant to discipline under sections 71-150 to 71-155.

(3) No person who makes a report of intoxication or dependence ~~on or active addiction to alcohol or any controlled substance or narcotic drug~~ to the program or from the program to the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or other criminal or civil action of any nature, whether direct or derivative, for making such report or providing information to the program or department in accordance with this section.

(4) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person licensed, certified, or registered by the department for habitual intoxication or dependence ~~on or active addiction to alcohol or any controlled substance or narcotic drug~~ shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from habitual intoxication or dependence ~~on or active addiction to alcohol or any controlled substance or narcotic drug~~ or when a complaint has been filed or an investigation or disciplinary or other administrative proceeding is in process.

Sec. 26. Section 71-1,142, Revised Statutes Supplement, 2000, is amended to read:

71-1,142. For purposes of sections 71-1,142 to ~~71-1,147.61~~ 71-1,147.59 and sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Practice of pharmacy means (a) the interpretation, ~~and~~ evaluation, and implementation of a medical order, of prescription orders, (b) the ~~compounding,~~ dispensing, and labeling of drugs and devices, ~~except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices,~~ (c) the ~~participation in drug product selection, drug utilization review, drug source selection, and drug administration,~~ (d) the proper and safe storage of drugs and devices and the maintenance of proper records ~~therefor,~~ (e) (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (f) (g) the provision of pharmaceutical care, and (g) (h) the offering ~~or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records.~~ The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(2) ~~Administration~~ Administer means the direct application of to

directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject;

(3) Administration means the act of (a) administering, (b) keeping a record of such activity, and (c) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device;

~~(3)~~ (4) Board means the Board of Pharmacy;

~~(4)~~ (5) Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;

(6) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

~~(7)~~ (5) Compounding means the preparation preparing, mixing, or assembling of a drug or device (a) as the result of a practitioner's prescription medical order or initiative occurring in the course of professional practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes the preparation of preparing drugs or devices in anticipation of prescription medical orders based upon routine, regularly observed prescribing patterns;

~~(6)~~ (8) Delegated dispensing means the practice of pharmacy by which one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more persons pursuant to sections 71-1,147.42 to 71-1,147.59 and sections 47 to 49 of this act under a protocol which provides that such person may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations;

(9) Deliver or delivery means the actual, constructive, or attempted transfer of to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration;

~~(7)~~ (10) Department means the Department of Health and Human Services Regulation and Licensure;

~~(8)~~ (11) Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a medical practitioner and dispensed by a pharmacist or other person authorized by law to do so;

~~(9)~~ (12) Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, upon the order of a medical practitioner pursuant to a prescription;

~~(10)~~ (13) Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor operating with a drug delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering a patient order drugs or devices pursuant to a prescription;

~~(11)~~ (14) Dispense or dispensing means the preparation and delivery of a drug or device pursuant to a lawful order of a medical practitioner interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver other than by administering; or other individual entitled to receive the drug or device;

~~(12)~~ (15) Distribute means the delivery of to deliver a drug or device, other than by administering or dispensing;

(16) Facility means a health care facility as defined in section 71-413;

(17) Hospital has the same meaning as in section 71-419;

~~(13)~~ Drug dispensing permit means a permit issued by the department upon the recommendation of the board to a public health clinic or a dialysis drug or device distributor which allows for the dispensing of drugs and devices in the formulary approved pursuant to section 71-1,147.48;

~~(14)~~ (18) Person means an individual, corporation, partnership, limited liability company, association, or other legal entity;

~~(15)~~ (19) Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by

a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation;

(20) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(21) (16) Pharmaceutical care means the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology. Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient;

(17) (22) Pharmacist means any person who (a) is licensed by the State of Nebraska to practice pharmacy; or (b) is primarily responsible for providing pharmaceutical care as defined in subdivision (16) of this section;

(18) (23) Pharmacy means (a) any establishment, place, or location advertised as a pharmacy, drug store, hospital pharmacy, dispensary, apothecary, or any combination of such titles or any establishment where the practice of pharmacy is carried on except as exempted in section 71-1,143 and (b) any establishment, place, or location used as a pick-up point or drop point, including kiosks, for prescriptions to be filled or where prescribed drugs or devices are made ready for delivery to the patient, but does not include an emergency box located within an institution pursuant to the provisions of the Emergency Box Drug Act has the same meaning as in section 71-425;

(19) (24) Drugs, medicines, and medicinal substances means (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (c) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts, or accessories, and (e) prescription drugs or devices as defined in subdivision (25) (31) of this section;

(20) Medical practitioner means any licensed physician, surgeon, podiatrist, dentist, or other person licensed to write prescriptions intended for treatment or prevention of disease or to affect body function in humans or animals;

(21) (25) Patient counseling means the verbal communication by a pharmacist, pharmacist intern, or practitioner, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescribed prescription drugs and devices and also includes the duties set out in subsection (2) of section 71-1,147.35;

(22) (26) Pharmacist in charge means a pharmacist who is licensed by the State of Nebraska to practice pharmacy who has been designated on a pharmacy permit license or designated by a public or private hospital licensed by the department as being responsible for the practice of pharmacy in the pharmacy for which such permit a pharmacy license is issued or such hospital's inpatient pharmacy and who shall work works within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less;

(23) Pharmacy (27) Pharmacist intern means (a) a student currently enrolled in an accredited college or school of pharmacy or (b) a graduate of an accredited college or school of pharmacy serving his or her internship, such internship to expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Such pharmacy pharmacist intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (i) the person to whom the pharmacy permit license is issued or a person in the actual employ of the permittee pharmacy licensee or (ii) the delegating pharmacist in charge designated in a delegated dispensing agreement by a public or private institution licensed as a hospital by the department which is not required to obtain a permit pursuant to section 71-1,147.01 prior to January 17, 2002, or a license as a pharmacy on or after such date or a person

in the actual employ of such institution with a delegated dispensing permit;

~~(24)~~ (28) Pharmacy technician means an individual at least eighteen years of age who is a high school graduate or officially recognized by the State Department of Education as possessing the equivalent degree of education, who has never been convicted of any drug-related misdemeanor or felony, and who, under the written control procedures and guidelines of an employing pharmacy, and having received onsite training pursuant to subsection (4) of section 71-1,147.33, may perform those functions which do not require the exercise of professional judgment in assisting a pharmacist in connection with the preparation, compounding, dispensing, and distribution of drugs or devices under the supervision of a licensed pharmacist on duty in the facility when such functions and which are subject to verification to assist a pharmacist in the practice of pharmacy;

(29) Practitioner means an advanced practice registered nurse, certified registered nurse anesthetist, certified nurse midwife, dentist, optometrist, physician assistant, physician, podiatrist, or veterinarian;

(30) Prescribe means to issue a medical order;

(31) ~~(25)~~ Prescription drug or device or legend drug or device means (a) a drug or device which is required under federal law is required, prior to being dispensed or delivered, to be labeled with either one of the following statements prior to being dispensed or delivered: (i) Caution: Federal law prohibits dispensing without prescription; ~~or~~ (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or (iii) "Rx Only" or (b) a drug or device which is required by any applicable federal or state law ~~or regulation~~ to be dispensed ~~or pursuant only to a prescription only or chart order or which~~ is restricted to use by medical practitioners only;

~~(26)~~ (32) Prescription order or prescription means a lawful written ~~or verbal~~ an order of a medical practitioner for a drug or device but does not include an order for a drug or device which is dispensed for administration to a patient during the patient's stay in a hospital issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

~~(27)~~ (33) Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a prescription medical order and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government;

~~(28)~~ (34) Public health clinic worker means a person in a public health clinic ~~operating~~ with a drug delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives pursuant to a written prescription;

~~(29)~~ (35) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-416;

(36) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-1701;

(37) ~~(30)~~ Supervision means the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist, except that when a pharmacy technician performs authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to persons who are patients or residents of a health care facility, licensed pursuant to the Health Care Facility Licensure Act, the activities or functions of such pharmacy technician shall only be subject to verification by a pharmacist on duty in the facility;

~~(31)~~ (38) Verification means the confirmation by ~~the~~ a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy; ~~Verification by the supervising pharmacist shall be documented prior to the time when the drug or device is dispensed; and~~

~~(32)~~ (39) Written control procedures and guidelines means the document prepared by an employing pharmacy and signed by the pharmacist in charge and approved by the board which specifies the manner in which ~~the qualifications~~ basic levels of competency of pharmacy technicians employed by the pharmacy are determined, the manner in which the training of such technicians is conducted and their basic level of competency is confirmed, the

manner in which supervision is provided, the manner in which the functions of pharmacy technicians are verified, the maximum ratio of pharmacy technicians to one pharmacist used in the pharmacy, and a ~~protect~~ guidelines governing the use of pharmacy technicians and the functions which they may perform; and

(40) Medical gas distributor means a person who dispenses medical gases to a patient or ultimate user but does not include a person who manufactures medical gases or a person who distributes, transfers, delivers, dispenses, or sells medical gases to a person other than a patient or ultimate user.

Sec. 27. The department, upon recommendation of the board, shall adopt and promulgate rules and regulations as deemed necessary to implement sections 28-1437 to 28-1439.01, 71-1,142 to 71-1,147.59, 71-2401 to 71-2405, and 71-2501 to 71-2512, sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act, the Mail Service Prescription Drug Act, the Nebraska Drug Product Selection Act, and the Uniform Controlled Substances Act. The minimum standards and requirements for the practice of pharmacy, including dispensing pursuant to a delegated dispensing permit, shall be consistent with the minimum standards and requirements established by the department for pharmacy licenses under the Health Care Facility Licensure Act.

Sec. 28. The Nebraska Pharmaceutical Fund is created. The fund shall be used exclusively for the administration of the laws, rules, and regulations pertaining to the practice of pharmacy and the Wholesale Drug Distributor Licensing Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 29. Section 71-1,143, Revised Statutes Supplement, 2000, is amended to read:

71-1,143. Sections 71-1,142 and 71-1,147 As authorized by the Uniform Licensing Law, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;

(2) Medical practitioners Practitioners, other than veterinarians and advanced practice registered nurses, who dispense drugs and medicines or devices as an incident to the practice of their profession, unless the except that if such practitioner regularly engages in dispensing such drugs and medicines or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license; - Except as provided in section 71-1,147.53, a medical practitioner who regularly engages in dispensing drugs and medicines to his or her patients and who charges for such drugs shall obtain a pharmacy permit and comply with all record-keeping, dispensing, labeling, and other requirements of the practice of pharmacy as set forth in this section and sections 71-1,142, 71-1,145 to 71-1,147.01, 71-1,147.03, 71-1,147.07 to 71-1,147.10, 71-1,147.15, 71-1,147.16, and 71-1,147.35 or by federal and state laws as they pertain to the regulation of the practice of pharmacy. Such regular and routine dispensing shall not be considered to be incident to practice, nor may such a practitioner delegate such dispensing to any other person;

(3) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the law relating to intoxicating liquors Nebraska Liquor Control Act;

(4) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care practitioners professionals;

(5) Licensed veterinarians practicing within the scope of their profession;

(6) Persons authorized by sections 71-1,147.39 to 71-1,147.61 to dispense authorized refills of oral contraceptives in a public health clinic operating with a drug dispensing permit; and

(7) Advanced practice registered nurses who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(8) Hospitals engaged in the compounding and dispensing of drugs and devices pursuant to chart orders for persons registered as patients and within the confines of the hospital, except that if a hospital engages in such compounding and dispensing for persons not registered as patients and within the confines of the hospital, such hospital shall obtain a pharmacy license or delegated dispensing permit;

(9) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients;

(9) Registered nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(10) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs; and

(11) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian.

Sec. 30. Section 71-1,145, Revised Statutes Supplement, 2000, is amended to read:

~~71-1,145.~~ (1) Every applicant for examination and registration as a pharmacist shall be not less than twenty-one years of age, of good moral character and temperate habits, a graduate of an accredited school or college of pharmacy, or an accredited department of pharmacy of a university, recognized by the board, except that an applicant who is a graduate of a school, college, or university department of pharmacy located outside of the United States and which is not accredited, shall be deemed to have satisfied the requirement of being a graduate of an accredited school, college, or department of pharmacy upon providing evidence satisfactory to the board, of graduation from such foreign school, college, or department of pharmacy and upon successfully passing an equivalency examination approved by the board.

(2) Every applicant shall file proof of sufficient internship experience in a ~~community retail or hospital~~ pharmacy, under the supervision of a registered or licensed pharmacist, as may be required by the board, which shall comply with national requirements for internship as set forth by the National Association of Boards of Pharmacy; shall have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited school or college of pharmacy, or in an accredited department of pharmacy of a university; and shall pass an examination satisfactory to the board.

(3) Proof of the qualifications for registration prescribed in this section shall be made to the satisfaction of the board, substantiated by proper affidavits, except that in all cases the actual time of attendance at an accredited school or college of pharmacy or an accredited department of pharmacy of a university is certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or department of pharmacy. Service and experience in a ~~retail or hospital~~ pharmacy under the supervision of a registered pharmacist, as required in this section, shall be predominantly related to the practice of pharmacy, and shall include the keeping of records and the making of reports required under state and federal statutes. The Department of Health and Human Services Regulation and Licensure, upon the recommendation of the board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship which shall comply with national requirements to effect reciprocity with other states which have similar requirements for licensure. The fee for pharmacy internship shall be forty dollars and shall accompany the application and shall be transmitted to the State Treasurer for deposit in the Nebraska Pharmaceutical Fund. ~~for expenditure in the manner prescribed by section 71-1,147.02.~~

Sec. 31. Section 71-1,145.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~71-1,145.01.~~ Notwithstanding the provisions of ~~sections~~ section 71-103 and ~~71-1,145~~ section 30 of this act, a temporary pharmacist license ~~to practice pharmacy~~ may be granted to persons meeting all of the qualifications for such license except the requirement that they be citizens of the United States. Such temporary license shall be issued for a period of one year from the date of issuance and may be renewed each year thereafter for four additional years, and if the person so licensed has not become a citizen of the United States within five years of the date such temporary license was issued, such license shall terminate and the person so licensed shall have no further right to practice pharmacy in this state. If a temporary pharmacist licensee becomes a citizen of the United States while a temporary pharmacist license is in force, and provides evidence thereof to the ~~Department of Health and Human Services Regulation and Licensure~~ department, a pharmacist license ~~to practice pharmacy~~ may be issued in place of such temporary license and no additional fee shall be charged unless such temporary license had already expired, in which case a renewal fee shall be charged. The applicant for a

temporary pharmacist license shall submit proof of his or her eligibility and intent to become a citizen of the United States. The fees to be paid and procedures for the denial, suspension, revocation, or reinstatement of such a temporary license shall be the same as for a pharmacist license.

Sec. 32. Section 71-1,144.05, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,144.05. Any person failing to comply with sections 71-1,144.01 to 71-1,144.05 shall be denied renewal of his or her pharmacist license. The procedures for denial of a renewal of the pharmacist license shall be identical to ~~these procedures~~ for nonpayment of renewal fees as provided in sections 71-149 and 71-161.10.

Sec. 33. Unless specifically limited by the board or the department, a pharmacist may (1) engage in the practice of pharmacy, (2) use the abbreviation R.P. or the title licensed pharmacist, (3) enter into delegated dispensing agreements, and (4) possess, without dispensing, prescription drugs and devices, including controlled substances, for purposes of administration.

Sec. 34. Section 71-1,147, Revised Statutes Supplement, 2000, is amended to read:

71-1,147. (1) Except as provided in sections for pharmacy technicians in section 71-1,147.33 and 71-1,147.53 for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, or a pharmacy pharmacist intern, or a practitioner with a pharmacy license shall, as described in sections 71-1,142, 71-1,143, and 71-1,147 to 71-1,147.14, provide pharmaceutical care, compound and dispense drugs or devices, or fill the prescription of a medical practitioner dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a licensed pharmacist or pharmacy pharmacist intern may dispense drugs or devices pursuant to a ~~prescription~~ medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided in section 28-414, no prescription may be filled or refilled more than twelve months after the date of issuance of the prescription.

(3) Except as provided in sections for pharmacy technicians in section 71-1,147.33 and 71-1,147.53 for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacy pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or fill the prescription of a medical practitioner dispense pursuant to a medical order.

(4) (3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a licensed pharmacist health care professional regulated pursuant to the provisions of Chapter 71 shall be considered an act of unprofessional conduct. for purposes of section 71-147. A violation of this subsection by a facility shall be prima facie evidence in an action against the permit of any pharmacy in which such violation occurred license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(5) For purposes of this section, nothing in this section shall be construed to prohibit any registered nurse employed by a hospital from administering single doses of drugs from original drug containers or properly labeled prepackaged drug containers to any patient of the hospital upon the order or prescription of a medical practitioner or to prohibit such registered nurse employed by a hospital from procuring the original drug container or properly labeled prepackaged drug container for the purpose of single-dose drug administration to any patient of the hospital upon the order or prescription of a medical practitioner.

(6) (4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Sec. 35. (1) All medical orders shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(2) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section 71-1,143. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. Sections 71-1,142 to 71-1,147.59 and sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act shall not be construed to require any pharmacist or pharmacist intern to dispense any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(3) Except as otherwise provided in section 28-414, a practitioner or his or her agent may transmit a medical order to a pharmacist or pharmacist intern by the following means: (a) In writing, (b) orally, or (c) any means which produces an authorized transmitted copy. For purposes of this subsection, authorized transmitted copy means a paper copy of a written, signed medical order produced by electronic or electromagnetic transmission or other means authorized by rule and regulation of the department upon recommendation of the board.

Sec. 36. Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis, except that pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the face of the prescription. Transfers are subject to the following:

(1) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use a real-time, on-line data base;

(2) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription except when a single refill is transferred for emergency or traveling purposes;

(3) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the information, the date of transfer, and the name of the transferring pharmacist or pharmacist intern;

(4) The receiving pharmacist or pharmacist intern indicates on the record of the transferred prescription that the prescription is transferred;

(5) The transferred prescription includes the following information:

(a) The date of issuance of the original prescription;

(b) The original number of refills authorized;

(c) The date of original dispensing;

(d) The number of valid refills remaining;

(e) The date and location of last refill; and

(f) The name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, the original prescription number, and the date of transfer; and

(6) Both the original and transferred prescriptions must be maintained by the transferring and receiving pharmacy for a period of five years from the date of transfer.

Sec. 37. The department may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee or permittee under sections 71-1,142 to 71-1,147.59 and sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act at the time his or her license or permit is suspended or revoked or at the time the board or department refuses to renew his or her license or permit. Except as otherwise provided in this section, drugs or devices so sealed shall not be disposed of until appeal rights under the Administrative Procedure Act have expired or an appeal filed pursuant to the act has been determined. The court involved in an appeal filed pursuant to the Administrative Procedure Act may order the department during the pendency of the appeal to sell sealed drugs or devices that are perishable. The proceeds of such a sale shall be deposited with the court.

Sec. 38. Section 71-1,147.13, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.13. Any person who does or commits any of the acts or things prohibited by sections 71-1,142, ~~71-1,143, 71-1,147 to 71-1,147.14, and 71-1,147.34 to 71-1,147.61~~ to 71-1,147.59 and sections 27, 28, 30, 31, 33, 35

to 37, 47 to 49, and 64 of this act or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor except as otherwise specifically provided.

Sec. 39. Section 71-1,147.15, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.15. It shall be unlawful to distribute, dispense, or vend any drug by automatic or vending machine, except that this prohibition shall not apply to ~~health care facilities licensed under the Health Care Facility Licensure Act~~ a facility.

Sec. 40. Section 71-1,147.27, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.27. The department may issue to all qualified graduates of accredited colleges of pharmacy, who are eligible for the examination provided for in section ~~71-1,145~~ 30 of this act, and who make application for such examination, a temporary educational permit, without charge. Such permit shall be issued only for the duration of the time between the date of the examination and the date of licensure granted as a result of such examination. Any person issued a temporary educational permit, without charge, shall meet all requirements provided for in sections 71-1,147.17 to 71-1,147.32, except payment of the required fee, and such exemption is only for the period of time between examination date and licensing date and for only those individuals who take the examination as provided in section ~~71-1,145~~ 30 of this act.

Sec. 41. Section 71-1,147.31, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.31. Any temporary educational permit granted under the authority of sections 71-1,147.17 to 71-1,147.32 may be suspended, limited, or revoked by the department, upon recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit or for any reason for which a ~~regular pharmacist license to practice pharmacy~~ could be suspended, limited, or revoked. A hearing on the suspension, limitation, or revocation of the temporary educational permit by the department shall be held in the same manner as for the denial of a ~~regular license to practice pharmacy~~ pharmacist license. The final order of the Director of Regulation and Licensure may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 42. Section 71-1,147.32, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.32. The holder of a temporary educational permit shall not be entitled to a pharmacist license for the practice of pharmacy in the State of Nebraska unless and until such individual meets all of the requirements of law for issuing such ~~regular pharmacist~~ license.

Sec. 43. Section 71-1,147.33, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.33. (1) ~~Any pharmacy may employ pharmacy technicians to A pharmacy technician shall only perform tasks which do not require professional judgment and which are subject to verification to assist in the preparation, compounding, dispensing, and distribution of drugs or devices, including, but not limited to, (a) maintaining patient drug records, (b) setting up, packaging, and labeling drug doses, (c) filling routine orders for stock supplies, and (d) mixing, labeling, and preparing drugs with parenteral fluids a pharmacist in the practice of pharmacy.~~

(2) ~~The following functions and tasks shall be deemed to require the exercise of professional judgment by a pharmacist and which shall not be performed by pharmacy technicians or by public health clinic workers individuals dispensing pursuant to a delegated dispensing permit include, but are not limited to:~~

(a) Receiving oral medical orders ~~for new prescriptions~~ or oral authorizations to refill prescriptions from a ~~medical practitioner~~ or his or her agent;

(b) Providing patient counseling; ~~to a patient or caregiver regarding drugs or devices, either before or after they have been dispensed, or regarding any medical information contained in a patient's record maintained pursuant to sections 71-1,147.35 and 71-1,147.36;~~

(c) Performing any evaluation or necessary clarification of a prescription medical order or performing any functions other than strictly clerical functions involving ~~the interpretation of a prescription prior to dispensing a medical order;~~

(d) ~~Training, instructing, supervising, Supervising or verifying, or directing the duties of pharmacy tasks and functions of pharmacy technicians;~~

(e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 71-1,147.35;

(f) ~~Releasing any confidential information maintained by the pharmacy;~~

(g) ~~Performing or participating in any professional consultation with medical practitioners, nurses, other health care professionals, or the authorized agent of any of them, for the purpose of providing pharmaceutical care;~~

(g) ~~Verifying any prescribed drug or device prior to dispensing consultations; and~~

(h) ~~Determining Drug product selecting, with regard to an individual prescription, the chemically and therapeutically equivalent drug products to be drug product selected for brand-name drug products medical order, in accordance with the Nebraska Drug Product Selection Act.~~

(3) ~~The Director of Regulation and Licensure shall, upon recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection shall require the board to approve any study proposed by this subsection.~~

(4) ~~The pharmacy employing pharmacy technicians shall be responsible for the supervision, onsite training, and performance of such technicians.~~

(4) (5) ~~The pharmacist in charge shall be responsible for the practice of pharmacy and the establishment of written control procedures and guidelines governing the qualifications, onsite training, functions, supervision, and verification of the performance of pharmacy technicians. The training of pharmacy technicians shall include instruction, onsite in the facility where such technicians are to be employed, in the duties and responsibilities of such technicians under state law and in the nature of the functions which they may and may not perform. The supervision of such technicians at the place of employment shall be performed by the licensed pharmacist who is on duty in the facility with the pharmacy technicians. as provided in subsection (5) of this section.~~

(5)(a) ~~The written control procedures and guidelines shall specify the means by which the employing pharmacy will determine that pharmacy technicians are at least eighteen years of age, are high school graduates or possess an equivalent degree of education, and have never been convicted of any drug-related misdemeanor or felony.~~

(b) ~~The written control procedures and guidelines shall specify that the onsite training of an individual employed in such capacity shall occur within the first month that such individual is employed, that the participation of individuals in such training during such period will be confirmed by the employing pharmacy, that all aspects of such training will be documented, and that the onsite training (6)(a) Each pharmacy shall document, in a manner and method specified in the written control procedures and guidelines, the basic competence of the pharmacy technician prior to performance of tasks and functions by such technician. Such basic competence shall include, but not be limited to: 7 basic instruction in the following:~~

(i) ~~Basic pharmaceutical nomenclature;~~
 (ii) ~~Metric system measures, both liquid and solid;~~
 (iii) ~~The meaning and use of Roman numerals;~~
 (iv) ~~Latin abbreviations Abbreviations used for dosages and directions to patients;~~

(v) ~~Basic medical terms, including terms relating to ailments, diseases, or infirmities;~~

(vi) ~~Instruction on the The use and operation of automated dispensing and record-keeping systems if used by the employing pharmacy;~~

(vii) ~~Discussion of applicable Applicable statutes, rules, and regulations governing the preparation, compounding, dispensing, and distribution of drugs or devices, record keeping with regard to such functions, and the employment, use, and functions of pharmacy technicians; and~~

(viii) ~~Discussion of the The contents of the written control procedures and guidelines.~~

~~Each employing pharmacy shall be responsible for confirming in a manner and method prescribed by the department that pharmacy technicians employed by the pharmacy have achieved a basic level of competence in the areas included in the onsite training.~~

(e) (b) ~~Written control procedures and guidelines shall include a protocol specifying specify the functions that pharmacy technicians will may perform in the employing pharmacy. The written control procedures and guidelines shall specify the means employed used by the employing pharmacy to~~

~~assure~~ verify that the prescribed drug or device, the dosage form, and the directions provided to the patient or caregiver conform to the medical order ~~that authorized~~ authorizing the drug or device to be dispensed.

~~(d)~~ (c) The written control procedures and guidelines shall specify the manner in which the ~~pharmacist responsible for the supervision of pharmacy technicians~~ will supervise such technicians and document the verification of the accuracy and completeness of their acts, tasks, and functions. Such verification shall include documentation that such pharmacist has checked the accuracy of all acts, tasks, or functions being performed by pharmacy technicians verification made prior to dispensing is documented.

~~(6)~~ The (7) Each pharmacy or facility shall, ~~prior to the utilization of before using~~ pharmacy technicians, file with the department board a copy of its written control procedures and guidelines. ~~The board shall review for approval or disapproval and receive approval of its written control procedures and guidelines for the use of pharmacy technicians in all pharmacies which employ such technicians prior to their utilization from the board.~~ The board shall, within ninety days ~~of from~~ the filing of such written control procedures and guidelines, review and either approve or disapprove them. The board shall notify the pharmacy or facility of the approval or disapproval. The board or its representatives shall have access to the approved written control procedures and guidelines upon request. Any written control procedures and guidelines for supportive pharmacy personnel that were filed by a pharmacy and approved by the board prior to May 26, 1999, shall be deemed to be approved and to apply to pharmacy technicians.

~~(7)~~ Hospitals that have been utilizing supportive pharmacy personnel prior to May 26, 1999, may continue to use such personnel after such date but shall change their job title to pharmacy technician and shall submit to the board the written control procedures and guidelines governing such pharmacy technicians with the job title change. A hospital that commences using pharmacy technicians as provided in the rules and regulations adopted and promulgated by the department pursuant to sections 71-1,142 to 71-1,147.36 on or after such date shall meet the requirements of such sections and rules and regulations. Any written control procedures and guidelines for supportive pharmacy personnel that were filed by a hospital and approved by the board prior to May 26, 1999, shall be deemed to be approved and to apply to pharmacy technicians.

~~(8)(a)~~ (8) Any hospital using supportive pharmacy personnel prior to June 11, 1993, and using pharmacy technicians on or after the operative date of this section, shall file a copy of written control procedures and guidelines with the board by February 1, 2002, or such hospital shall be in violation of subsection (2) of section 71-1,147.

(9)(a) If pharmacy technicians perform functions requiring professional judgment and licensure as a pharmacist, perform functions not specified under approved written control procedures and guidelines, or perform functions without supervision and such acts are known to the pharmacist supervising the pharmacy technicians or the pharmacist in charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the part of the pharmacist supervising the pharmacy technicians or the pharmacist in charge pursuant to section 71-147 against whom disciplinary measures may be taken.

(b) Acts described in subdivision (a) of this subsection may be grounds for the department, upon the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of unauthorized acts. After a full hearing the court shall either grant or deny the application. Such order shall continue until the court, after a like hearing, finds the basis for such order has been removed.

Sec. 44. Section 71-1,147.34, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.34. (1) ~~Except as provided in subsection (7) of section 71-1,147.33, disciplinary~~ Disciplinary action may be taken in accordance with ~~section 71-155~~ against the ~~permit~~ license of the employing pharmacy or the license of the hospital pursuant to the Health Care Facility Licensure Act, or against the license of the pharmacist in charge pursuant to section 71-155, for the failure to submit written control procedures and guidelines and to receive board approval prior to the employment of pharmacy technicians.

(2) Disciplinary action may be taken in accordance with ~~such~~ section 71-155 against the supervising pharmacist who is on duty in the pharmacy and is responsible for the supervision of pharmacy technicians for his or her

failure or the failure of the pharmacists or pharmacy technicians to follow approved written control procedures and guidelines.

(3) Disciplinary action may be taken in accordance with ~~such~~ section 71-155 against the supervising pharmacist who is on duty in the pharmacy and is responsible for the supervision of pharmacy technicians for any failure to properly verify the accuracy and completeness of the acts, tasks, or functions undertaken by pharmacy technicians, which failure results in a discrepancy in the dispensing process.

(4) Disciplinary action may be taken in accordance with ~~such~~ section 71-155 against the license of a pharmacist in charge, or in accordance with the Health Care Facility Licensure Act against the permit license of the pharmacy, ~~or the license of the hospital,~~ for the hiring and employment of an individual to serve as a pharmacy technician when the pharmacist, pharmacy, or hospital knew or reasonably should have known that such individual was not qualified by law to so serve.

Sec. 45. Section 71-1,147.35, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.35. (1)(a) Prior to the dispensing or the delivery of ~~each new or refill prescription~~ a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

- (i) Therapeutic duplication;
- (ii) Drug-disease contraindications;
- (iii) Drug-drug interactions;
- (iv) Incorrect drug dosage or duration of drug treatment;
- (v) Drug-allergy interactions; and
- (vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her ~~physician~~ practitioner and to record and maintain records of the following information to facilitate such review:

- (i) The name, address, telephone number, date of birth, and gender of the patient;
- (ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and
- (iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the department upon the recommendation of the board. ~~and consistent with the following:~~

- ~~(i) Compendia which shall consist of the following:~~
 - ~~(A) American Hospital Formulary Service Drug Information;~~
 - ~~(B) United States Pharmacopeia-Dispensing Information; and~~
 - ~~(C) American Medical Association Drug Evaluations; and~~
- ~~(ii) The peer reviewed medical literature.~~

(2)(a) Prior to the dispensing or delivery of ~~each new or refill a drug or device pursuant to a prescription,~~ the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

- (i) The name and description of the prescribed drug or device;
- (ii) The route of administration, dosage form, ~~dosage dose,~~ and duration of therapy;
- (iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;
- (iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;
- (v) Techniques for self-monitoring drug therapy;
- (vi) Proper storage;
- (vii) Prescription refill information; and
- (viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in ~~subdivision (a)~~ of this subsection shall be provided in person whenever practical or by the

utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in ~~subdivision (a)~~ of this subsection but shall not be used as a substitute for such patient counseling. If written information is provided, it shall also include all information found on the prescription label.

(e) ~~Nothing in this~~ This subsection shall not be construed to require a pharmacist to provide the patient counseling ~~called for by subdivision (a) of this subsection~~ when:

(i) The patient or caregiver refuses such patient counseling;

(ii) The pharmacist, in his or her professional judgment, determines that such patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her physician practitioner;

(iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom ~~prescribed~~ prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant; or

(iv) ~~The medical practitioner duly~~ authorized to prescribe drugs or devices specifies manually on the face of the written prescription or by telephonic communication on each prescription that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral medical order or in writing on the face of a written medical order, including any medical order which results in an authorized transmitted copy. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing medical practitioner. For purposes of this subdivision, authorized transmitted copy means a paper copy of a written, signed medical order produced by electronic or electromagnetic transmission or other means authorized by rule and regulation of the department upon recommendation of the board.

Sec. 46. Section 71-1,147.36, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.36. (1) Information with regard to a patient maintained by a pharmacist pursuant to sections 71-1,142 to ~~71-1,147.61~~ 71-1,147.59 and sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act shall be privileged and confidential and may be released only to ~~(1)~~ (a) the patient or the caregiver of the patient or others authorized by the patient or his or her legal representative, ~~(2)~~ (b) a physician treating the patient, ~~(3)~~ (c) other physicians or pharmacists when, in the professional judgment of the pharmacist, such release is necessary to protect the patient's health or well-being, or ~~(4)~~ (d) other persons or governmental agencies authorized by law to receive such information.

(2) Nothing in this section shall prohibit the release of confidential information to researchers conducting biomedical, pharmaco-epidemiologic, or pharmaco-economic research pursuant to health research approved by an institutional review board which is established in accordance with 21 C.F.R. parts 50 and 56 or 45 C.F.R. part 46, as such parts existed on the operative date of this section.

Sec. 47. A pharmacist may delegate certain specified dispensing tasks and functions under specified conditions and limitations to another person by entering into a delegated dispensing agreement which serves as the basis for a delegated dispensing permit. A delegated dispensing agreement shall include the address of the site where the dispensing will occur, the name and license number of each pharmacist who will assume the responsibilities of the delegating pharmacist, the name and signature of any individual who will be dispensing pursuant to such agreement, the manner in which inspections must be conducted and documented by the delegating pharmacist, and any other information required by the board. A delegated dispensing agreement shall not become effective until a delegated dispensing permit based upon such agreement is issued by the department pursuant to section 48 of this act.

Sec. 48. (1) Any person who has entered into a delegated dispensing agreement pursuant to section 47 of this act may apply to the department for a delegated dispensing permit. An applicant shall apply at least thirty days prior to the anticipated date for commencing delegated dispensing activities. Each applicant shall (a) file an application as prescribed by the department and a copy of the delegated dispensing agreement and (b) pay any fees required by the department. A hospital applying for a delegated dispensing permit

shall not be required to pay an application fee if it has a pharmacy license under the Health Care Facility Licensure Act.

(2) The department shall issue or renew a delegated dispensing permit to an applicant if the department determines that:

(a) The application and delegated dispensing agreement comply with sections 71-1,147.42 to 71-1,147.59 and sections 47 to 49 of this act;

(b) The public health and welfare is protected and public convenience and necessity is promoted by the issuance of such permit. If the applicant is a hospital, public health clinic, dialysis drug or device distributor, or medical gas distributor, the department shall find that the public health and welfare is protected and public convenience and necessity is promoted. For any other applicant, the department may, in its discretion, require the submission of documentation to demonstrate that the public health and welfare is protected and public convenience and necessity is promoted by the issuance of the delegated dispensing permit; and

(c) The applicant has complied with any inspection requirements pursuant to section 49 of this act.

(3) In addition to the requirements of subsection (2) of this section, a public health clinic (a) shall apply for a separate delegated dispensing permit for each clinic maintained on separate premises even though such clinic is operated under the same management as another clinic and (b) shall not apply for a separate delegated dispensing permit to operate an ancillary facility. For purposes of this subsection, ancillary facility means a delegated dispensing site which offers intermittent services, which is staffed by personnel from a public health clinic for which a delegated dispensing permit has been issued, and at which no legend drugs or devices are stored.

(4) A delegated dispensing permit shall not be transferable. Such permit shall expire annually on July 1 unless renewed by the department. The department may adopt and promulgate rules and regulations to reinstate expired permits upon payment of a late fee.

Sec. 49. (1) Before a delegated dispensing permit may be issued by the department, a pharmacy inspector of the board shall conduct an onsite inspection of the delegated dispensing site. A hospital applying for a delegated dispensing permit shall not be subject to an initial inspection or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(2) Each permittee shall have the delegated dispensing site inspected at least once on an annual basis. Such inspection may be conducted by self-inspection or other compliance assurance modalities, when approved by the board, as authorized in the rules and regulations of the department. A hospital with a delegated dispensing permit shall not be subject to annual inspections or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(3) Any applicant or permittee who fails to meet the requirements of the board or department to dispense drugs or devices pursuant to a delegated dispensing permit shall, prior to dispensing (a) have the delegated dispensing site reinspected by a pharmacy inspector of the board and (b) pay any reinspection fees.

(4) The department shall set inspection fees by rule and regulation not to exceed the fees established for pharmacy inspections required to obtain a pharmacy license under the Health Care Facility Licensure Act. The department shall remit inspection fees to the State Treasurer for credit to the Nebraska Pharmaceutical Fund.

Sec. 50. Section 71-1,147.42, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.42. If a complaint is filed against a ~~delegated dispensing permittee public health clinic or a dialysis drug or device distributor~~ or any staff member, ~~public health clinic worker, dialysis drug or device distributor worker,~~ volunteer, or consultant in association with work performed under a ~~drug dispensing permit~~ delegated dispensing permit and if the complaint is found to be valid, the cost of investigating the complaint and any followup inspections shall be calculated by the board based upon the actual costs incurred and the cost shall be borne by the ~~permittee public health clinic or dialysis drug or device distributor~~ being investigated. All costs collected by the department shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund. If the complaint is not found to be valid, the cost of the investigation shall be paid from the fund.

Sec. 51. Section 71-1,147.43, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.43. ~~(1) The department may deny an application for a drug delegated dispensing permit, revoke, limit, or suspend a delegated dispensing permit, or refuse renewal of a delegated dispensing permit for a violation of section 71-147 or 71-148 or for any violation of sections 71-1,142 to 71-1,147.59 and sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act and any rules and regulations adopted and promulgated by the department pursuant to such sections. with respect to a public health clinic on any of the following grounds:~~

- ~~(a) Conviction of any crime involving moral turpitude;~~
- ~~(b) Obtaining a permit by false representation or fraud;~~
- ~~(c) Operating a public health clinic without a consultant pharmacist responsible for the duties specified in sections 71-1,147.50 and 71-1,147.51;~~
- ~~(d) Failure to pass an initial or annual inspection;~~
- ~~(e) Failure to pay inspection costs;~~
- ~~(f) Failure to pay any fee required by section 71-1,147.41;~~
- ~~(g) Use of unauthorized persons in the dispensing or administration of drugs or devices;~~
- ~~(h) The compounding and dispensing of drugs or devices or the filling of a prescription by a person other than a licensed pharmacist or by an intern in pharmacy, without the presence of and the immediate personal supervision of a licensed pharmacist except as provided in section 71-1,147.33 or 71-1,147.53;~~
- ~~(i) The dispensing of any drug or device not listed in the approved formulary or failure to provide patient information;~~
- ~~(j) A conviction of a violation of sections 71-1,142 to 71-1,147.61 or of a felony or, if a natural person, the revocation or suspension of a drug dispensing permit;~~
- ~~(k) Unprofessional conduct which shall include, but not be limited to:~~
 - ~~(i) Misrepresentation or fraud in the conduct of a public health clinic;~~
 - ~~(ii) Aiding or abetting an unlicensed person to practice pharmacy;~~
 - ~~(iii) The dispensing without a prescription of a drug or device which under state or federal law or regulation is prohibited from being dispensed without a prescription or the renewal of such a prescription without the authorization of the prescriber;~~
 - ~~(iv) The dispensing of a different drug or device in place of the drug or device ordered or prescribed without the express permission of the person ordering or prescribing the same; or~~
 - ~~(v) Any fraudulent act in drug product selection whereby the purchaser is charged for the prescribed brand rather than the selected product which is deemed to be chemically and therapeutically equivalent;~~
- ~~(l) Violation of the rules and regulations governing the practice of pharmacy as adopted and promulgated under authority of section 71-1,147.09 by the department; and~~
- ~~(m) Suggesting, soliciting, ordering, assisting, or abetting a pharmacist in the commission of any of the offenses set forth in sections 71-147 and 71-148.~~

~~(2) The department may deny an application for a drug dispensing permit, revoke or suspend a permit, or refuse renewal of a permit with respect to a dialysis drug or device distributor on any of the following grounds:~~

- ~~(a) Conviction of any crime involving moral turpitude;~~
- ~~(b) Obtaining a permit by false representation or fraud;~~
- ~~(c) Operating a dialysis drug or device distributor facility without a consultant pharmacist responsible for the duties specified in sections 71-1,147.50 and 71-1,147.51;~~
- ~~(d) Failure to pass an initial or annual inspection;~~
- ~~(e) Failure to pay any fee required by section 71-1,147.41;~~
- ~~(f) Conviction of a violation of sections 71-1,142 to 71-1,147.61 applicable to dialysis drug or device distributors or of a felony or, if a natural person, the revocation or suspension of a drug dispensing permit;~~
- ~~(g) Unprofessional conduct which shall include, but not be limited to, the dispensing without a prescription of a drug or device which under state or federal law or regulation is prohibited from being dispensed without a prescription or the renewal of such a prescription without the authorization of the prescriber; and~~
- ~~(h) Violation of the rules and regulations governing the practice of pharmacy applicable to dialysis drug or device distributors as adopted and promulgated under authority of section 71-1,147.09 by the department.~~

Sec. 52. Section 71-1,147.44, Revised Statutes Supplement, 2000, is amended to read:

- 71-1,147.44. (1) If the department determines to deny an

application for a ~~drug~~ delegated dispensing permit or to revoke, limit, suspend, or refuse renewal of a ~~permit with respect to a public health clinic or a dialysis drug or device distributor~~ delegated dispensing permit, ~~it~~ the department shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, limitation, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 71-1,147.46.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department. The proceedings shall be summary in nature and triable as equity actions. Affidavits may be received in evidence in the discretion of the Director of Regulation and Licensure. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Sec. 53. Section 71-1,147.45, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.45. (1) Upon the completion of any hearing ~~with respect to a public health clinic or a dialysis drug or device distributor~~ pursuant to section 71-1,147.44, the ~~director~~ Director of Regulation and Licensure shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

- (a) Issue a censure against the permittee;
- (b) Place the permittee on probation;
- (c) Place a limitation or limitations on the permit and upon the right of the permittee to dispense drugs or devices to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;
- (d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any;
- (e) Enter an order of suspension of the permit;
- (f) Enter an order of revocation of the permit; and
- (g) Dismiss the action.

(2) The permittee shall not dispense drugs or devices after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. The permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If the permit is revoked, the revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement by any permittee whose permit has been revoked. The application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application.

(3) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall within thirty days after receipt remit any collected civil penalty to the State Treasurer for credit to the permanent school fund.

Sec. 54. Section 71-1,147.46, Revised Statutes Supplement, 2000, is amended to read:

- 71-1,147.46. (1) A petition for the revocation or suspension of a

~~drug delegated dispensing permit with respect to a public health clinic or a dialysis drug or device distributor~~ may be filed by the Attorney General or by the county attorney in the county in which the permittee resides or is operating a ~~public health clinic or a dialysis drug or device distributor facility~~ dispensing pursuant to a delegated dispensing permit. The petition shall be filed with the board and shall be entitled In the Matter of the Revocation (or suspension) of the Permit of (name of permittee) to dispense drugs and devices. It shall state the charges against the permittee with reasonable definiteness. Upon approval of such petition by the board, it shall be forwarded to the department which shall make an order fixing a time and place for hearing thereon, which shall not be less than ten days nor more than thirty days thereafter. Notice of the filing of such petition and of the time and place of hearing shall be served upon the permittee at least ten days before such hearing.

(2) The notice of charges may be served by any sheriff or constable or by any person especially appointed by the department. The order of revocation or suspension of a permit shall be entered on record and the name of such permittee stricken from the roster of permittees, and the permittee shall not engage in the dispensing of drugs and devices after revocation of the permit or during the time for which it is suspended.

(3) Any permittee shall have the right of appeal from an order of the department denying, revoking, suspending, or refusing renewal of a ~~drug delegated~~ dispensing permit. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 55. Section 71-1,147.47, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.47. When appropriate, the Attorney General, upon the recommendation of the board, shall initiate criminal charges against pharmacists, ~~pharmacy owners,~~ or other persons who knowingly permit ~~public health clinic workers~~ individuals dispensing pursuant to a delegated dispensing permit to perform professional duties which require the expertise or professional judgment of a pharmacist.

Sec. 56. Section 71-1,147.48, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.48. ~~(1)(a)~~ (1) Upon recommendation of the board, the Director of Regulation and Licensure shall approve a formulary to be used by individuals dispensing pursuant to a delegated dispensing permit. A formulary shall consist of a list of drugs or devices appropriate to delegated dispensing activities authorized by the delegated dispensing permit. Except as otherwise provided in this section, if the board finds that a formulary would be unnecessary to protect the public health and welfare and promote public convenience and necessity, the board shall recommend that no formulary be approved.

(2)(a) Upon the recommendation of the board, which shall be based on the recommendations of the Public Health Clinic Formulary Advisory Committee, the ~~Director of Regulation and Licensure~~ director shall approve the formulary to be used by public health clinics ~~operating with a drug dispensing permit~~ dispensing pursuant to a delegated dispensing permit.

(b) The formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections which may be dispensed and stored, ~~by public health clinics operating with a drug dispensing permit,~~ patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the committee or exclude any of the provisions for patient instruction approved by the board.

(d) Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

- (i) Controlled substances;
- (ii) Drugs with significant dietary interactions;
- (iii) Drugs with significant drug-drug interactions; and
- (iv) Drugs or devices with complex counseling profiles.

~~(2)(a)~~ (3)(a) Upon the recommendation of the board, the ~~Director of Regulation and Licensure~~ director shall approve a formulary to be used by dialysis drug or device distributors. ~~operating with a drug dispensing permit.~~

(b) The formulary for a dialysis drug or device distributor shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored. ~~by a dialysis drug or device distributor operating with a drug dispensing permit.~~

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

(d) Controlled substances shall not be eligible to be included in the formulary.

Sec. 57. Section 71-1,147.50, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.50. (1) ~~All public health clinics or dialysis drug or device distributors which dispense legend drugs and devices pursuant to a drug dispensing permit~~ Each delegated dispensing permittee shall have an actively practicing Nebraska-licensed pharmacist listed as the ~~consultant pharmacist on the permit~~ delegating pharmacist in the delegated dispensing agreement. ~~The delegating pharmacist shall be responsible for all activities set forth in his or her delegated dispensing agreement. The delegating pharmacist shall approve and maintain a policy and procedure manual governing those aspects of the practice of pharmacy covered by the delegated dispensing agreement.~~

(2) ~~The consultant delegating pharmacist for a public health clinic or a dialysis drug or device distributor shall be physically in the public health clinic or distributor's facility at least once every thirty days. The delegating pharmacist shall conduct and document monthly inspections of all activities and responsibilities listed in subsection (3) of this section and under his or her delegated dispensing agreement.~~

(3) ~~The delegating pharmacist for a public health clinic and shall be responsible for the security, environment, inventory, and record keeping of all drugs and devices received, stored, or dispensed by the public health clinic.~~

~~(3) The consultant delegating pharmacist shall be physically in the for a dialysis drug or device distributor facility at least once every thirty days and shall be responsible for the distribution, record keeping, labeling, and delivery of all drugs and devices dispensed by the dialysis drug or device distributor.~~

~~(4) The consultant pharmacist of a public health clinic shall conduct and document monthly inspections as detailed in subsection (1) of section 71-1,147.51 of inventory, record keeping, storage, security, dispensing, and labeling procedures of all drugs and devices.~~

~~(5) The consultant pharmacist of a dialysis drug or device distributor shall conduct and document monthly inspections with respect to all activities and responsibilities detailed in subsection (2) of section 71-1,147.51.~~

Sec. 58. Section 71-1,147.52, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,147.52. ~~The consultant delegating pharmacist or the on-call pharmacist for the public health clinic operating with a drug dispensing permit shall not be held liable for acts or omissions on the part of a public health clinic worker or of licensed or certified health care staff. The public health clinic for which a public health clinic worker is working shall be liable for acts or omissions on the part of the public health clinic worker an individual dispensing pursuant to the delegated dispensing permit.~~

Sec. 59. Section 71-1,147.53, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.53. Under a ~~drug dispensing permit issued to delegated dispensing permit for~~ a public health clinic, approved formulary drugs and devices may be dispensed by a public health clinic worker or a health care professional licensed in Nebraska to practice medicine and surgery or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant without the onsite services of a pharmacist if:

(1) The initial dispensing of all prescriptions for approved formulary drugs and devices is conducted by a health care professional licensed in Nebraska to practice medicine and surgery or pharmacy or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant;

(2) The drug or device is dispensed pursuant to a prescription written on site by a ~~medical~~ practitioner;

(3) ~~The only prescriptions to be refilled under the drug dispensing permit~~ delegated dispensing permit are prescriptions for oral contraceptives;

(4) Prescriptions are accompanied by patient instructions and written information approved by the Director of Regulation and Licensure;

(5) The dispensing of authorized refills of oral contraceptives is done by a licensed health care professional listed in subdivision (1) of this section or by a public health clinic worker; ~~who meets the requirements provided in sections 71-1,147.54 to 71-1,147.56;~~

(6) All drugs or devices ~~dispensed from a drug dispensing permit site~~ are prepackaged by the manufacturer or at a public health clinic by a

pharmacist into the quantity to be prescribed and dispensed at the public health clinic;

(7) All drugs and devices stored, received, or dispensed ~~by~~ under the authority of public health clinics are properly labeled at all times. Properly For purposes of this subdivision, properly labeled means that the label affixed to the container prior to dispensing contains the following information:

(a) The name of the manufacturer;

(b) The lot number and expiration date from the manufacturer or, if prepackaged by a pharmacist, the lot number and calculated expiration date. Calculated expiration date means an expiration date on the prepackaged product which is not greater than twenty-five percent of the time between the date of repackaging and the expiration date of the bulk container nor greater than six months from the date of repackaging;

(c) Directions for patient use;

(d) The quantity of drug ~~inside in the container~~;

(e) The name, strength, and dosage form of the drug; and

(f) Auxiliary labels as needed for proper ~~drug compliance~~ adherence to any prescription;

(8) The following additional information is added to the label of each container when the drug or device is dispensed:

(a) The patient's name;

(b) The name of the prescribing health care professional;

(c) The prescription number;

(d) The date dispensed; and

(e) The name and address of the public health clinic;

(9) The only drugs and devices allowed to be dispensed or stored by public health clinics appear on the formulary approved pursuant to section 71-1,147.48; and

(10) At any time that dispensing is occurring from a public health clinic, the ~~consultant~~ delegating pharmacist for the public health clinic or ~~any other actively practicing pharmacist licensed to practice pharmacy on-call pharmacist~~ in Nebraska is available, either in person or by telephone, to answer questions from clients, staff, public health clinic workers, or volunteers. This availability shall be confirmed and documented at the beginning of each day that dispensing will occur. The ~~consultant delegating~~ pharmacist or ~~practicing on-call~~ pharmacist shall inform the public health clinic if he or she will not be available during the time that his or her availability is required. If a pharmacist is unavailable, no dispensing shall occur.

Sec. 60. Section 71-1,147.55, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.55. (1) A ~~consultant~~ delegating pharmacist shall conduct the training of public health clinic workers. The training shall be approved ~~according to the standards determined in advance by the board department~~ upon the recommendation of the board. The board shall base its recommendation upon the standards determined by the Public Health Clinic Formulary Advisory Committee. ~~The training shall consist of at least six hours of classroom instruction, including, but not limited to, the following:~~

(a) ~~Procedures for dispensing authorized refills of oral contraceptives;~~

(b) ~~Federal and state laws regarding drug dispensing;~~

(c) ~~Proper labeling of oral contraceptives;~~

(d) ~~Proper record keeping of refilled prescriptions;~~

(e) ~~The actions, drug interactions, and effects of oral contraceptives;~~

(f) ~~Use of Volumes I and II of the United States Pharmacopeia-Dispensing Information;~~

(g) ~~Proper pharmacist referral;~~

(h) ~~Procedures for reaching the on-call pharmacist;~~

(i) ~~Storage and security of approved formulary drugs and devices;~~ and

(j) ~~Patient information.~~

(2) A ~~consultant~~ delegating pharmacist shall conduct training of dialysis drug or device distributor workers. The training shall ~~consist of,~~ but not be limited to, the following:

(a) ~~An overview of peritoneal dialysis therapies;~~

(b) ~~The proper labeling and inspection of home-patient orders;~~

(c) ~~The requirements of applicable Nebraska law; and~~

(d) Patient information be based upon the standards approved by the department upon recommendation of the board.

(3) The public health clinic, the dialysis drug or device

distributor, and the consultant delegating pharmacist shall be responsible to assure that approved training has occurred and is documented. Documentation of training shall be maintained in the employee's personnel file and in the policy and procedure manual.

Sec. 61. Section 71-1,147.56, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.56. (1)(a) ~~The A public health clinic worker or dialysis drug or device distributor worker shall demonstrate proficiency to the delegating pharmacist, according to the standards determined by the department, to the consultant pharmacist upon completion of training. Documentation of proficiency shall be maintained in the employee's personnel file and in the policy and procedure manual.~~

~~(b) The upon recommendation of the board. The delegating pharmacist shall document proficiency for each worker. In addition, a public health clinic worker shall be supervised with documentation by one of the by a licensed health care professionals professional specified in subdivision (1) of section 71-1,147.53 for the first month that such worker is dispensing of authorized refills of oral contraceptives. occurs. The public health clinic for which a public health clinic worker is working shall be liable for acts or omissions on the part of the public health clinic worker.~~

~~(c) (2) Following initial training and proficiency demonstration, the public health clinic worker or dialysis drug or device distributor worker shall demonstrate continued proficiency to the consultant pharmacist at least annually or as requested by the consultant pharmacist.~~

~~(d) The public health clinic worker shall attend a two-hour inservice program regarding oral contraceptives taught by a pharmacist at least once a year, and more often as necessary, with documentation of attendance maintained in the employee's personnel file and in the policy and procedure manual.~~

~~(2) Following initial training and proficiency demonstration, the dialysis drug or device distributor worker shall demonstrate proficiency to the consultant pharmacist upon completion of the training. Documentation of proficiency shall be maintained in the worker's personnel file and in the policy and procedure manual. Training and proficiency demonstration shall be conducted annually. A dialysis drug or device distributor worker shall attend annual training programs taught by a pharmacist. Documentation of such training shall be maintained in the worker's employee file.~~

~~(3) The public health clinic or dialysis drug or device distributor for which a public health clinic worker or dialysis drug or device distributor worker is working shall be liable for acts or omissions on the part of such worker.~~

Sec. 62. Section 71-1,147.57, Revised Statutes Supplement, 2000, is amended to read:

71-1,147.57. A delegating pharmacist shall conduct the training of all licensed health care professionals specified in subdivision (1) of section 71-1,147.53 and who are dispensing pursuant to the delegated dispensing permit of a public health clinic. The training shall be approved in advance by the department upon the recommendation of the board. The board shall base its recommendation upon the standards determined by the Public Health Clinic Formulary Advisory Committee. Each person licensed to practice medicine and surgery or as a physician assistant or advanced practice registered nurse and each person certified as a nurse practitioner or nurse midwife who works in a public health clinic operating with a drug dispensing permit shall have two hours of training provided by a licensed, actively practicing pharmacist in the following:

- ~~(1) Procedures for dispensing initial prescriptions and authorized refills of oral contraceptives;~~
- ~~(2) Procedures for dispensing approved drugs and devices;~~
- ~~(3) Federal and state laws regarding drug dispensing;~~
- ~~(4) Proper labeling of oral contraceptives and approved drugs and devices;~~
- ~~(5) Proper record keeping of initial and refilled prescriptions;~~
- ~~(6) Use of Volumes I and II of the United States Pharmacopeia-Dispensing Information;~~
- ~~(7) Proper pharmacist referral;~~
- ~~(8) Procedures for reaching the on-call pharmacist;~~
- ~~(9) Storage and security of approved formulary drugs and devices;~~

and

- ~~(10) Patient information.~~

Sec. 63. Section 71-1,147.59, Revised Statutes Supplement, 2000, is amended to read:

- 71-1,147.59. (1) The board may appoint formulary advisory

committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

(2) The Public Health Clinic Formulary Advisory Committee is created. The committee shall consist of eight members as follows:

(a) Two members designated by the board;

(b) Two members who are employees of the department with knowledge of and interest in reproductive health and sexually transmitted diseases;

(c) Two members who are licensed ~~to practice pharmacy~~ pharmacists in this state and who are selected by the Director of Regulation and Licensure. The Nebraska Pharmacists Association may submit to the director a list of five persons of recognized ability in the profession. If such a list is submitted, the director shall consider the names on such list and may appoint one or more of the persons so named. The director may appoint any qualified person even if such person is not named on the list submitted by the association; and

(d) Two members who are employees of public health clinics which ~~are hold or will be operating with drug dispensing permits hold a delegated dispensing permit~~ and who are selected by the director from names recommended by such public health clinics.

~~(2) Initial designations~~ (3) Designations and recommendations shall be made and submitted to the director ~~within thirty days after July 16, 1994. Subsequent designations and recommendations shall be submitted in July prior to the third quarter meeting of the committee.~~

~~(3) Members shall serve for terms of two years each beginning with the third quarter meeting. 7 except that one-half of the initial members appointed to the committee, as designated by the director, shall serve for terms of three years each. Members may serve for consecutive terms as approved by the director. The director may remove a member of the committee for inefficiency, neglect of duty, or misconduct in office. in the manner provided in section 71-1,147.43.~~

Sec. 64. (1) For purposes of sections 71-1,142, 71-1,143, and 71-1,147, the use of the term license as it relates to a pharmacy shall be construed to mean (a) any permit to operate a pharmacy issued by the department prior to January 1, 2002, pursuant to sections 71-1,147.01 to 71-1,147.12 as such sections existed on December 31, 2001, and (b) any license to operate a pharmacy issued by the department on and after January 1, 2002, pursuant to the Health Care Facility Licensure Act.

(2) With respect to the operation and regulation of pharmacies on and after January 1, 2002:

(a) A permit to operate a pharmacy issued prior to January 1, 2002, under sections 71-1,142 to 71-1,147.59 as such sections existed on December 31, 2001, shall be valid and effective for the term of the permit unless revoked or its effectiveness is otherwise terminated as provided by law and shall be deemed a license issued under the Health Care Facility Licensure Act;

(b) All rules, regulations, and orders of the department adopted prior to January 1, 2002, under sections 71-1,142 to 71-1,147.59 as such sections existed on December 31, 2001, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law; and

(c) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to January 1, 2002, under sections 71-1,142 to 71-1,147.59 as such sections existed on December 31, 2001, shall abate by reason of the change in regulation of pharmacies due to the enactment of the Health Care Facility Licensure Act.

(3) With respect to the operation and regulation of persons dispensing pursuant to a drug dispensing permit on and after the operative date of this section:

(a) A drug dispensing permit for a public health clinic or a dialysis drug or device distributor issued prior to such date under sections 71-1,147.39 to 71-1,147.61, as such sections existed prior to the operative date of this section, shall be valid and effective for the term of the permit unless revoked or its effectiveness is otherwise terminated as provided by law and shall be deemed to be a delegated dispensing permit;

(b) All rules, regulations, and orders adopted by the department concerning drug dispensing permits prior to the operative date of this section under sections 71-1,142 to 71-1,147.61, as such sections existed prior to the operative date of this section, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law; and

(c) No suit, action, or other proceeding, judicial or administrative, concerning drug dispensing permits which was lawfully commenced prior to the operative date of this section under sections 71-1,142 to 71-1,147.61, as such sections existed prior to the operative date of this section, shall abate by reason of the enactment of this legislative bill.

(4) This section terminates on January 1, 2003.

Sec. 65. Section 71-401, Revised Statutes Supplement, 2000, is amended to read:

71-401. Sections 71-401 to ~~71-462~~ 71-461 and section 67 of this act shall be known and may be cited as the Health Care Facility Licensure Act.

Sec. 66. Section 71-425, Revised Statutes Supplement, 2000, is amended to read:

71-425. ~~(1)~~ Pharmacy means ~~(a)~~ a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, ~~apothecary~~, or any combination of such titles where drugs or devices are dispensed as defined in section 71-1,142. ~~7 (b) a facility where the practice of pharmacy is carried on except as exempted in section 71-1,143, or (c) a facility used as a pick-up point or drop point, including kiosks, for prescriptions to be filled or where prescribed drugs or devices are made ready for delivery to the patient.~~

~~(2) Pharmacy does not include an emergency box located within an institution pursuant to the Emergency Box Drug Act.~~

Sec. 67. (1) A permit to operate a pharmacy issued prior to January 1, 2002, under sections 71-1,147.01 to 71-1,147.12 as such sections existed on December 31, 2001, shall be valid and effective for the term of the permit unless revoked or its effectiveness is otherwise terminated as provided by law and shall be deemed a pharmacy license issued under the Health Care Facility Licensure Act.

(2) All rules, regulations, and orders of the department adopted prior to January 1, 2002, under sections 71-1,147.01 to 71-1,147.12 as such sections existed on December 31, 2001, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(3) No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to January 1, 2002, under sections 71-1,147.01 to 71-1,147.12 as such sections existed on December 31, 2001, shall abate by reason of the enactment of this legislative bill.

(4) This section terminates on January 1, 2003.

Sec. 68. Section 71-15,139, Revised Statutes Supplement, 2000, is amended to read:

71-15,139. (1) A housing agency may adopt and promulgate reasonable rules and regulations consistent with federal and state laws, rules, and regulations and the purposes of the Nebraska Housing Agency Act concerning the termination of tenancy. Any resident so terminated shall be sent a written notice of termination setting out the reasons for such termination, and any resident served with a notice shall be given the opportunity to contest the termination in an appropriate hearing by the housing agency. A resident may contest the termination in any suit filed by the housing agency in any court for recovery of possession of the premises.

(2) Such notice may provide that if the resident fails to (a) pay his or her rent or comply with any covenant or condition of his or her lease or the rules and regulations of such housing agency, (b) cure a violation or default thereof as specified in such notice, or (c) follow the procedure for a hearing as set forth in the notice, all within the time or times set forth in such notice, the tenancy shall then be automatically terminated and no other notice or notices need be given of such termination or the intent to terminate the tenancy, and upon such termination, and without any notice other than as provided for in this section, a housing agency may file suit against any resident for recovery of possession of the premises and may recover the same as provided by law.

(3) A housing agency may, after three days' written notice of termination and without an administrative hearing, file suit and have judgment against any resident for recovery of possession of the premises if the resident, any member of the resident's household, any guest, or any other person who is under the resident's control or who is present upon the premises with the resident's consent, engages in any drug-related or violent criminal activity on the premises, or engages in any activity that threatens the health, safety, or peaceful enjoyment of other residents or housing agency employees. Such activity shall include, but not be limited to, any of the following activities of the resident, or the activities of any other person on the premises with the consent of the resident: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat to use an illegal firearm or other weapon; or (c) possession of a controlled substance by the resident or any other person on the premises with the consent of the resident if the resident knew or should have known of the possession by such other person of a controlled substance, unless such controlled substance was obtained directly from or pursuant to a ~~valid prescription or medical order~~ by issued by a practitioner authorized to prescribe as defined in subdivision (20) of section 28-401 while acting in the course of his or her professional practice.

Sec. 69. Section 71-2407, Revised Statutes Supplement, 2000, is amended to read:

71-2407. (1) No person operating outside of the State of Nebraska shall ship, mail, or in any manner deliver dispensed prescription drugs into the State of Nebraska unless such person:

(a) Is licensed as a pharmacist in the United States;

(b) Has filed with the Department of Health and Human Services Regulation and Licensure evidence of a pharmacy license or permit issued by and valid in the state in which the person is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

(c) Is located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services Regulation and Licensure, with the approval of the Board of Pharmacy, to be substantially equivalent to the requirements ~~contained in sections 71-1,142 to 71-1,147.36 of the Health Care Facility Licensure Act;~~

(d) Has designated the Secretary of State as his, her, or its agent for service of process in this state; and

(e) Has paid a fee equivalent to the ~~annual fee for an initial or renewal permit to operate a pharmacy license~~ in the State of Nebraska ~~as established in and at the times provided for in section 71-1,147.07. Such fees shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund pursuant to section 71-434.~~

(2) This section does not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

(3) For purposes of this section and section 71-2408, prescription drug has the definition of prescription drug or device as found in section 71-1,142.

Sec. 70. Section 71-2411, Revised Statutes Supplement, 2000, is amended to read:

71-2411. For purposes of the Emergency Box Drug Act:

(1) Authorized personnel shall mean any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, pharmacist, or physician's assistant;

(2) Department shall mean the Department of Health and Human Services Regulation and Licensure;

(3) Drug shall mean any prescription drug or device or legend drug or device defined under section 71-1,142, any nonprescription drug as defined under section 71-1,142, any controlled substance as defined under section 28-405, or any device as defined under section 71-1,142;

(4) Emergency box drugs shall mean drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) Institution shall mean an intermediate care facility, an intermediate care facility for the mentally retarded, a mental health center, a nursing facility, and a skilled nursing facility, as such terms are defined in sections 71-420, 71-421, 71-423, 71-424, and 71-429;

(6) Institutional pharmacy shall mean the physical portion of an institution engaged in the compounding, dispensing, and labeling of drugs which is operating pursuant to a ~~permit issued prior to January 17, 2002, by the Department of Health and Human Services Regulation and Licensure under section 71-1,147.03 as it existed prior to such date or pursuant to a pharmacy license issued on or after such date~~ by the department under the Health Care Facility Licensure Act;

(7) Multiple dose vial shall mean any bottle in which more than one dose of a liquid drug is stored or contained; and

(8) Supplying pharmacist shall mean the pharmacist in charge of an institutional pharmacy or a pharmacist who provides emergency box drugs to an institution pursuant to the Emergency Box Drug Act. Supplying pharmacist shall not include any agent or employee of the supplying pharmacist who is not a pharmacist.

Sec. 71. Section 71-2413, Revised Statutes Supplement, 2000, is amended to read:

71-2413. (1) The supplying pharmacist and the medical director and quality assurance committee of the institution shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. Such drugs shall then be approved in advance of placement in emergency boxes by the Board of Pharmacy, unless such drugs are included on a general list of drugs previously approved by the board for use in emergency boxes. The board may

adopt a general list of drugs to be included in emergency boxes. The supplying pharmacist shall maintain a list of emergency box drugs in the pharmacy of the supplying pharmacist which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. The supplying pharmacist shall obtain a receipt upon delivery of the emergency box to the institution signed by the director of nursing of the institution which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying pharmacist for a period of two years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a ~~valid~~ prescription. ~~order~~. Whenever access to the emergency box occurs, the ~~valid~~ prescription ~~order~~ and proof of use shall be provided to the supplying pharmacist and shall be recorded on the resident's medical record by authorized personnel of the institution. Removal of any drug from an emergency box by authorized personnel of the institution shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature of the authorized personnel. The form shall be maintained at the institution for a period of twenty-four months from the date of removal with a copy of the form to be provided to the supplying pharmacist.

(3) Whenever an emergency box is opened, the supplying pharmacist shall be notified by the charge nurse or the director of nursing of the institution within twenty-four hours and the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box within seventy-two hours.

(4) Upon ~~the occurrence of~~ the expiration ~~date~~ of any drug in the emergency box, the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box. The expired drug shall be immediately destroyed within the institution by a pharmacist, and such destruction shall be witnessed and documented by such pharmacist. If the expired drug is a controlled substance listed in Schedule II, III, IV, or V of section 28-405, it shall be destroyed pursuant to subdivision (3)(f)(iv) of section 28-414. Records pertaining to the documentation of expired drugs which are destroyed shall be maintained at the institution for a period of five years from the date of destruction with a copy of such records to be provided to the supplying pharmacist. Emergency drugs shall be considered inventory of the pharmacy of the supplying pharmacist until such time as they are removed for administration or destruction.

(5) ~~Immediately upon replacement of an expired drug by the supplying pharmacist or another pharmacist designated by the supplying pharmacist, the expired drug being replaced shall be immediately destroyed within the institution by the supplying pharmacist or another pharmacist designated by the supplying pharmacist, with such destruction witnessed and documented by authorized personnel of the institution. Records pertaining to the documentation of expired drugs which are destroyed by the supplying pharmacist or another pharmacist designated by the supplying pharmacist shall be maintained at the institution for a period of twenty-four months from the date of such destruction, with a copy of such records to be provided to the supplying pharmacist. Drugs in emergency boxes shall be considered inventory of the pharmacy of the supplying pharmacist until such time as they are removed for administration to a resident of the institution or pursuant to subsection (4) of this section.~~

(6) Authorized personnel of the institution shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacist upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the institution shall be recorded and maintained at the institution for a period of twenty-four months from the date of examination.

(7) (6) The supplying pharmacist and the medical director and quality assurance committee of the institution shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Sec. 72. Section 71-2417, Revised Statutes Supplement, 2000, is amended to read:

71-2417. Any emergency box containing a controlled substance ~~which is listed in section 28-405 and~~ maintained at an institution shall be exempt from the provisions of subdivision ~~(3)(f)~~ (3)(g) of section 28-414.

Sec. 73. Section 71-2419, Revised Statutes Supplement, 2000, is amended to read:

71-2419. A physician licensed under the Uniform Licensing Law who prescribes, dispenses, or administers or a nurse licensed under the Nurse Practice Act or pharmacist licensed under the Uniform Licensing Law who administers or dispenses a controlled substance in excess of the recommended dosage for the treatment of pain shall not be subject to discipline under sections 71-147 to 71-161.20 or 71-1,142 to ~~71-1,147.61~~ 71-1,147.59 and sections 27, 28, 30, 31, 33, 35 to 37, 47 to 49, and 64 of this act or under the Nurse Practice Act or criminal prosecution under the Uniform Controlled Substances Act when: (1) In the judgment of the physician, appropriate pain management warrants such dosage; (2) the controlled substance is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason; and (3) the administration of the controlled substance conforms to policies and guidelines for the treatment of pain adopted by the Board of Examiners in Medicine and Surgery.

Sec. 74. Section 71-2421, Revised Statutes Supplement, 2000, is amended to read:

71-2421. (1) To protect the public safety, dispensed drugs or devices may be returned to the dispensing pharmacy only under the following conditions:

(a) For immediate destruction by a pharmacist, except that drugs and devices dispensed to residents of a long-term care facility shall be destroyed on the site of the long-term care facility;

(b) In response to a recall by the manufacturer, packager, or distributor;

(c) If a device is defective or malfunctioning; or

(d) Return from a long-term care facility for credit, except that:

(i) No controlled substance may be returned;

(ii) The decision to accept the return of the dispensed drug or device shall rest solely with the pharmacist;

(iii) The dispensed drug or device shall have been in the control of the long-term care facility at all times;

(iv) The dispensed drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact, as dispensed by the pharmacy. Such container shall bear the expiration date or calculated expiration date and lot number; and

(v) Tablets or capsules shall have been dispensed in a unit dose with a tamper-evident container which is impermeable to moisture and approved by the Board of ~~Examiners in~~ Pharmacy.

(2) Returned dispensed drugs or devices shall not be retained in inventory nor made available for subsequent dispensing, except as provided in subdivision (1)(d) of this section.

(3) For purposes of this section, dispense, drugs, and devices are defined in section 71-1,142.

Sec. 75. Section 71-2501, Reissue Revised Statutes of Nebraska, is amended to read:

71-2501. ~~The word poison, within the meaning~~ (1) For purposes of sections 71-2501 to 71-2510:

(a) Poison shall include: Arsenic, metallic or elemental, and all poisonous compounds and preparations thereof; corrosive sublimate; white precipitate; red precipitate, ~~biniodide of mercury~~ mercuric iodide; nitrate of mercury; hydrocyanic acid and all its salts and poisonous compounds; aconitine, arecoline, atropine, brucine, colchicine, coniine, daturine, delphinine, gelsemine, gelseminine, ~~homatrophine~~ homatropine, hyoscine, hyoscyamine, lobeline, pelletierine, physostigmine, pilocarpine, sparteine, strychnine, veratrine, and all other poisonous alkaloids and their salts, poisonous compounds, and preparations; volatile or essential oil of bitter almonds, natural and artificial; aconite, belladonna, calabar bean, cantharides, colchicum, conium cotton root, cocculus indicum, datura, ergot, gelsemium, henbane, ignatia, lobelia, nux vomica, savin, ~~scopela~~ scopolamine, solanum, stramonium, staphisagra, strophanthus, veratrum viride, and their pharmaceutical preparations and compounds; cantharidin, picrotoxin, elaterin, santonin, their poisonous chemical compounds and derivatives and preparations; ascaridol; volatile oil of mustard, natural and synthetic; oil of tansy; oil of savin, ~~glacia~~ glacial acetic acid; trichloroacetic acid; aniline oil; benzaldehyde; bromoform; carbolic acid; cresylic acid; chloral hydrate; chromic acid; croton oil; dinitrophenol; mineral acids; oxalic acid; nitrobenzene; phosphorous; paraldehyde; picric acid; salts of antimony; salts of barium, except the sulphate, salts of cobalt, salts of chromium; salts of lead; salts of thallium; salts of zinc; carbon tetrachloride, and silver nitrate; and

(b) ~~Poison~~ - ~~The term poison shall not be construed to include:~~

(i) ~~Agricultural~~ ~~agricultural~~ or garden spray, insecticides, concentrated lye, fungicides, rodent destroyers, and other preparations of whatever ingredients, preservative or otherwise for animal or poultry use, for commercial, industrial, manufacturing, fire protection purposes, or any combination of such purposes, and not for human use, when the same are properly packaged, prepared, and labeled with official poison labels in conformity with the terms and provisions of section 71-2502 or the Federal Food, Drug, and Cosmetic Act, as such act existed on the operative date of this section, or the Federal Insecticide, Fungicide, and Rodenticide Act, as such act existed on the operative date of this section;

(ii) ~~Preparations~~ - ~~Poison shall not be construed to include~~ ~~preparations~~ prepared by or under the supervision of a governmental agency for use by it or under its direction in the suppression of injurious insect pests and plant diseases destructive to the agricultural and horticultural interests of the state; and

(iii) ~~Preparations~~ - ~~It shall also not include~~ ~~preparations~~ for the destruction of rodents, predatory animals, or noxious weeds.

(2) ~~Sections~~ + ~~PROVIDED,~~ ~~that sections~~ 71-2501 to 71-2511 shall not apply to the sale of patent or proprietary medicines in the original package of the manufacturer, when labeled in conformity with ~~the provisions of~~ section 71-2502.

Sec. 76. Section 71-5402, Revised Statutes Supplement, 2000, is amended to read:

71-5402. As used in the Nebraska Drug Product Selection Act, unless the context otherwise requires:

(1) Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug and placed upon its container, label, or wrapping at the time of packaging;

(2) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names and accepted by the federal Food and Drug Administration of those drug products having exactly the same active chemical ingredients in exactly the same strength and quantity;

(3) Drug product select means to dispense, without the duly licensed prescriber's express authorization, a chemically equivalent and bioequivalent drug product in place of the drug product ordered or prescribed;

(4) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;

(5) Bioequivalent means drug products that:

(a) Are legally marketed under regulations promulgated by the federal Food and Drug Administration;

(b) Are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed;

(c) Comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and

(d) For which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(6) Pharmacist means a pharmacist duly licensed in accordance with the Uniform Licensing Law;

(7) Medical practitioner has the same meaning as practitioner in section 71-1,142; and

(8) Department means the Department of Health and Human Services Regulation and Licensure.

Sec. 77. Section 71-5405, Reissue Revised Statutes of Nebraska, is amended to read:

71-5405. (1) The drug product selection of any drug by a pharmacist pursuant to ~~sections 71-1,147.10 and 71-5401 to 71-5408~~ the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.

(2) Drug product selection of drugs made by a pharmacist in accordance with ~~sections 71-1,147.10 and 71-5401 to 71-5408~~ the act, and any rules and regulations that the department may adopt and promulgate under ~~sections 71-1,147.10 and 71-5401 to 71-5408~~ the act, shall not constitute evidence of negligence if the drug product selection was made within reasonable and prudent practice of pharmacy.

(3) When drug product selection by a pharmacist is permissible in accordance with the ~~provisions of sections 71-1,147.10 and 71-5401 to 71-5408~~ act, such drug product selection shall not constitute evidence of negligence on the part of the prescribing medical practitioner. In order to promote drug

product selection to the fullest extent, ~~it is declared to be in the public interest that the~~ failure of a prescribing medical practitioner to provide that there shall be no drug product selection in any case shall not constitute evidence of negligence or malpractice on the part of such prescribing medical practitioner. ~~7 and it is hereby so provided.~~

Sec. 78. Section 71-5406, Reissue Revised Statutes of Nebraska, is amended to read:

71-5406. The manufacturer, packager, or distributor of any human use legend drug sold, delivered, or offered for sale in the State of Nebraska after January 1, 1978, shall have printed on the label on the immediate container of the drug the name and address of the manufacturer of the finished dosage form of the drug. Whenever a duly authorized agent of the department finds or has probable cause to believe that any drug ~~or medicine~~ is without such labeling, ~~he the agent~~ shall affix thereto an appropriate marking, giving notice that the ~~article drug is~~, or is suspected of being sold, delivered, or offered for gain in violation of ~~sections 71-1,147.10 and 71-5401 to 71-5408~~ the Nebraska Drug Product Selection Act and has been embargoed, and warning that it is unlawful for any person to remove or dispose of the embargoed ~~article drug~~ by sale or otherwise without permission from the agent or a court of competent jurisdiction.

Sec. 79. Section 71-5407, Reissue Revised Statutes of Nebraska, is amended to read:

71-5407. (1) In addition to any other penalties provided by law, any person who violates the provisions of ~~section 71-1,147.10 or~~ the Nebraska Drug Product Selection Act or any rule or regulation adopted and promulgated under such ~~section or~~ act shall, upon conviction thereof, be ~~punished by a fine of not more than two hundred fifty dollars guilty of a Class IV misdemeanor~~ for each violation.

(2) It shall be unlawful for any employer or such an employer's agent to coerce a pharmacist to dispense a prescription drug or device against the professional judgment of the pharmacist or as ordered by the prescribing medical practitioner.

~~(3) Violation of the act or commission of any act described in subsection (1) of section 71-1,147.10 by a licensed pharmacist shall be considered an act of unprofessional conduct for purposes of section 71-147 and shall subject the pharmacist to disciplinary action under section 71-147.~~

Sec. 80. Section 71-6045, Reissue Revised Statutes of Nebraska, is amended to read:

71-6045. The council shall consist of sixteen members appointed by the Governor as follows:

(1) One member shall be a licensed registered nurse in the State of Nebraska;

(2) One member shall be a licensed physician and surgeon in the State of Nebraska;

(3) One member shall be a licensed dentist in the State of Nebraska;

(4) One member shall be a ~~registered~~ licensed pharmacist in the State of Nebraska;

(5) One member shall be a representative of the Department of Health and Human Services with interest in or responsibilities for aging programs;

(6) One member shall be a representative of the Department of Health and Human Services Regulation and Licensure;

(7) One member shall be a representative of the Department of Health and Human Services Finance and Support;

(8) One member shall be representative of an agency of state or local government, other than the Department of Health and Human Services Regulation and Licensure, with interests in or responsibilities for nursing homes or programs related thereto;

(9) Four members shall be laypersons representative of the public;

(10) Two members shall be administrators or owners of proprietary nursing homes; and

(11) Two members shall be administrators or owners of voluntary nursing homes.

Sec. 81. Section 71-6721, Revised Statutes Supplement, 2000, is amended to read:

71-6721. For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under sections 71-1908 to 71-1917;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services Regulation and Licensure;

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means a health care facility or health care service as defined in section 71-413 or 71-415 or an entity or person certified by the Department of Health and Human Services Regulation and Licensure or the Department of Health and Human Services Finance and Support to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the Department of Health and Human Services Regulation and Licensure;

(16) Nonprescription drug has the definition found in section 71-1,142;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-422, 71-424, and 71-429;

(18) Prescription drug has the definition of prescription drug or device as found in section 71-1,142;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

Sec. 82. Section 71-7409, Revised Statutes Supplement, 2000, is amended to read:

71-7409. Emergency medical reasons shall mean the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: Holders of pharmacy ~~permits licenses~~, holders of ~~hospital~~ pharmacy inspection certificates, and ~~medical~~ practitioners as defined in section 71-1,142.

Sec. 83. Section 71-7416, Revised Statutes Supplement, 2000, is amended to read:

71-7416. No wholesale drug distributor, manufacturer, or pharmacy shall knowingly purchase or receive any prescription drug from any source other than a person or entity licensed pursuant to the Wholesale Drug

Distributor Licensing Act except transfers for emergency medical reasons, the gross dollar value of which shall not exceed five percent of the total prescription drug sales revenue of the transferor or transferee holder of a pharmacy ~~permit license~~, holder of a ~~hospital~~ pharmacy inspection certificate, or ~~medical~~ practitioner as defined in section 71-1,142 during the immediately preceding calendar year, and except as otherwise provided in the act.

Sec. 84. Section 71-7417, Revised Statutes Supplement, 2000, is amended to read:

71-7417. (1) No person ~~or entity~~ shall act as a wholesale drug distributor without first obtaining a wholesale drug distributor license from the department. If the applicant is an individual, the application shall include the applicant's social security number. The department shall issue a license upon the recommendation of the board that the applicant meets the requirements for licensure stated in the ~~act~~ Wholesale Drug Distributor Licensing Act and upon payment of a fee of not less than two hundred dollars and not more than six hundred dollars.

(2) A separate wholesale drug distributor license shall be required for each facility located within this state and directly or indirectly owned or operated by the same business entity or parent entity.

(3) An agent or employee of a licensed wholesale drug distributor need not be licensed under the ~~Wholesale Drug Distributor Licensing Act~~ act and may lawfully possess drug samples when such agent or employee is acting in the usual course of his or her business or employment.

(4) No license is required for any person who (a) engages in a wholesale transaction relating to the manufacture, distribution, sale, transfer, or delivery of medical gases the gross dollar value of which does not exceed five percent of the total retail sales of medical gases by such person during the immediately preceding calendar year and (b) has either a pharmacy permit or license or a drug dispensing permit or delegated dispensing permit.

(5) The issuance of a license pursuant to the act shall not change or affect tax liability to the State of Nebraska of any wholesale drug distributor.

Sec. 85. Section 71-7420, Reissue Revised Statutes of Nebraska, is amended to read:

71-7420. A wholesale drug distributor license shall expire on July 1 of each year and may be renewed. The license shall not be transferable. The annual renewal fee shall be not less than one hundred dollars and not more than three hundred dollars. The department shall mail an application for renewal to each licensee not later than June 1 of each year. If an application for renewal is received from the licensee after July 1, the department may impose a penalty equal to the renewal fee and the department shall refuse to issue the license until such penalty is paid in addition to the renewal fee. Failure to receive an application for renewal shall not relieve the licensee from the penalty imposed by this section.

Fees collected under the Wholesale Drug Distributor Licensing Act shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund, ~~and expended as provided in section 71-1,147.02.~~

Sec. 86. Sections 86 to 92 of this act shall be known and may be cited as the Mail Order Contact Lens Act.

Sec. 87. For purposes of the Mail Order Contact Lens Act:

(1) Contact lens prescription means a written order bearing the original signature of an optometrist or physician or an oral or electromagnetic order issued by an optometrist or physician that authorizes the dispensing of contact lenses to a patient and meets the requirements of section 88 of this act;

(2) Department means the Department of Health and Human Services Regulation and Licensure;

(3) Mail-order ophthalmic provider means an entity that ships, mails, or in any manner delivers dispensed contact lenses to Nebraska residents;

(4) Optometrist means a person licensed to practice optometry pursuant to sections 71-1,133 to 71-1,136.09; and

(5) Physician means a person licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107.14.

Sec. 88. (1) A mail-order ophthalmic provider may dispense contact lenses in Nebraska or to a Nebraska resident if the contact lens prescription is valid. Such prescription is valid if it (a) contains the patient's name, date ordered, expiration date, instructions for use, optometrist or physician identifying information, date of patient's last examination, fabrication, and related information and (b) has not expired.

(2) Each contact lens prescription shall be valid for the duration

of the prescription as indicated by the optometrist or physician or for a period of twelve months from the date of issuance, whichever period expires first. Upon expiration, an optometrist or physician may extend the prescription without further examination.

(3) An optometrist or physician shall offer the prescription to a patient following the fitting process and payment of all fees for services rendered. The patient shall mail the prescription or send a copy by facsimile or other electronic means to the mail-order ophthalmic provider.

Sec. 89. The department shall require and provide for an annual registration for all mail-order ophthalmic providers located outside of this state, including those providing services via the Internet, that dispense contact lenses to Nebraska residents. The department shall grant a mail-order ophthalmic provider's registration upon the disclosure and certification by such provider of the following:

(1) That it is licensed or registered to dispense contact lenses in the state where the dispensing facility is located and from where the contact lenses are dispensed, if required;

(2) The location, names, and titles of all principal corporate officers and the person who is responsible for overseeing the dispensing of contact lenses to Nebraska residents;

(3) That it complies with directions and appropriate requests for information from the regulating agency of each state where it is licensed or registered;

(4) That it will respond directly and within a reasonable period of time to all communications from the department concerning emergency circumstances arising from the dispensing of contact lenses to Nebraska residents;

(5) That it maintains its records of contact lenses dispensed to Nebraska residents so that such records are readily retrievable;

(6) That it will cooperate with the department in providing information to the regulatory agency of any state where it is licensed or registered concerning matters related to the dispensing of contact lenses to Nebraska residents;

(7) That it conducts business in a manner that conforms to the requirements of section 88 of this act;

(8) That it provides a toll-free telephone service for responding to patient questions and complaints during its regular hours of operation and agrees to (a) include the toll-free number in literature provided with mailed contact lenses and (b) refer all questions relating to eye care for the lenses prescribed back to the contact lens prescriber; and

(9) That it provides the following, or substantially equivalent, written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS.

Sec. 90. The mail-order ophthalmic provider shall pay a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in Nebraska as established in and at the times provided for in section 71-1,147.07 prior to January 1, 2002, and in the Health Care Facility Licensure Act on and after January 1, 2002. Such fees shall be remitted to the State Treasurer for credit to the Nebraska Pharmaceutical Fund prior to January 1, 2002, and to the Department of Health and Human Services Regulation and Licensure Cash Fund on and after January 1, 2002.

Sec. 91. The department, upon the recommendation of the Board of Pharmacy, the Board of Optometry, or the Board of Medicine and Surgery, shall notify the Attorney General of any possible violations of the Mail Order Contact Lens Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, the Attorney General may commence an action in the district court of Lancaster County to enjoin such person from further mailing, shipping, or otherwise delivering contact lenses into Nebraska.

Sec. 92. The department, upon the joint recommendation of the Board of Pharmacy, Board of Optometry, and Board of Medicine and Surgery, may adopt and promulgate rules and regulations for enforcement of the Mail Order Contact Lens Act.

Sec. 93. Sections 21, 27, 28, 30 to 32, 39 to 42, 44, 65, 67, 69, 70, 77 to 79, 82, 83, 85, 94, and 96 of this act become operative on January 1, 2002. The other sections of this act become operative on their effective date.

Sec. 94. Original sections 71-1,144.05, 71-1,145.01, 71-1,147.27, 71-1,147.32, 71-5405 to 71-5407, and 71-7420, Reissue Revised Statutes of

Nebraska, and sections 71-155.01, 71-1,145, 71-1,147.15, 71-1,147.31, 71-1,147.34, 71-401, 71-2407, 71-2411, 71-7409, and 71-7416, Revised Statutes Supplement, 2000, are repealed.

Sec. 95. Original sections 28-409, 28-413, 28-417, 28-418, 28-429, 28-438, 28-442, 71-161.12, 71-161.16, 71-1,147.13, 71-1,147.36, 71-1,147.47, 71-1,147.52, 71-2501, and 71-6045, Reissue Revised Statutes of Nebraska, and sections 28-401, 28-406 to 28-408, 28-410 to 28-412, 28-414 to 28-416, 71-101, 71-147, 71-161.13, 71-172.01, 71-1,142, 71-1,143, 71-1,147, 71-1,147.33, 71-1,147.35, 71-1,147.42 to 71-1,147.46, 71-1,147.48, 71-1,147.50, 71-1,147.53, 71-1,147.55 to 71-1,147.57, 71-1,147.59, 71-425, 71-15,139, 71-2413, 71-2417, 71-2419, 71-2421, 71-5402, 71-6721, and 71-7417, Revised Statutes Supplement, 2000, are repealed.

Sec. 96. The following sections are outright repealed: Section 71-1,147.14, Reissue Revised Statutes of Nebraska, and section 71-462, Revised Statutes Supplement, 2000.

Sec. 97. The following sections are outright repealed: Section 28-402, Reissue Revised Statutes of Nebraska, and sections 71-1,147.39 to 71-1,147.41, 71-1,147.49, 71-1,147.51, 71-1,147.58, 71-1,147.60, and 71-1,147.61, Revised Statutes Supplement, 2000.

Sec. 98. Since an emergency exists, this act takes effect when passed and approved according to law.