

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 194

Introduced By: Pahls, 31

Read first time: January 9, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to the Uniform Licensing Law; to amend
2 sections 71-147.02, 71-150, 71-154, 71-155, 71-161.03,
3 71-168.01, 71-171, and 71-3,173, Reissue Revised Statutes of
4 Nebraska, and section 71-101, Revised Statutes Cumulative
5 Supplement, 2006; to change provisions relating to rules and
6 regulations and certain disciplinary actions; to harmonize
7 provisions; and to repeal the original sections.

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

1 Section 1. Section 71-101, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 71-101. Sections 71-101 to 71-1,107.30, 71-1,133 to
4 71-1,338, 71-1,343 to 71-1,361, and 71-1301 to 71-1354, section 2 of
5 this act, and the Physical Therapy Practice Act shall be known and
6 may be cited as the Uniform Licensing Law.

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

9 (1) Board or professional board means one of the boards
10 appointed by the State Board of Health pursuant to sections 71-111 and
11 71-112;

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

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

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

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

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

1 title;

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

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

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

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

24 Sec. 2. The department shall not adopt and promulgate or
25 otherwise amend or repeal any rule or regulation under sections 71-101
26 to 71-172.02 without giving notice to each credentialed person
27 subject to such sections of any hearing required by the

1 Administrative Procedure Act relating to such rule or regulation at
2 least thirty days prior to such hearing. The requirements of this
3 section shall be in addition to any requirements relating to adoption
4 and promulgation of rules and regulations under the Administrative
5 Procedure Act.

6 Sec. 3. Section 71-147.02, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 71-147.02. ~~The~~ Upon the unanimous vote of the
9 appropriate professional board, the department may temporarily
10 suspend or temporarily limit the license of any licensee, the
11 certificate of any certificate holder, or the registration of any
12 registrant without notice or a hearing if the director ~~determines~~
13 and the board, upon unanimous vote, determine that there is
14 reasonable cause to believe that grounds exist under section 71-147
15 for the revocation, suspension, or limitation of the license,
16 certificate, or registration and that the licensee's, certificate
17 holder's, or registrant's continuation in practice would constitute an
18 imminent danger to the public health and safety. Simultaneously with
19 any such action, upon the unanimous vote of the board, the
20 department shall institute proceedings for a hearing on the grounds
21 for revocation, suspension, or limitation of the license, certificate,
22 or registration. Such hearing shall be held no later than fifteen days
23 from the date of such temporary suspension or temporary limitation of
24 the license, certificate, or registration.

25 A continuance of the hearing shall be granted by the
26 department upon the written request of the licensee, certificate
27 holder, or registrant, and such a continuance shall not exceed thirty

1 days. A temporary suspension or temporary limitation order by the
 2 director shall take effect only upon the unanimous vote of the board
 3 and when the order is served upon the licensee, certificate
 4 holder, or registrant.

5 In no case shall a temporary suspension or temporary
 6 limitation of a license, certificate, or registration under this
 7 section be in effect for a period of time in excess of ~~ninety~~
 8 thirty days. If a decision is not reached within ~~ninety~~ thirty
 9 days, the licensee, certificate holder, or registrant shall be
 10 reinstated to full licensure, certification, or registration unless
 11 and until the department, upon a unanimous vote of the board,
 12 reaches a decision to revoke, suspend, or limit the license,
 13 certificate, or registration or otherwise discipline the licensee,
 14 certificate holder, or registrant.

15 Sec. 4. Section 71-150, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 71-150. (1) The Director of Regulation and Licensure shall
 18 have jurisdiction of proceedings (a) to deny the issuance of a
 19 license, certificate, or registration, ~~and~~ (b) to refuse renewal
 20 of a license, certificate, or registration, ~~and~~ (c)

21 (2) Upon the unanimous vote of the appropriate professional
 22 board, the director shall have jurisdiction of proceedings to
 23 discipline a licensee, certificate holder, or registrant.

24 ~~(2)~~ (3) To deny or refuse renewal of a license,
 25 certificate, or registration, the department shall send the applicant,
 26 licensee, certificate holder, or registrant, by registered or
 27 certified mail, notice setting forth the action taken and the reasons

1 for the determination. The denial or refusal to renew shall become
2 final thirty days after mailing the notice unless the applicant,
3 licensee, certificate holder, or registrant, within such thirty-day
4 period, gives written notice of his or her desire for a hearing. The
5 hearing shall be conducted in accordance with the Administrative
6 Procedure Act.

7 ~~(3)~~ (4) In order for the director to discipline a
8 licensee, certificate holder, or registrant, a petition shall be filed
9 by the Attorney General in all cases. The petition shall be filed in
10 the office of the director only upon the unanimous vote of the
11 appropriate professional board. The department may withhold a
12 petition for discipline or a final decision from public access for a
13 period of five days from the date of filing the petition or the date
14 the decision is entered or until service is made, whichever is
15 earliest.

16 Sec. 5. Section 71-154, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 71-154. Notice of the filing of a petition pursuant to
19 section 71-150 and of the time and place of hearing shall be served
20 upon the licensee, certificate holder, or registrant at least ~~ten~~
21 thirty days before the hearing. The notice may be served by any
22 method specified in section 25-505.01, or the director may permit
23 substitute or constructive service as provided in section 25-517.02
24 when service cannot be made with reasonable diligence by any of the
25 methods specified in section 25-505.01.

26 Sec. 6. Section 71-155, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 71-155. (1) The proceeding under section 71-150 shall be
2 summary in its nature and triable as an equity action and shall be
3 heard by the Director of Regulation and Licensure, ~~or by a hearing~~
4 ~~officer designated by the director under rules and regulations of the~~
5 ~~department.~~ Affidavits may be received in evidence in the discretion
6 of the director, ~~or hearing officer.~~ The department shall have
7 the power to administer oaths, to subpoena witnesses and compel their
8 attendance, and to issue subpoenas duces tecum and require the
9 production of books, accounts, and documents in the same manner and to
10 the same extent as the district courts of the state. Depositions may
11 be used by either party. Upon the completion of any hearing held under
12 this section, the director shall, if the petition is brought with
13 respect to subdivision (15) of section 71-148, make findings as to
14 whether the licensee's conduct was necessary to save the life of a
15 mother whose life was endangered by a physical disorder, physical
16 illness, or physical injury, including a life-endangering physical
17 condition caused by or arising from the pregnancy itself, and shall,
18 only upon the unanimous vote of the appropriate professional board,
19 have the authority through entry of an order to exercise in his or
20 her discretion any or all of the following powers, irrespective of the
21 petition:

- 22 (a) Issue a censure against the credentialed person;
23 (b) Place the credentialed person on probation;
24 (c) Place a limitation or limitations on the credential and
25 upon the right of the credentialed person to practice the profession
26 to such extent, scope, or type of practice, for such time, and under
27 such conditions as are found necessary and proper;

1 (d) Impose a civil penalty not to exceed twenty thousand
2 dollars. The amount of the penalty shall be based on the severity of
3 the violation;

4 (e) Enter an order of suspension of the credential;

5 (f) Enter an order of revocation of the credential; and

6 (g) Dismiss the action.

7 ~~(2) If the director determines that guilt has been~~
8 ~~established, the director may, at his or her discretion, consult with~~
9 ~~the professional board for the profession involved concerning~~
10 ~~sanctions to be imposed or terms and conditions of the sanctions.~~
11 ~~When the director consults with a professional board, the~~
12 ~~credentialed person shall be provided with a copy of the director's~~
13 ~~request, the recommendation of the board, and an opportunity to~~
14 ~~respond in such manner as the director determines.~~

15 ~~(3)~~ (2) The credentialed person shall not engage in the
16 practice of a profession after a credential to practice such
17 profession is revoked or during the time for which it is suspended. If
18 a credential is suspended, the suspension shall be for a definite
19 period of time to be set by the director and approved upon a
20 unanimous vote of the appropriate professional board. ~~The~~ When
21 approved by a unanimous vote of the board, the director may provide
22 that the credential shall be automatically reinstated upon expiration
23 of such period, reinstated if the terms and conditions as set by the
24 director are satisfied, or reinstated subject to probation or
25 limitations or conditions upon the practice of the credentialed
26 person. If such credential is revoked, such revocation shall be for
27 all times, except that at any time after the expiration of two years,

1 application may be made for reinstatement pursuant to section
2 71-161.04.

3 (3) Within sixty days after the completion of a hearing
4 under this section, the director shall enter an order regarding the
5 matter unless otherwise disposed of pursuant to section 71-161.03.
6 The director shall notify the credentialed person of such order
7 within such sixty-day period.

8 Sec. 7. Section 71-161.03, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-161.03. (1) Any petition filed with the Director of
11 Regulation and Licensure pursuant to section 71-150 may, at any time
12 prior to the entry of any order by the director, be disposed of by
13 stipulation, agreed settlement, consent order, or similar method as
14 agreed to between the parties and the unanimous vote of the
15 appropriate professional board. A proposed settlement shall be
16 submitted and considered in camera and shall not be a public record
17 unless accepted by the director and upon the unanimous vote of the
18 board. The director may review the input provided to the Attorney
19 General by the board pursuant to subsection (2) of this section. If
20 the settlement is acceptable to the director and the board, upon a
21 unanimous vote, he or she shall make it the sole basis of any order
22 he or she enters in the matter, and it may be modified or added to by
23 the director only upon the mutual consent of both of the parties
24 thereto and upon the unanimous vote of the board. If the settlement
25 is not acceptable to the director or the board, upon a unanimous
26 vote, it shall not be admissible in any subsequent hearing and it
27 shall not be considered in any manner as an admission.

1 (2) The Attorney General shall not enter into any agreed
2 settlement or dismiss any petition without first having given notice
3 of the proposed action and an opportunity to the appropriate
4 professional board to provide input into the terms of the settlement
5 or on dismissal. The board shall have fifteen days from the date of
6 the Attorney General's request to respond, but the recommendation of
7 the board, if any, shall not be binding on the Attorney General.
8 Meetings of the board for such purpose shall be in closed session, and
9 any recommendation by the board to the Attorney General shall not be a
10 public record until the pending action is complete, ~~except that~~
11 ~~if the director reviews the input provided to the Attorney General by~~
12 ~~the board as provided in subsection (1) of this section, the licensee~~
13 ~~or certificate holder shall also be provided a copy of the input and~~
14 ~~opportunity to respond in such manner as the director determines.~~

15 Sec. 8. Section 71-168.01, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 71-168.01. (1) Any person may make a complaint and request
18 investigation of an alleged violation of the Uniform Licensing Law or
19 rules and regulations issued under such law. ~~The~~ Upon the unanimous
20 vote of the appropriate professional board, the department shall
21 review all complaints and determine whether to conduct an
22 investigation and in making such determination ~~may~~ shall consider
23 factors such as:

24 (a) Whether the complaint pertains to a matter within the
25 authority of the department to enforce;

26 (b) Whether the circumstances indicate that a complaint is
27 made in good faith and is not malicious, frivolous, or vexatious;

1 (c) Whether the complaint is timely or has been delayed too
2 long to justify present evaluation of its merit. A complaint filed
3 twelve months or more after an allegation involving actual health and
4 safety issues or potential health and safety issues to the public
5 shall be dismissed. A complaint filed six months or more after any
6 other alleged violation with no obvious health and safety issues to
7 the public shall be dismissed. If the content of the complaint does
8 not merit a timely investigation under this subdivision for lack of
9 urgency in regard to protecting the public and the matter is
10 dismissed, the professional board may send a letter of concern to the
11 credentialed person urging corrective action;

12 (d) Whether the complainant may be a necessary witness if
13 action is taken and is willing to identify himself or herself and come
14 forward to testify; or

15 (e) Whether the information provided or within the knowledge
16 of the complainant is sufficient to provide a reasonable basis to
17 believe that a violation has occurred or to secure necessary evidence
18 from other sources.

19 A complaint submitted to the department shall be
20 confidential, and a person making a complaint shall be immune from
21 criminal or civil liability of any nature, whether direct or
22 derivative, for filing a complaint or for disclosure of documents,
23 records, or other information to the department.

24 (2) If the department determines that a complaint will not
25 be investigated, the department shall notify the complainant and the
26 credentialed person of such determination. ~~At the request of the~~
27 ~~complainant, the~~ The appropriate professional board may review the

1 complaint and provide its recommendation to the department on whether
2 the complaint merits investigation.

3 (3) A professional board may designate one of its
4 professional members to serve as a consultant to the department in
5 reviewing complaints and on issues of professional practice that may
6 arise during the course of an investigation. Such consultation shall
7 ~~not~~ be required for the department to evaluate a complaint or to
8 proceed with an investigation. A board may also recommend or confer
9 with a consultant member of its profession to assist the board or
10 department on issues of professional practice.

11 (4) ~~The~~ Within fourteen days after receipt of a
12 complaint, the department ~~may~~ shall notify the credentialed
13 person that a complaint has been filed and that an investigation
14 ~~will~~ may be conducted upon the unanimous vote of the professional
15 board. The notice shall include a copy of the complaint and the name
16 of the complainant. ~~except when the department determines that such~~
17 ~~notice may prejudice an investigation.~~

18 (5) The department shall advise the appropriate professional
19 board on the progress of investigations. ~~If requested by the~~
20 ~~complainant, the~~ The identity of the complainant shall ~~not~~ be
21 released to the board. When the department determines that an
22 investigation is complete, the department shall consult with the board
23 to obtain its recommendation for submission to the Attorney General.
24 In making a recommendation, the board may review all investigative
25 reports and have full access to the investigational file of the
26 department and any previous investigational information in the files
27 of the department on the credentialed person that may be relevant to

1 the investigation, except that reports or other documents of any law
2 enforcement agency provided to the department shall not be available
3 for board review except to the extent such law enforcement agency
4 gives permission for release to the board and reports provided by any
5 other agency or public or private entity, which reports are
6 confidential in that agency's or entity's possession and are provided
7 with the express expectation that the report will not be disclosed,
8 may be withheld from board review. The recommendation of the board
9 shall be made part of the completed investigational report of the
10 department and submitted to the Attorney General. The recommendation
11 of the board shall be based on precedent and be consistent with
12 similar cases. The recommendation shall be reasonable and fair to
13 represent an appropriate disciplinary action regarding the alleged
14 violation as compared to violations of a more severe or minor nature
15 and the respective disciplinary actions taken in other cases. The
16 recommendation of the board shall include, but not be limited to:
17 (a) The specific violations of statute, regulation, or both
18 that the board finds substantiated based upon the investigation;
19 (b) Matters which the board believes require additional
20 investigation; and
21 (c) The disposition or possible dispositions that the board
22 believes appropriate under the circumstances.
23 (6) If the department and the board disagree on the basis
24 for investigation or if the board recommends additional investigation
25 and the department and board disagree on the necessity of additional
26 investigation, the matter shall be ~~forwarded to the Attorney General~~
27 ~~for review and determination.~~ dismissed.

1 (7) Complaints or investigational records of the department
2 shall not be public records, shall not be subject to subpoena or
3 discovery, and shall be inadmissible in evidence in any legal
4 proceeding of any kind or character except a contested case before the
5 department. Such complaints or records shall be a public record if
6 made part of the record of a contested case before the department. No
7 person, including, but not limited to, department employees and
8 members of a professional board, having access to such complaints or
9 investigational records shall disclose such information in violation
10 of this section, except that the department may exchange such
11 information with law enforcement and other state licensing agencies as
12 necessary and appropriate in the discharge of the department's duties
13 and only under circumstances to ensure against unauthorized access to
14 such information. Violation of this subsection is a Class I
15 misdemeanor.

16 (8) All meetings of the professional boards or between a
17 board and staff of the department or the Attorney General on
18 investigatory matters shall be held in closed session, including the
19 voting of the board on any matter pertaining to the investigation or
20 recommendation.

21 Sec. 9. Section 71-171, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 71-171. Upon the request of ~~the department,~~ a
24 professional board, the Attorney General shall institute in the name
25 of the state the proper civil or criminal proceedings against any
26 person regarding whom a complaint has been made, charging him or her
27 with violation of any of the provisions of the Uniform Licensing Law,

1 and the county attorney, at the request of the Attorney General, ~~or~~
2 ~~of the department,~~ shall appear and prosecute such action when
3 brought in his or her county.

4 Sec. 10. Section 71-3,173, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 71-3,173. (1) The hearing in any disciplinary action shall
7 be before the director, ~~or a hearing officer appointed by the~~
8 ~~director.~~

9 (2) The department may, upon the unanimous vote of the
10 board, impose the disciplinary actions cited in section 71-155.

11 Sec. 11. Original sections 71-147.02, 71-150, 71-154,
12 71-155, 71-161.03, 71-168.01, 71-171, and 71-3,173, Reissue Revised
13 Statutes of Nebraska, and section 71-101, Revised Statutes Cumulative
14 Supplement, 2006, are repealed.