LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 869

Introduced by Gloor, 35.

Read first time January 13, 2014

Committee: Health and Human Services

A BILL

FOR AN ACT relating to the Uniform Controlled Substances Act; to amend sections 28-413, 28-415, 28-418, 28-1437, 28-1438.01, 28-1439, 38-2870, and 71-2417, Reissue Revised Statutes of Nebraska, sections 28-401.01 and 28-414, Revised Statutes Cumulative Supplement, 2012, and section 28-401, Revised Statutes Supplement, 2013; to define and redefine terms; to change and transfer provisions relating to prescriptions and controlled substances; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-401, Revised Statutes Supplement, 2013, is amended to read:

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

(1) Administer ~~shall mean~~ means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

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

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

(4) Controlled substance ~~shall mean~~ means a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance ~~shall~~ does 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 January 1, ~~2009,~~ 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance ~~shall mean~~ means 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~~ means the Department of Health and Human Services;

(7) Division of Drug Control ~~shall mean~~ means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense ~~shall mean~~ means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute ~~shall mean~~ means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe ~~shall mean~~ means to issue a medical order;

(11) Drug ~~shall mean~~ means (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~~ does not include devices or their components, parts, or accessories;

(12) Deliver or delivery ~~shall mean~~ means 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~~ means 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~~ does 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~~ means 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~~ means the production, preparation, propagation, conversion, 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~~ includes any packaging or repackaging of the

substance or labeling or relabeling of its container. Manufacture ~~shall~~ does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, 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~~ means 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~~ does 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~~ means 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~~ does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate ~~shall include~~ includes its racemic and levorotatory forms;

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

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

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

(20) Practitioner ~~shall mean~~ means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a 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 practice or research in this state, including an emergency medical service as defined in section 38-1207;

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

(22) Immediate precursor ~~shall mean~~ means 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~~ means the State of Nebraska;

(24) Ultimate user ~~shall mean~~ means 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) Hospital ~~shall have~~ has the same meaning as in section 71-419;

(26) Cooperating individual ~~shall mean~~ means 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;

(27) Hashish or concentrated cannabis ~~shall mean: (a) The~~ means (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;

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

(29) Imitation controlled substance ~~shall mean~~ means 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;

(30)(a) Controlled substance analogue ~~shall mean~~ means a substance (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 (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) Controlled substance analogue ~~shall~~ does 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 January 1, ~~2009,~~ 2014, (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 January 1, ~~2009,~~ 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid ~~shall mean~~ means 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~~ does 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;

(32) Chart order ~~shall mean~~ means 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~~ does not include a prescription;

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

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

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

(36) Reverse distributor ~~shall mean~~ means 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;

(37) Signature ~~shall mean~~ 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 86-611 or an electronic signature;

(38) Facsimile ~~shall mean~~ means a copy generated by a system that encodes a document or photograph into electrical signals,

transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature ~~shall have~~ has the definition found in section 86-621;

(40) Electronic transmission ~~shall mean~~ means transmission of information in electronic form. Electronic transmission ~~may include~~ includes computer-to-computer transmission or computer-to-facsimile transmission; ~~and~~

(41) Long-term care facility ~~shall mean~~ means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act; and ~~.~~

(42) Compounding has the same meaning as in section 38-2811.

Sec. 2. Section 28-401.01, Revised Statutes Cumulative Supplement, 2012, is amended to read:

28-401.01 Sections 28-401 to 28-456.01 and 28-458 to 28-462 and sections 5 to 11 of this act shall be known and may be cited as the Uniform Controlled Substances Act.

Sec. 3. Section 28-413, Reissue Revised Statutes of Nebraska, is amended to read:

28-413 Controlled substances listed in Schedules I and II

of section 28-405 shall be distributed by a registrant to another registrant ~~only~~ pursuant to an order form or the electronic controlled substance ordering system of the administration.

Compliance with the provisions of the Controlled Substances Act, 21 U.S.C. 801 et seq., as such act existed on ~~May 1, 2001,~~ January 1, 2014, respecting order forms shall be deemed compliance with this section.

Sec. 4. Section 28-414, Revised Statutes Cumulative Supplement, 2012, is amended to read:

28-414 (1)~~(a)~~ Except as otherwise provided in this ~~subsection~~ section 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~~ a prescription ~~bearing the signature of~~ from a practitioner authorized to prescribe. No prescription 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.

(2) A prescription for controlled substances listed in Schedule II of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, (d) dosage form of the drug or biological, if applicable, (e) quantity of the drug,

device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) prescribing practitioner's name and address, and (i) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (i) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

~~(b)~~ (3) 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 a facsimile of a written, signed prescription bearing the word "emergency" or~~ pursuant to an oral prescription reduced to writing in accordance with ~~subdivision (3)(b)~~ subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency".

~~(c)~~ (4)(a) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription if the original written, signed paper 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;~~ (a)(ii) or (iii) of this subsection;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper 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 enrolled in a hospice care program and bearing the words "hospice patient"; and

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

~~(iv)~~ (b) For purposes of subdivisions ~~(1)(c)(ii) and (1)(c)(iii) of this section,~~ (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall serve as the original written prescription and shall be maintained in accordance with ~~subdivision (3)(a) of this section.~~ subsection (1) of section 7 of this act.

~~(d)(i)~~ (5)(a) 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 or in the electronic record. 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 paper prescription.

~~(ii)~~ (b) 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 or in the electronic record. 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 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 medical order. Such medical order is valid for six months after the date of issuance. Authorization from a practitioner authorized to prescribe is required to refill 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 section 38-2871.~~

~~(b) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription. The facsimile 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. 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 maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records 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 a controlled substance may transfer:~~

~~(i) Any controlled substance listed in Schedule I or II of section 28-405 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 by a pharmacy inspector, by a reverse distributor, or by the federal Drug Enforcement Administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;~~

~~(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 individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or~~

~~(C) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients at such hospital may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the hospital 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 individuals credentialed under the Uniform Credentialing Act and designated by the pharmacy.~~

~~(iv) When the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by~~

~~the facility or hospital.~~

~~(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 records, 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.~~

Sec. 5. (1) Except as otherwise provided in this section 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, oral, or electronic medical order. Such medical order is valid for 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 section 38-2871.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following

information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, (d) dosage form of the drug or biological, if applicable, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with subsection (2) of section 7 of this act.

(4) A prescription for a controlled substance listed in

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

Sec. 6. (1) If a prescription is created, signed, transmitted, and received electronically, all records related to that prescription must be retained electronically.

(2) Electronic records must be maintained electronically for five years after the date of their creation or receipt.

(3) Records regarding controlled substances must be readily retrievable from all other records. Electronic records must be easily readable or easily rendered into a format that a person can read.

(4) Records of electronic prescriptions for controlled substances shall be maintained in an application that meets the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014. The computers on which the records are maintained may be located at another location, but the records must be readily retrievable at the registered location if requested by an agent of the administration or other law enforcement agent. The electronic application must be capable of printing out or transferring the records in a format that is readily understandable to an agent of the administration or other law enforcement agent at the registered

location.

Sec. 7. (1) Paper 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.

(2) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department and law enforcement for inspection without a search warrant.

(3) 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 serial number of the prescription under which it is recorded in the practitioner's prescription records, 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 paper prescription or so designates in an electronic prescription or an oral prescription, such label shall also bear the name of the controlled substance.

Sec. 8. A registrant who is the owner of a controlled substance may transfer:

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

(2) 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.

Sec. 9. (1) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this section when the need for such substances ceases. Complete records of the destruction of controlled substances pursuant to this section shall be maintained by the registrant for five years after the date of destruction.

(2) If the owner is a registrant:

(a) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;

(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 individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or

(c) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients in such hospital may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with subsection (4) of section 28-411.

(3) If the owner is a patient, such owner may utilize a medication take-back program or other lawfully recognized disposal program to dispose of his or her controlled substances obtained by prescription.

(4) If the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital.

Sec. 10. Section 28-1438.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~28-1438.01~~ (1) Any practitioner who gives information to a law enforcement officer or professional board appointed pursuant to the Uniform Credentialing Act shall not be subject to any civil,

criminal, or administrative liability or penalty for giving such information.

(2) As used in this section, unless the context otherwise requires:

(a) Information ~~shall mean~~ means information regarding unlawfully obtaining or attempting to obtain from a practitioner (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance; and

(b) Law enforcement officer ~~shall have~~ has the definition found in section 81-1401. ~~; and~~

~~(c) Practitioner shall have the definition found in section 28-401.~~

Sec. 11. Section 28-1439, Reissue Revised Statutes of Nebraska, is amended to read:

~~28-1439~~ Whenever matter is submitted to the criminalistics laboratory of the Nebraska State Patrol for chemical analysis to determine if the matter is, or contains, a controlled substance, the report of that analysis shall be admissible in any preliminary hearing in any court in Nebraska as prima facie evidence of the identity, nature, and quantity of the matter analyzed. Nothing in this section is intended to require the use of a laboratory report in a preliminary hearing or to prohibit the use of other evidence, including circumstantial evidence, in the preliminary hearing to establish the identity, nature, and quantity of a controlled

substance.

Sec. 12. Section 28-415, Reissue Revised Statutes of Nebraska, 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 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)(g) of section 28-414.~~ subsection (3) of section 7 of this act. No person shall alter, deface, or remove any label so affixed.

Sec. 13. 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~~ in compliance with 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 the Uniform Controlled Substances Act or any record required to be kept by 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 and sections 5 to 9 of this act to distribute or dispense a controlled substance in violation of section 28-414 and sections 5 to 9 of this act;

(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 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 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. 14. Section 28-1437, Reissue Revised Statutes of Nebraska, is amended to read:

28-1437 (1) It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain by means of misrepresentation, fraud, forgery, deception, or subterfuge possession of any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act, but which can only be lawfully distributed, under federal statutes in effect on ~~April 16, 1996,~~ January 1, 2014, upon the written or oral order of a practitioner authorized to prescribe such substances.

(2) Such substances as referred to in subsection (1) of

this section shall be known as legend drug substances, which shall be defined as including all drug substances not classified as controlled substances under the Uniform Controlled Substances Act, but which require a written or oral prescription from a practitioner authorized to prescribe such substances and which may only be lawfully dispensed by a duly licensed pharmacist, in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 to 392, in effect on ~~April 16, 1996.~~ January 1, 2014.

(3) A prescription for a legend drug may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile or electronic transmission. Except as otherwise provided in section 28-414 and sections 5 to 9 of this act for prescriptions for Schedule II, III, IV, or V controlled substances, the facsimile or electronic transmission shall serve as the original prescription for purposes of this ~~subsection.~~ section.

Sec. 15. Section 38-2870, Reissue Revised Statutes of Nebraska, is amended to read:

38-2870 (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 38-2850. 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. The Pharmacy Practice 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 and sections 5 to 9 of this act, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern by the following means: (a) In writing, (b) orally, (c) by facsimile or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile or electronic transmission of a medical order which is not signed by the practitioner. Such order shall be treated the same as an oral medical order.

(4) Except as otherwise provided in section 28-414 and sections 5 to 9 of this act, any medical order transmitted by facsimile or electronic transmission shall (a) be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or

pharmacist intern in a licensed pharmacy of the patient's choice. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy, (b) identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law, and (c) serve as the original medical order if all other requirements of this subsection are satisfied. Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature or a digital signature.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

Sec. 16. Section 71-2417, Reissue Revised Statutes of Nebraska, is amended to read:

71-2417 Any emergency box containing a controlled substance listed in section 28-405 and maintained at a long-term care facility shall be exempt from ~~the provisions of subdivision (3)(g) of section 28-414.~~ subsection (3) of section 7 of this act.

Sec. 17. Original sections 28-413, 28-415, 28-418,

28-1437, 28-1438.01, 28-1439, 38-2870, and 71-2417, Reissue Revised Statutes of Nebraska, sections 28-401.01 and 28-414, Revised Statutes Cumulative Supplement, 2012, and section 28-401, Revised Statutes Supplement, 2013, are repealed.