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LEGISLATURE OF NEBRASKA

ONE HUNDRED SEVENTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 392

Introduced by Stinner, 48.

Read first time January 14, 2021

Committee: Health and Human Services

A BILL FOR AN ACT relating to psychologists; to amend sections 38-2838, 38-2850, 38-3112, 71-2445, and 71-2473, Reissue Revised Statutes of Nebraska, and sections 28-401, 38-3101, and 38-3111, Revised Statutes Cumulative Supplement, 2020; to adopt the Prescribing Psychologist Practice Act; to define and redefine terms; to provide for the use of certain terms; to change the membership of the Board of Psychology; to harmonize provisions; and to repeal the original sections.

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

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Section 1. Section 28-401, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

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

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I through V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, hemp, 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, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

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

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled

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Substances Act;

(8) Dispense 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 means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug 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 does not include devices or their components, parts, or accessories;

(12) Deliver or delivery 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) Hemp has the same meaning as in section 2-503;

(14)(a) Marijuana 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.

(b) Marijuana 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, the sterilized seed of such plant which is incapable of germination, or cannabidiol contained in a drug

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product approved by the federal Food and Drug Administration or obtained pursuant to sections 28-463 to 28-468.

(c) Marijuana does not include hemp.

(d) When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it 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.

(e) When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(15) Manufacture 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 includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture 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;

(16) Narcotic drug 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

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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 does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(17) Opiate 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 does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(18) Opium poppy means the plant of the species Papaver somniferum L., except the seeds thereof;

(19) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(20) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(21) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, a prescribing psychologist, 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;

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(22) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(23) Immediate precursor 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;

(24) State means the State of Nebraska;

(25) Ultimate user 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;

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

(27) Cooperating individual 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;

(28)(a) Hashish or concentrated cannabis means (i) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (ii) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.

(b) When resins extracted from (i) industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701 or (ii) hemp as defined in section 2-503 are in the possession of a person as authorized under the Nebraska Hemp Farming Act, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(29) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital,

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(e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(30) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue 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 or controlled substance analogue. 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;

(31)(a) Controlled substance analogue 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 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, 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

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January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(32) Anabolic steroid 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 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;

(33) Chart order 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 does not include a prescription;

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

(35) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(36) Registrant means any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice;

(37) Reverse distributor 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;

(38) 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

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form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(39) Facsimile 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;

(40) Electronic signature has the definition found in section 86-621;

(41) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(42) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(43) Compounding has the same meaning as in section 38-2811;

(44) Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body; and

(45) Lookalike substance means a product or substance, not specifically designated as a controlled substance in section 28-405, that is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance or that possesses one or more of the following indicia or characteristics:

(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement,

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stimulation, or another effect on the human body that replicates or mimics those produced by a controlled substance;

(b) The name or packaging of the product or substance uses images or labels suggesting that it is a controlled substance or produces effects on the human body that replicate or mimic those produced by a controlled substance;

(c) The product or substance is marketed or advertised for a particular use or purpose and the cost of the product or substance is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;

(d) The packaging or label on the product or substance contains words or markings that state or suggest that the product or substance is in compliance with state and federal laws regulating controlled substances;

(e) The owner or person in control of the product or substance uses evasive tactics or actions to avoid detection or inspection of the product or substance by law enforcement authorities;

(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will replicate or mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;

(g) The owner or person in control of the product or substance makes a verbal or written statement to a prospective customer, buyer, or recipient of the product or substance implying that the product or substance may be resold for profit; or

(h) The product or substance contains a chemical or chemical compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing on

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the product’s packaging or label or depicted in advertisement of the product or substance.

Sec. 2. Section 38-2838, Reissue Revised Statutes of Nebraska, is amended to read:

38-2838 Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, a prescribing psychologist, or a veterinarian.

Sec. 3. Section 38-2850, Reissue Revised Statutes of Nebraska, is amended to read:

38-2850 As authorized by the Uniform Credentialing Act, 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) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, nurse practitioners, and physician assistants, and prescribing psychologists, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(2) 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 Nebraska Liquor Control Act;

(3) 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 professionals;

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

(5) Certified nurse midwives, certified registered nurse anesthetists, nurse practitioners, and physician assistants, and

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prescribing psychologists who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(6) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents as authorized under the Optometry Practice Act, and ophthalmologists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents;

(7) Registered nurses or licensed practical 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 repackaged or prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(8) 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;

(9) 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;

(10) A person accredited by an accrediting body who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users; and

(11) A person accredited by an accrediting body who, pursuant to a medical order, (a) sells, delivers, or distributes devices described in subsection (2) of section 38-2841 to patients or ultimate users or (b)

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purchases or receives such devices with intent to sell, deliver, or distribute to patients or ultimate users.

Sec. 4. Section 38-3101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

38-3101 Sections 38-3101 to 38-3133 and the Prescribing Psychologist Practice Act shall be known and may be cited as the Psychology Practice Act.

Sec. 5. Section 38-3111, Revised Statutes Cumulative Supplement, 2020, is amended to read:

38-3111 (1) Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in the Prescribing Psychologist Practice Act, in the Psychology Practice Act, in the Sex Offender Commitment Act, and in section 44-513 includes ~~means~~ only psychologists licensed to practice psychology in this state under section 38-3114 or under similar provisions of the Psychology Interjurisdictional Compact and such references do not include ~~does not mean~~ persons holding a special license under section 38-3116 or holding a provisional license under the Psychology Practice Act.

(2) Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Credentialing Act except for persons licensed under section 38-3116 or holding a provisional license under the Psychology Practice Act.

Sec. 6. Section 38-3112, Reissue Revised Statutes of Nebraska, is amended to read:

38-3112 The board shall consist of five professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165, except that (1) two

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of the five years of experience for professional members may have been served in teaching or research and (2) beginning no later than three years after the effective date of this act, at least one of the professional members shall be a prescribing psychologist.

Sec. 7. Sections 7 to 41 of this act shall be known and may be cited as the Prescribing Psychologist Practice Act.

Sec. 8. For purposes of the Prescribing Psychologist Practice Act, the definitions in sections 9 to 17 of this act apply.

Sec. 9. Advisory committee means the Prescribing Psychologist Advisory Committee.

Sec. 10. Collaborative practice agreement means a written agreement between a prescribing psychologist with a prescription certificate and a licensed physician that meets the requirements of section 18 of this act.

Sec. 11. Prescribing psychologist means a licensed psychologist who holds a valid prescription certificate or provisional prescription certificate.

Sec. 12. Prescription certificate means a certificate to exercise prescriptive authority issued pursuant to section 26 of this act.

Sec. 13. Prescriptive authority means the authority to order, prescribe, discontinue, administer, and provide samples of psychotropic medication.

Sec. 14. Primary health care practitioner means a physician, nurse practitioner, or other qualified health care provider who (1) has an active clinical relationship with a patient and is principally responsible for the health care needs of the patient, (2) is attending to the health care needs of the patient, or (3) is considered by the patient to be the patient's primary health care practitioner.

Sec. 15. Provisional prescription certificate means a certificate to exercise prescriptive authority issued pursuant to section 20 of this act.

Sec. 16. Psychotropic medication means any drug or controlled

substance, other than an opiate as defined in section 28-401, recognized in or customarily used for the management of a mental, nervous, emotional, behavioral, substance abuse, or cognitive disease or disorder, including the kinds and degrees of mental and emotional disorders found in the International Classification of Diseases or the Diagnostic and Statistical Manual of Mental Disorders, as approved by the department with the recommendation of the board.

Sec. 17. Supervising physician means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery, who is board-certified in family medicine, internal medicine, pediatrics, psychiatry, or another specialty, and who prescribes psychotropic medication for the treatment of mental disorders to patients in the normal course of the person's medical practice.

Sec. 18. (1) A collaborative practice agreement shall establish clinical protocols and practice guidelines relevant to the scope of practice of the prescribing psychologist with a prescription certificate and not the autonomous practice of psychology. The practice guidelines may include limitations on the prescribing of psychotropic medication by a prescribing psychologist with a prescription certificate and protocols for prescribing to special populations.

(2) The department, in consultation with the board and the advisory committee, shall adopt and promulgate rules and regulations to establish criteria for (a) practice guidelines to be included in collaborative practice agreements and (b) protocols for prescribing medication for special populations.

Sec. 19. (1) A licensed psychologist shall not have prescriptive authority in this state unless the psychologist has been issued a prescription certificate or provisional prescription certificate pursuant to the Prescribing Psychologist Practice Act.

(2) A psychologist who serves in the armed forces of the United States or the United States Public Health Service or who is employed by

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the United States Department of Veterans Affairs or another federal agency is not subject to certification under the Prescribing Psychologist Practice Act if the practice of the psychologist is limited to that service or employment.

Sec. 20. A licensed psychologist may apply to the department for a provisional prescription certificate. The application shall be made on a form approved by the board and accompanied by the appropriate fee and evidence satisfactory to the department that the applicant:

(1) Possesses a doctoral degree in health service psychology and holds an unrestricted license to practice psychology in Nebraska;

(2) Has successfully completed a postdoctoral degree in clinical psychopharmacology, or the equivalent as determined by the board, from an institution of higher education that meets the requirements of section 21 of this act as determined by the department;

(3) Has passed a national proficiency examination in clinical psychopharmacology developed by a nationally recognized body and approved by the board. The examination shall be passed within three years immediately preceding the date of application for the provisional prescription certificate. The board may adopt rules and regulations, as provided in section 38-126, to specify the passing score on the examination and the number of opportunities the applicant has to pass the examination before no longer being considered for a provisional prescription certificate;

(4) Has completed a practicum in clinical assessment and pathophysiology meeting the requirements of section 22 of this act;

(5) Has completed a practicum focused on treating patients with mental disorders meeting the requirements of section 23 of this act;

(6) Has completed the requirements of subdivisions (4) and (5) of this section within three years immediately preceding the date of the application;

(7) Has malpractice insurance sufficient to meet rules and

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regulations adopted by the board and promulgated by the department as provided in section 38-126;

(8) Possesses current certification in Basic Life Support; and

(9) Has submitted a proposed supervision plan for the provisional prescription certificate which meets the requirements of section 25 of this act. The supervision plan shall include information regarding the supervising physician and proposed arrangement for supervision sessions with the prescribing psychologist that involve a minimum of four hours of supervision each month. The proposed supervision plan shall be reviewed by the department for approval prior to issuance of the provisional prescription certificate.

Sec. 21. For purposes of issuing a provisional prescription certificate under section 20 of this act, an institution of higher education shall:

(1) Be regionally accredited by a regional or professional accrediting organization recognized by the United States Department of Education;

(2) Meet standards of the American Psychological Association for postdoctoral education and training in psychopharmacology for prescriptive authority;

(3) Offer a postdoctoral master's program in clinical psychopharmacology, or the equivalent thereof as determined by the board, that provides a structured sequence of study, with at least four hundred fifty hours of intensive didactic education, that includes instruction in each of the following areas:

(a) Anatomy and physiology;

(b) Biochemistry;

(c) Neurosciences to include neuroanatomy, neuropathology, neurophysiology, neurochemistry, and neuroimaging;

(d) Pharmacology;

(e) Psychopharmacology;

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(f) Clinical medicine and pathophysiology;

(g) Health assessment, including relevant physical and laboratory assessment;

(h) Diversity and lifespan factors and special populations;

(i) Professional, ethical, legal, and conflict of interest issues; and

(j) Case reviews that cover a broad range of clinical psychopathologies, complicating medical conditions presenting as psychiatric illness, diagnostic questions, choice of psychotropic medication, management of side effects from psychotropic medication, compliance problems, and alternative treatment approaches;

(4) Employ faculty and supervisors sufficient in number to accomplish the program's education and training goals;

(5) Employ a training director who is a licensed psychologist with expertise in clinical psychopharmacology, a psychiatrist, or another qualified health care professional with expertise consistent with the program's mission and goals to train psychologists to effectively and safely prescribe psychotropic medications;

(6) Provide for the frequent evaluation of students' knowledge and application of that knowledge; and

(7) Ensure every graduate completes necessary training in basic science as part of the admission and training process.

Sec. 22. (1) For purposes of issuing a provisional prescription certificate under section 20 of this act, a practicum in clinical assessment and pathophysiology shall:

(a) Be supervised by a supervising physician;

(b) Involve four hundred patient encounters as defined in rules and regulations adopted and promulgated by the department, with the recommendation of the board and the advisory committee, pursuant to section 38-126;

(c) Provide the applicant with clinical experience through direct

observation and hands-on training with a supervising physician in a medical setting; and

(d) Provide the opportunity to gain experience required for the verification form required pursuant to this section.

(2) The board, in consultation with the advisory committee, shall adopt rules and regulations pursuant to section 38-126, including a verification form, for the practicum in clinical assessment and pathophysiology. The form shall include verification by the supervising physician, or training director of the postdoctoral psychopharmacology program, that the applicant:

(a) Demonstrated competency in assessing a medically diverse patient population;

(b) Adequately assessed vital signs;

(c) Observed the progression of illness and continuity of care of individual patients;

(d) Demonstrated competent laboratory assessment; and

(e) Demonstrated competence in physical and health assessment techniques.

Sec. 23. (1) For purposes of issuing a provisional prescription certificate under section 20 of this act, a practicum focused on treating patients with mental disorders shall:

(a) Include four hundred hours focused on treating no fewer than one hundred separate patients with mental disorders;

(b) Be supervised by a supervising physician, a prescribing psychologist with an unrestricted prescription certificate, or more than one of such supervisors to meet the requirements of the practicum; and

(c) Provide the opportunity to gain experience required for the verification form required pursuant to this section.

(2) The board, in consultation with the advisory committee, shall adopt rules and regulations pursuant to section 38-126 for the practicum focused on treating patients with mental disorders, including required

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supervision in person, pertinent clinical activities, and a verification form. The form shall include verification by the supervising physician, prescribing psychologist, or training director of the postdoctoral psychopharmacology program, that the applicant:

(a) Was involved in the assessment and treatment of one hundred separate patients presenting with mental disorders;

(b) Received an intensive supervised experience appropriate to the current and anticipated practice of the applicant;

(c) Was involved in the assessment and treatment of children or other special populations if appropriate to the current and anticipated practice of the applicant;

(d) Was involved in the assessment and treatment of patients with a range of mental disorders;

(e) Was exposed to acute, short-term, and maintenance strategies for psychotropic medication;

(f) Was exposed to patients with a range of medical co-morbidities;

(g) Recommended safe and effective pharmacological interventions for the one hundred patients, with any prescriptions being issued by the supervising physician, prescribing psychologist, or other licensed practitioner with authority to prescribe;

(h) Recommended safe and effective management of side effects of psychotropic medication; and

(i) Completed the practicum in not less than six months or more than three years.

Sec. 24. The board, in consultation with the advisory committee, shall develop a procedure to address any deficiencies in the training of an applicant prior to issuance of a provisional prescription certificate. The review process may result in a remediation plan for the applicant. The remediation plan may include refresher courses, approved by the board, which provide a planned program of supervised educational training that involves review of knowledge and skills for effective and safe

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prescribing practices.

Sec. 25. (1) A licensed psychologist holding a provisional prescription certificate shall have prescriptive authority subject to supervision. Supervision shall be provided either in person, by telephone, or by live video communication. A licensed psychologist shall have a minimum of two years of experience with prescriptive authority subject to supervision prior to eligibility for a prescription certificate.

(2) In accordance with the supervision plan approved as required under section 20 of this act, the supervising physician shall document and verify that the licensed psychologist has safely prescribed psychotropic medication and has demonstrated competence in review of systems, medical history, physical examination, interpretation of medical tests, differential diagnosis, integrated treatment planning, collaboration with health care practitioners, and management of complications and side effects of psychotropic medication. The supervising physician shall make such documentation available upon request by the board or the department.

(3) Prior to application for a prescription certificate, the licensed psychologist shall evaluate a minimum of one hundred separate patients diagnosed with a mental disorder where a pharmacological treatment is considered as a treatment option, even if a decision is made not to prescribe psychotropic medication to the patient. If the licensed psychologist specializes in the care of children, elderly, or other special populations, the licensed psychologist shall complete at least one year of exercising prescriptive authority with such populations prior to application for a prescription certificate.

(4) The licensed psychologist shall maintain documentation on patients seen during the period of holding a provisional prescription certificate. The documentation shall include demographic information on each patient, the psychotropic medication prescribed, and other

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information as determined by the board. The documentation shall account for each patient encounter and the supervision hours and shall contain the name and signature of the supervising physician. The licensed psychologist shall make such documentation available upon request by the board or the department while holding a provisional prescription certificate and shall submit the documentation at the time of application for a prescription certificate.

Sec. 26. A licensed psychologist who holds a provisional prescription certificate may apply to the department for a prescription certificate. It shall be a condition of practice under a prescription certificate that the prescribing psychologist is a party to a collaborative practice agreement. The application shall be made on a form approved by the board and accompanied by the appropriate fee and evidence satisfactory to the department that the applicant:

(1) Holds an unrestricted license to practice psychology in Nebraska;

(2) Holds a provisional prescription certificate;

(3) Has successfully completed a minimum of two years of experience with prescriptive authority under a provisional prescription certificate supervised by a supervising physician pursuant to the supervision plan approved as required under section 20 of this act and verified pursuant to section 25 of this act;

(4) Has malpractice insurance sufficient to meet rules and regulations adopted by the board and promulgated by the department as provided in section 38-126; and

(5) Possesses current certification in Basic Life Support.

Sec. 27. (1) A psychologist licensed in another jurisdiction may apply for a prescription certificate or provisional prescription certificate based on licensure or credentialing in another jurisdiction if the applicant meets the criteria for having prescriptive authority under the Prescribing Psychologist Practice Act.

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(2) A psychologist licensed in another jurisdiction may apply for a prescription certificate based on ten years of experience with prescriptive authority in another jurisdiction with verification approved by the board that the applicant has had no disciplinary sanction during the entire period of experience with prescriptive authority.

Sec. 28. A provisional prescription certificate expires upon receipt of a prescription certificate or two years after the date of issuance of the provisional prescription certificate, whichever occurs first. The provisional prescription certificate may only be extended with approval of the department, in consultation with the board. A licensed psychologist holding a provisional prescription certificate may apply for a prescription certificate or apply for an additional two-year period of supervised practice under a provisional prescription certificate within ninety days prior to the expiration of the provisional prescription certificate.

Sec. 29. A prescription certificate expires two years after the date of issuance or renewal of the prescription certificate. The department, in consultation with the board, shall adopt and promulgate rules and regulations pursuant to section 38-126 which establish a method for renewal of a prescription certificate.

Sec. 30. (1) Each prescribing psychologist shall complete no fewer than forty hours of professional activities directed at maintaining continuing competency during each twenty-four-month period.

(2) An applicant for renewal of a prescription certificate or extension of a provisional prescription certificate shall present satisfactory evidence to the department demonstrating successful completion of approved continuing competency hours. The board shall adopt rules and regulations pursuant to section 38-126 related to the content of approved continuing competency relevant to effective and safe prescribing practices for psychotropic medication and approval of sponsors of continuing competency hours.

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(3) Any continuing competency hours that are credited toward completion of the hours required for a certificate shall not be credited toward the requirements for continuing competency for a license to practice psychology.

Sec. 31. (1) A licensed psychologist holding a provisional prescription certificate shall inform the public of the supervisory relationship required for exercising prescriptive authority under the authority of a provisional prescription certificate. Such licensed psychologist shall use the term provisional prescription certificate when communicating credentials to the public.

(2) A licensed psychologist holding a provisional prescription certificate shall inform each patient and the patient's legal guardian, if any, that the psychologist has received specialized training in the prescription of psychotropic medication, that the psychologist is transitioning to independent psychopharmacological practice, and that the psychologist is practicing under supervision with respect to the prescribing of psychotropic medication.

Sec. 32. A prescribing psychologist shall have prescriptive authority under the terms and conditions of the certificate issued to the prescribing psychologist. Each prescription issued by a prescribing psychologist shall comply with all applicable state and federal laws and shall be identified as issued by a prescribing psychologist in a manner determined by the department.

Sec. 33. A prescribing psychologist may order and interpret laboratory studies and other medical diagnostic procedures as necessary for the diagnosis and assessment of mental, nervous, emotional, behavioral, substance abuse, and cognitive diseases or disorders and treatment maintenance, including laboratory studies necessary for the monitoring of potential side effects associated with psychotropic medication. The board shall adopt rules and regulations pursuant to section 38-126, in consultation with the advisory committee, related to

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ordering and interpreting laboratory studies by prescribing psychologists.

Sec. 34. A prescribing psychologist shall limit practice to the areas of competence in which proficiency has been gained through education, training, and experience. A prescribing psychologist shall not prescribe psychotropic medication that is not authorized in rules and regulations adopted and promulgated by the department pursuant to section 38-126, with the recommendation of the board in consultation with the advisory committee. A prescribing psychologist shall not prescribe to treat conditions that include chronic pain; endocrine, cardiovascular, orthopedic, neurological, and gynecological illness; or other nonpsychiatric illnesses, disorders, or illnesses causing mental disorders. A prescribing psychologist shall not perform medical procedures such as spinal taps, electroconvulsive therapy, intramuscular or intravenous administration of psychotropic medication, or phlebotomy.

Sec. 35. (1) When prescribing psychotropic medication for a patient, a prescribing psychologist shall maintain ongoing communication with the primary health care practitioner who oversees the patient's general medical care. The prescribing psychologist shall provide the primary health care practitioner a summary of the treatment plan and followup reports as dictated by the patient's condition. The purpose of the communication includes ensuring that necessary medical examinations are conducted and determining whether psychotropic medication prescribed by the prescribing psychologist would be contraindicated for the patient's medical condition. The prescribing psychologist shall prescribe only in consultation and collaboration with the patient's primary health care practitioner and with the concurrence of such primary health care practitioner. If a patient does not have a primary health care practitioner, the prescribing psychologist shall not prescribe to the patient. The board shall adopt rules and regulations pursuant to section 38-126, in consultation with the advisory committee, relating to

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communication from a prescribing psychologist to a primary health care practitioner.

(2) Communication between a primary health care practitioner and a prescribing psychologist may be conducted in person, by telephone, electronically, in writing, or by some other appropriate means. The prescribing psychologist shall document communications with the patient's primary health care practitioner in the patient's health care record. A prescribing psychologist shall have contact with each patient's primary health care practitioner on at least a semiannual basis to relay information regarding the care of a patient receiving psychotropic medication.

(3) A prescribing psychologist and a primary health care practitioner shall be responsible for the respective individual's decisions in managing the care of a patient. The prescribing psychologist is responsible for the decision made by the prescribing psychologist to prescribe psychotropic medication as part of a treatment plan and is responsible for the choice of psychotropic medication. The prescribing psychologist is responsible for monitoring the side effects of psychotropic medication prescribed by the psychologist. The prescribing psychologist is responsible for managing common side effects and making a referral to a psychiatrist or another practitioner when necessary to manage side effects outside the scope of practice and training of the prescribing psychologist. A primary health care practitioner shall not be liable for the acts of a prescribing psychologist.

(4) If an emergency exists that may jeopardize the health and well-being of the patient, the prescribing psychologist may, without prior communication with the primary health care practitioner, prescribe psychotropic medications or modify an existing prescription for psychotropic medication for that patient. The prescribing psychologist shall then contact the primary health care practitioner as soon as possible. The prescribing psychologist shall document in the patient's

treatment file the nature and extent of the emergency and attempts to establish contact with the primary treating health practitioner prior to prescribing.

(5) If a prescribing psychologist is serving in an area declared by the Governor or the President of the United States as an emergency or disaster area, an onsite physician, or other qualified health care professional as defined in state or federal regulations, may serve as the primary health care practitioner.

Sec. 36. Unless specifically agreed to by the primary health care practitioner, a prescribing psychologist shall not prescribe a psychotropic medication for a patient with serious co-morbid disease of the central nervous system, cardiac arrhythmia, or blood dyscrasia; for a patient who is being pharmacologically treated for coronary vascular disease; for a patient who is pregnant or breast feeding; for a patient who is hospitalized for an acute medical condition; or for any other condition proscribed by the rules and regulations adopted and promulgated by the department, with the recommendation of the board as provided in section 38-126.

Sec. 37. (1) A licensed psychologist shall be subject to disciplinary action against the psychologist's license, prescription certificate, provisional prescription certificate, or both the license and certificate for any violation of the Prescribing Psychologist Practice Act. The disciplinary action shall be conducted according to the Uniform Credentialing Act.

(2) Pursuant to section 38-126, the department, with the recommendation of the board, and in consultation with the advisory committee, shall adopt and promulgate rules and regulations that ensure that a prescribing psychologist limits the practice by such psychologist to demonstrated areas of competence and safe practices. A prescribing psychologist shall only prescribe psychotropic medication in situations where the psychologist has adequate education and training to safely

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prescribe. The prescribing psychologist shall not self-prescribe or prescribe to any person who is a member of the prescribing psychologist's immediate family or household. Before prescribing a psychotropic medication that is classified as a controlled substance, the prescribing psychologist shall check the patient's dispensed prescription drug information using the prescription drug monitoring program described in sections 71-2454 to 71-2456.

(3) The department shall refer any concerns regarding acts or omissions of a supervising physician to the Board of Medicine and Surgery.

Sec. 38. The department shall establish and collect fees for credentialing under the Prescribing Psychologist Practice Act as provided in sections 38-151 to 38-157.

Sec. 39. (1) It shall be a violation of the Prescribing Psychologist Practice Act for any person who does not hold a prescription certificate in accordance with the act to represent that such person is a prescribing psychologist. It shall be a violation of the act for any psychologist who does not hold a prescription certificate in accordance with the act to exercise prescriptive authority whether practicing as an individual, firm, partnership, limited liability company, corporation, or other entity.

(2) Any person who represents that such person is a prescribing psychologist in violation of the act or who exercises prescriptive authority in violation of the act shall be guilty of a Class II misdemeanor. Each day of violation shall constitute a separate offense.

(3) Any person filing or attempting to file, as belonging to such person, a diploma or license of another or a forged affidavit of identification shall be guilty of a Class IV felony.

Sec. 40. (1) The Prescribing Psychologist Advisory Committee is created within the department. The advisory committee shall assist the board and the department in developing and recommending rules and

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regulations related to prescription certificates.

(2)(a) The advisory committee shall be composed of a psychiatrist, a pediatrician, a family practice physician, a pharmacist who has a doctorate degree and expertise in clinical psychopharmacology, and a psychologist. To be eligible to serve as a member of the advisory committee, a person shall be licensed to practice the specified profession in Nebraska. The psychologist member shall possess a postdoctoral master's degree in clinical psychopharmacology or, during membership on the advisory committee, work in a university setting and have expertise in the neurosciences and psychopharmacology.

(b) The department, with the recommendation of the Board of Psychology, shall appoint the psychiatrist, the pediatrician, and the family practice physician, from a list of potential members provided by the Board of Medicine and Surgery. The department, with the recommendation of the Board of Psychology, shall appoint the pharmacist from a list of potential members provided by the Board of Pharmacy. The department, with the recommendation of the Board of Psychology, shall appoint the psychologist.

(3) The chairperson of the Board of Psychology shall serve as an ex officio, nonvoting member of the advisory committee.

Sec. 41. (1) The advisory committee shall convene at the request of the department or the board to make recommendations regarding:

(a) Rules and regulations adopted and promulgated under the Prescribing Psychologist Practice Act and proposed changes to such rules and regulations;

(b) Approval of postdoctoral training programs at institutions of higher education that meet the requirements of section 21 of this act;

(c) The scope of psychotropic medication that may be prescribed by a prescribing psychologist;

(d) Safe and effective techniques to manage side effects of psychotropic medication;

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(e) The practicum and verification form described in section 23 of this act;

(f) Procedures to address deficiencies in the training of an applicant for a provisional prescription certificate;

(g) Ordering and interpreting laboratory studies by prescribing psychologists;

(h) Continuing competency requirements;

(i) Communication from a prescribing psychologist to a primary health care practitioner; and

(j) Approval of applications for provisional prescription certificates and prescription certificates.

(2) The advisory committee shall also convene at the request of the department or the board to review complaints against prescribing psychologists and other matters relevant to prescription certificates.

Sec. 42. Section 71-2445, Reissue Revised Statutes of Nebraska, is amended to read:

71-2445 For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated medication system may only be used in conjunction with the provision of pharmacist care;

(3) 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, for a patient receiving detoxification treatment or maintenance

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treatment pursuant to section 28-412, or for a resident in a long-term care facility in which a long-term care automated pharmacy is located from which drugs will be dispensed. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Long-term care automated pharmacy means a designated area in a long-term care facility where an automated medication system is located, that stores medications for dispensing pursuant to a medical order to residents in such long-term care facility, that is installed and operated by a pharmacy licensed under the Health Care Facility Licensure Act, and that is licensed under section 71-2451;

(6) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

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

(8) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(9) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

(10) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

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(11) Practice of pharmacy has the definition found in section 38-2837;

(12) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, a prescribing psychologist, or a veterinarian;

(13) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(14) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

(15) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

Sec. 43. Section 71-2473, Reissue Revised Statutes of Nebraska, is amended to read:

71-2473 Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a pharmacist, a physician assistant, a physician, ~~or~~ a podiatrist, or a prescribing psychologist, credentialed under the Uniform Credentialing Act.

Sec. 44. Original sections 38-2838, 38-2850, 38-3112, 71-2445, and 71-2473, Reissue Revised Statutes of Nebraska, and sections 28-401, 38-3101, and 38-3111, Revised Statutes Cumulative Supplement, 2020, are repealed.