

## LEGISLATIVE BILL 579

Approved by the Governor April 14, 1986

Introduced by Scofield, 49

AN ACT relating to professional counseling; to amend sections 33-150, 71-103, 71-104, 71-106, 71-108, 71-111, 71-118, 71-125, 71-128, 71-135, 71-136, 71-138, 71-145, 71-147, 71-148, 71-150 to 71-152, 71-154, 71-156, 71-157, 71-161.02, 71-161.04 to 71-161.08, 71-161.12 to 71-161.19, 71-166, 71-168, and 71-170, Reissue Revised Statutes of Nebraska, 1943, sections 71-101, 71-133, 71-149, 71-155, 71-155.01, and 71-171.01, Revised Statutes Supplement, 1984, and sections 71-102, 71-107, 71-110, 71-112, 71-113, 71-116, 71-131, 71-139, 71-161.09, 71-161.10, and 71-162, Revised Statutes Supplement, 1985; to state intent; to define terms; to provide for the certification and registration of counselors; to create a fund; to provide for disclosure statements; to provide continuing education requirements; to provide confidentiality standards; to provide a penalty; to provide for fees; to harmonize provisions; to provide severability; and to repeal the original sections.

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

Section 1. (1) The Legislature finds that:

(a) The unregulated practice of professional counseling can clearly harm or endanger the health, safety, and welfare of the public;

(b) The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by a less cost-effective means than state regulation of the practice of professional counseling. The Legislature also finds that certified professional counselors must exercise independent judgment and that professional education, training, and experience are required to make such judgments.

(2) The Legislature further finds that the practice of professional counseling in the State of Nebraska is not sufficiently regulated for the

protection of the health, safety, and welfare of the public. It declares that this is a matter of statewide concern and it shall be the policy of the State of Nebraska to promote high standards of professional performance by those engaged in the practice of professional counseling. The Legislature further declares its intention to regulate the practice of professional counseling and use of the title professional counselor by all others not certified for such purpose pursuant to the Uniform Licensing Law or exempted in section 3 of this act.

Sec. 2. As used in sections 1 to 13 of this act, unless the context otherwise requires:

(1) Board shall mean the Board of Examiners in Professional Counseling;

(2) Certified professional counselor shall mean a person who is certified to practice professional counseling pursuant to the Uniform Licensing Law and who holds a current certificate issued by the department pursuant to section 6 of this act;

(3) Department shall mean the Department of Health;

(4) Professional counseling shall mean the offering or rendering of counseling services to individuals or groups for remuneration and shall include, but not be limited to:

(a) Assisting individuals or groups through the counseling relationship to develop understanding, define goals, plan action, and change behavior with the goal of reflecting interests, abilities, aptitudes, and needs as they are related to personal and social concerns, educational progress, and occupations;

(b) Appraisal activities which shall mean selecting, administering, scoring, and interpreting instruments designed to assess a person's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics, except that nothing in this subdivision shall be construed to authorize a certified professional counselor or registered counselor to engage in the practice of clinical psychology as defined in sections 71-1.221 and 71-1.222;

(c) Referral activities which evaluate data to identify which persons or groups may better be served by other specialists;

(d) Research activities which shall mean reporting, designing, conducting, or consulting on research in counseling with human subjects;

(e) Therapeutic, vocational, or personal rehabilitation in relationship to adapting to physical,

emotional, or intellectual disability; and

(f) Consulting on any activity listed in this section; and

(5) Registered counselor shall mean any person who engages in the practice of professional counseling, who holds himself or herself out to the public as a person engaging in the practice of professional counseling, and who is registered with the department pursuant to section 5 of this act. Registered counselors shall include, but not be limited to, individuals who employ any theory or technique that offers assistance or attempts to offer assistance to an individual or individuals in amelioration or adjustment of mental, emotional, or behavioral problems, including techniques to achieve sensitivity and awareness of self and others and the development of human potential. Registered counselor shall include every person who employs a variety of disciplines, theories, and techniques under differing titles such as hypnotherapist, reality counselor, psychic healer, or reevaluation counselor.

Sec. 3. After June 1, 1987, no person shall engage in the practice of professional counseling unless he or she is certified or registered for such purpose pursuant to the Uniform Licensing Law, except that nothing in the Uniform Licensing Law shall prevent:

(1) Qualified members of other professions who are licensed, certified, or registered under Chapter 7 or under Chapter 71, articles 1, 13, 17, and 28, from doing work consistent with the scope of practice of their respective professions;

(2) Any person employed by an agency, bureau, or division of the federal government, state government, or any other political subdivision, including agencies formed under the Interlocal Cooperation Act, from discharging his or her official duties, except that if such person engages in the practice of professional counseling in this state outside the scope of such official duty, he or she shall be certified or registered; or

(3) Members of the clergy from engaging in the practice of counseling within the scope of their duties, counselor educators in counselor education programs which are approved by the board, and students who are pursuing a course of study in a program approved by the board if such study is performed under supervision of a certified professional counselor or a counselor educator.

Sec. 4. The Professional Counselor Fund is



hereby created. All money in the fund shall be used exclusively by the Bureau of Examining Boards to carry out the statutory and regulatory duties pertaining to the practice of professional counseling. The State Treasurer shall credit to the Professional Counselor Fund, on and after the effective date of this act, all certification, registration, and renewal fees for the practice of professional counseling remitted to the state treasury by the department pursuant to section 71-162, except such amounts distributed pursuant to sections 33-150 and 71-6228. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 5. (1) A person shall be qualified to be a certified professional counselor if he or she: (a) Has received a master's degree from an educational program approved by the board; (b) has had three years of full-time experience in professional counseling approved by the board after receipt of the master's degree, except that (i) one year of experience may be obtained prior to the granting of the master's degree if the master's program included an internship component acceptable to the board and (ii) thirty graduate semester hours beyond the master's degree may be substituted for one year of required experience if the hours are clearly related to the field of professional counseling. In no case may the applicant have less than one year of full-time experience in professional counseling; and (c), except as provided in section 7 of this act, satisfactorily passes an examination approved by the board. The department, upon the recommendation of the board, may adopt and promulgate rules and regulations prescribing the experience required under subdivision (1)(b) of this section.

(2) A person shall be qualified to be a registered counselor if he or she submits his or her name and address to the department.

Sec. 6. (1) The department shall issue a certificate, signed by the director, to each person who is qualified to be a certified professional counselor. The department shall issue a letter of confirmation of registration to each person who submits his or her name and address to the department.

(2) A letter of confirmation of registration shall not be construed to provide any assessment or endorsement by the State of Nebraska of the qualifications of a registered counselor and no such registrant shall use the title registered counselor or

any initial or combination of initials implying registration in connection with a business or advertisement based upon having been registered under the Uniform Licensing Law.

Sec. 7. Upon payment of the fee provided in section 71-162 and the provision of evidence to the board of his or her professional education, training, experience, and qualifications to practice certified professional counseling, a certificate to practice as a certified professional counselor shall be issued without examination to any applicant who (1) applies to the department for a certificate by June 1, 1987, and (2) satisfies the requirements established in subdivisions (1)(a) and (1)(b) of section 5 of this act.

Sec. 8. Each certified professional counselor or registered counselor shall present a disclosure statement in writing to a person who is seeking professional counseling from such counselor during the first contact with the person seeking professional counseling. The department, with the approval of the board, shall adopt and promulgate rules and regulations governing the content of disclosure statements and the method of disclosure to the person seeking counseling. Such rules and regulations shall include, but not be limited to: (1) Any relevant education, training, and experience of the counselor; (2) an explanation of the therapeutic orientation and areas of specialization of the counselor; (3) the proposed course of treatment, including the type, length, and timing of sessions, special techniques employed, method of establishing goals, and financial arrangements; (4) a list of acts of unprofessional conduct (a) described in the Uniform Licensing Law for a certified professional counselor and (b) as defined in the rules and regulations of the board adopted and promulgated pursuant to section 12 of this act for a registered counselor, and the address and phone number for referring complaints; (5) the right to refuse treatment; (6) a complete disclosure of the limits of confidentiality; and (7) for a registered counselor, a statement setting forth the provisions of subsection (2) of section 6 of this act.

Sec. 9. (1) Except as otherwise provided in this section and section 11 of this act, each certified professional counselor shall, in the period since his or her certificate was issued or last renewed, complete at least forty hours of approved continuing education courses, clinics, forums, lectures, training programs, or seminars.

The board and the department shall determine

the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars shall be monitored, recorded, and submitted to the department. Such rules and regulations shall be adopted and promulgated in the manner and form prescribed by sections 71-161.09 and 71-161.10.

(2)(a) Each certified professional counselor shall submit evidence, on forms provided by the department, that he or she has satisfied the requirements of this section before his or her certificate is renewed. Such evidence shall be submitted at the time application for renewal of a certificate is made.

(b) If the certified professional counselor has satisfied the requirements of this section at the time application for renewal of the certificate is submitted, his or her certificate shall be automatically renewed.

(c) If the certified professional counselor has not satisfied the requirements of this section at the time application for renewal of the certificate is submitted, the department shall notify him or her of such in the manner prescribed by section 71-110. Unless an extension of time to meet the requirements of this section has been granted or a waiver of the requirements of this section approved, the certificate shall be automatically revoked in the manner and form provided in section 71-149.

(3) The department, on the recommendation of the board, may waive the continuing education requirements, in part or in whole, for any two-year certificate period when a certified professional counselor submits documentation that circumstances beyond his or her control prevented him or her from completing such requirements. Such circumstances shall include that the certificate holder:

(a) Holds a Nebraska certificate but is not practicing professional counseling in Nebraska;

(b) Has been in the service of the regular armed forces of the United States during any part of the period since his or her certificate was issued or last renewed; or

(c) Is a legal resident of another state, territory, or the District of Columbia and has not practiced as a certified professional counselor in the State of Nebraska since his or her certificate was issued or last renewed.

(4) Any person seeking to reinstate a certificate which has lapsed within the preceding year



shall comply with the continuing education requirements for regular renewal of the certificate. Any person seeking to reinstate a certificate which has lapsed one year or longer prior to the time of seeking reinstatement shall present satisfactory evidence of having completed at least twenty hours of the approved continuing education requirements within one year prior to his or her application for reinstatement.

(5) Each certified professional counselor shall provide a sworn affidavit listing continuing education activities which he or she participated in or attended, the amount of credit received for each activity, and the date, location, and name of the approved provider which sponsored the activity on a separate form or portion of the certificate renewal application as may be designated by the department. Each certified professional counselor shall be responsible for maintaining in his or her personal files such certificates or records of credit from continuing education activities received from approved providers. The board may biennially select, in a random manner, a sample of the certificate renewal applications for audit of continuing education credits. Each certified professional counselor selected for audit shall be required to produce documentation of his or her attendance at those continuing education courses, clinics, forums, lectures, programs, or seminars listed on his or her renewal application.

(6) The department shall not renew a certificate or reinstate a certificate for any person who has failed to comply with the requirements of this section.

Sec. 10. No certified professional counselor or registered counselor shall disclose any information he or she may have acquired from persons consulting him or her in his or her professional capacity except:

(1) With the written consent of (a) such person or (b) in the case of death or disability, the personal representative of the person's estate, any other person authorized to sue on behalf of such person, or the beneficiary of an insurance policy regarding such person's life, health, or physical condition;

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

(3) When the person or persons waive the privilege by bringing charges against the certified professional counselor or registered counselor.

Sec. 11. Notwithstanding any other provision

in the Uniform Licensing Law, the initial certificate or registration shall be valid for two years and shall expire on June 1, 1989. Commencing on June 1, 1989, a certificate or registration shall be renewed on June 1 of each odd-numbered year. The department, on the recommendation of the board, shall set the initial certification and registration fees and the biennial certification and registration renewal fees for certified professional counselors and registered counselors pursuant to section 71-162.

Sec. 12. The department, upon the recommendation of the board, shall adopt and promulgate rules and regulations which define unprofessional conduct for a registered counselor. Unprofessional conduct may include any one or more of the acts enumerated in section 71-148 and such other acts as may be defined in such rules and regulations adopted and promulgated by the department.

Sec. 13. (1) Any person who engages in the practice of professional counseling without first being certified or registered pursuant to the Uniform Licensing Law shall be guilty of a Class IV misdemeanor.

(2) Any person certified pursuant to the Uniform Licensing Law who engages in the practice of professional counseling without complying with such law may have such certification denied, refused renewal, limited, revoked, or suspended and shall otherwise be subject to disciplinary measures under sections 71-147 to 71-161.08 and 71-161.11 to 71-161.18.

(3) Any person registered pursuant to the Uniform Licensing Law who engages in the practice of professional counseling in violation of the rules and regulations adopted pursuant to section 12 of this act may have such registration denied, refused renewal, limited, revoked, or suspended pursuant to sections 71-155 to 71-161.08 and 71-161.11 to 71-161.18.

Sec. 14. That section 33-150, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-150. The State Treasurer shall credit to the General Fund of the state fifteen per cent of all fees remitted to the state treasury by the state boards of examiners in medicine and surgery, chiropractic, dentistry, including fees from dental hygienists, professional counseling, optometry, pharmacy, embalming and funeral directing, including fees received from funeral establishments as well as embalmers and funeral directors, podiatry, and veterinary medicine, the Board of Occupational Therapy Practice, the Board of



Cosmetologist Examiners, the Board of Barber Examiners, the Board of Nursing, the State Real Estate Commission, the Brand Fund of the Secretary of State, the State Board of Examiners for Professional Engineers and Architects, the State Athletic Commissioner, the Nebraska Oil and Gas Conservation Commission pursuant to sections 57-906 and 57-911, and any other state board, bureau, division, fund, or commission not mentioned above, if and when fifteen per cent of all such fees remitted into the treasury be appropriated or reappropriated to the General Fund of the state by the Legislature for the uses and purposes of the General Fund during any biennium. Nothing in this section shall be construed to apply to the fees inuring to the Nebraska Brand Inspection and Theft Prevention Fund and funds of the State Racing Commission.

Sec. 15. That section 71-101, Revised Statutes Supplement, 1984, be amended to read as follows:

71-101. For the purpose of this act: (1) Board of examiners shall mean one of the boards appointed by the Department of Health to give examinations to applicants for licenses; (2) licensed, when applied to any licensee in any of the professions named in section 71-102, shall mean a person licensed under this act; (3) profession or health profession shall mean and refer to any of the several groups named in section 71-102; (4) department shall mean the Department of Health of the State of Nebraska; (5) ~~wherever whenever~~ the masculine gender is used, it shall be construed to include the feminine, and the singular number shall include the plural when consistent with the intent of this act; (6) license, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title; (7) certificate, certify, or certification, with respect to professions, shall mean a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate shall also mean a document issued by the department which designates particular credentials for an individual; and ~~(6)~~ (8) this act shall mean and refer

to sections 71-101 to 71-1,167, and 71-1,206 to 71-1,226, and sections 1 to 13 of this act which for convenience shall be known as the Uniform Licensing Law.

Sec. 16. That section 71-102, Revised Statutes Supplement, 1985, be amended to read as follows:

71-102. (1) No person shall engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, physical therapy, audiology, speech-language pathology, embalming, funeral directing, psychology, or veterinary medicine and surgery, as defined in this act, unless such person shall have obtained from the Department of Health a license for that purpose.

(2) No person shall hold himself or herself out as a certified professional counselor unless such person has obtained from the department a certificate for such purpose.

Sec. 17. That section 71-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-103. No person shall be licensed or certified to practice a profession under this act until he or she shall have furnished satisfactory evidence to the Department of Health that he or she has attained the age of twenty-one years and is of good moral character.

Sec. 18. That section 71-104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-104. The Department of Health may refuse to grant a license or certificate to practice a profession to any person, otherwise qualified, upon any of the grounds for which a license or certificate may be revoked under the provisions hereinafter contained.

Sec. 19. That section 71-106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-106. Every license or certificate issued under this act shall be presumptive evidence of the right of the holder to practice in this state the profession specified therein.

Sec. 20. That section 71-107, Revised Statutes Supplement, 1985, be amended to read as follows:

71-107. Every person licensed or certified under this act to practice a profession shall keep such license or certificate displayed in the office or place in which he or she practices and place and keep placed,

in a conspicuous place at each entrance thereto, a sign, in intelligible lettering not less than one inch in height, containing the name of such person immediately followed by the recognized abbreviation indicating the professional degree, if any, held by such person. In addition to the foregoing, those persons licensed or certified to practice osteopathy, chiropractic, podiatry, optometry, audiology, speech-language pathology, professional counseling, or physical therapy shall cause to be placed upon such signs, in lettering of equal height, the word, Osteopath, Chiropractor, Podiatrist, Optometrist, Audiologist, Speech-Language Pathologist, Professional Counselor, or Physical Therapist, as the case may be. The same wording shall be used in all signs, announcements, stationery, and advertisements of such licensees and certificate holders.

Sec. 21. That section 71-108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-108. The name, age, nativity, location or post office address, school and date of graduation, date of examination and ratings or grades received, and the date of a license, or certificate if one is issued, of all applicants for examination in the several professions regulated by this act, shall be entered in a book kept in the office of the Department of Health, to be known as the registry record. A separate registry record shall be kept for each profession, and the names of applicants in that profession shall be given consecutive numbers, and all other records relating to that application or the license or certificate granted thereunder shall be given the same number. A list shall also be kept of those granted licenses or certificates in the several professions. Applications for a license or certificate shall be upon forms prepared by the department, and the completed applications shall be kept as a part of the permanent files of the department. All applications based on licenses or certificates granted in other states shall be received upon forms prepared by the department and entered in the registry records as nearly as may be in the same form as are those applying for examinations. In addition, the date of a license or certificate and the length of time of practice in the other state shall be given and entered. The data in any or all of such records may be maintained in computer files, placed upon microfilm, or stored in a similar form. All such records, in whatever form, shall be available for public inspection, as defined by



regulations of the department. Investigational records, reports, and files of any kind shall not be a public record until such time as formal charges are filed by the department, the Attorney General, or the appropriate county attorney in the manner outlined in sections 71-147 to 71-172 and sections 71-1,156 to 71-1,167.

Sec. 22. That section 71-110, Revised Statutes Supplement, 1985, be amended to read as follows:

71-110. (1) The different licenses to practice a profession or certificates shall be renewed biennially, except as provided in section 11 of this act, upon request of the licensee or certificate holder without examination. The biennial license or certificate renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the board, shall establish by rule and regulation. The biennial expiration date in the different professions shall be as follows: January, pharmacy and psychology; February, embalming and funeral directing; March, dentistry and dental hygiene; April, podiatry and veterinary medicine and surgery; June, professional counseling; August, chiropractic and optometry; September, osteopathy; October, medicine and surgery; November, physical therapy; and December, audiology and speech-language pathology. The request for renewal need not be in any particular form and shall be accompanied by the legal fee. Such fee shall be paid not later than the date of the expiration of such license or certificate, except that while actively engaged in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, persons licensed or certified to practice the professions above named shall not be required to pay the renewal license or certificate fee.

(2) At least thirty days before the expiration of a license or certificate, as set forth in subsection (1) of this section, the Department of Health shall notify each licensee or certificate holder by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any licensee or certificate holder who fails to pay the renewal fee on or before the date of expiration of his or her license or certificate shall be given a second notice in the same manner advising him or her (a) of the failure to pay, (b) that the license or certificate on that account has expired, (c) that the department will suspend action for thirty days following the date of expiration, (d) that upon the receipt of the renewal fee, together with

an additional fee of five dollars, within that time, no order of revocation will be entered, and (e) that upon the failure to receive the amount then due and five dollars in addition to the regular renewal fee, as provided by subsection (1) of this section, an order of revocation will be entered.

(3) Any licensee or certificate holder who allows a license or certificate to lapse by failing to renew the same, as provided in subsections (1) and (2) of this section, may be reinstated upon the recommendation of the board of examiners for his or her profession and the payment of the regular and additional renewal fees then due.

Sec. 23. That section 71-111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-111. For the purpose of giving examinations to applicants for license to practice the professions for which a license is required by this act or for the purposes of certification, the Department of Health shall appoint a board of examiners for each of said the professions except osteopathy.

Sec. 24. That section 71-112, Revised Statutes Supplement, 1985, be amended to read as follows:

71-112. The boards of examiners provided in section 71-111 shall be designated as follows: For medicine and surgery and osteopathy, Examiners in Medicine and Surgery; for chiropractic, Examiners in Chiropractic; for dentistry and dental hygiene, Examiners in Dentistry; for optometry, Examiners in Optometry; for physical therapy, Examiners in Physical Therapy; for pharmacy, Examiners in Pharmacy; for audiology and speech-language pathology, Examiners in Audiology and Speech-Language Pathology; for professional counseling, Examiners in Professional Counseling; for embalming and funeral directing, Examiners in Embalming and Funeral Directing; for podiatry, Examiners in Podiatry; for psychology, Examiners of Psychologists; and for veterinary medicine and surgery, Examiners in Veterinary Medicine.

Sec. 25. That section 71-113, Revised Statutes Supplement, 1985, be amended to read as follows:

71-113. (1) Each board of examiners shall consist of four members, including one lay person, except that (a) in audiology and speech-language pathology the board shall consist of five members, including one lay person, (b) in dentistry the board

shall consist of eight members, including one lay person, (c) in medicine and surgery the board shall consist of seven members, including one lay person, (d) in embalming and funeral directing the board shall consist of four members, including one lay person appointed by the Department of Health, (e) in pharmacy the board shall consist of five members, including one lay member, and (f) in psychology the board shall consist of six members, including one lay person. Notwithstanding any other provision of law, the Department of Health shall appoint one lay member to each board of examiners set forth in this subsection in accordance with section 71-114.

(2) Membership on the Board of Examiners in Audiology and Speech-Language Pathology shall consist of two members who are audiologists, two members who are speech-language pathologists, and one lay person. All professional members shall be qualified to be licensed in accordance with this act. The professional members appointed to the initial board shall be licensed not later than six months after being appointed to the board. If for any reason a professional member cannot be licensed within such time period, a new professional member shall be appointed.

(3) Membership in the Board of Examiners in Professional Counseling shall consist of two certified professional counselors, one registered counselor, and one lay person. Each counselor examiner first appointed to the board pursuant to this section shall be a person who is and has been actively engaged in the practice of professional counseling for at least two years immediately preceding his or her appointment to the board and shall be certified or registered not later than six months after being appointed to the board. If for any reason a counselor examiner cannot be certified or registered within such a time period, a new counselor examiner shall be appointed.

Sec. 26. That section 71-116, Revised Statutes Supplement, 1985, be amended to read as follows:

71-116. (1) The members of each board of examiners shall be appointed for a term of five years and no member shall be appointed for or serve for more than two consecutive full five-year terms.

(2) The members of the Board of Examiners in Dentistry shall be appointed as follows: As of December 1, 1971, one member shall be appointed for a term of five years, and one member shall be appointed for a term of three years; as of December 1, 1972, one member shall



be appointed for a term of three years; as of December 1, 1973, one member shall be appointed for a term of three years; as of December 1 of each year thereafter, two members shall be appointed for a term of five years; as of December 1, 1979, one member who is a duly licensed dental hygienist and complies with sections 71-114 and 71-115 shall be appointed for a term of five years; and as of December 1, 1984, one lay member shall be appointed for a term of five years. The dental hygienist member shall have full voting rights, except in matters pertaining to the initial or continuing licensure or competency of a duly licensed practitioner of dentistry. Thereafter successors with like qualifications shall be appointed for five-year terms. No member shall be appointed for or serve for more than two consecutive full five-year terms.

(3) The members of the Board of Examiners in Medicine and Surgery shall be appointed as follows: Within thirty days after May 25, 1943, five members shall be appointed, one of whom shall hold office until December 1, 1944, one until December 1, 1945, one until December 1, 1946, one until December 1, 1947, and one until December 1, 1948; upon the expiration of such terms, successors shall be appointed for terms of five years each. Within thirty days after October 19, 1963, a sixth member, who shall be a person eligible for appointment to the Board of Examiners in Osteopathy who also has a license to practice medicine and surgery in the State of Nebraska, shall be appointed for a term expiring on December 1, 1968. As of December 1, 1984, one lay member shall be appointed for a term of five years. Thereafter successors with like qualifications shall be appointed for five-year terms. Upon the expiration of the five-year term of such sixth member of the board after August 30, 1981, his or her eligible successor shall be a person who has a license to practice medicine and surgery and a license to practice osteopathy in the State of Nebraska.

(4) The members of the Board of Examiners in Audiology and Speech-Language Pathology shall consist of two audiologists, two speech-language pathologists, and one lay member and shall be appointed as follows: Within sixty days after July 22, 1978, four members shall be appointed, two of whom shall hold office until December 1, 1979, and two until December 1, 1980. As of December 1, 1984, one lay member shall be appointed for a term of five years. Upon the expiration of such terms the successors shall be appointed for terms of five years each. No member shall be appointed for or serve

for more than two consecutive five-year terms.

(5) As of December 1, 1983, the Board of Examiners in Pharmacy shall be composed of five members, including four actively practicing pharmacists, one of whom practices within the confines of a hospital, and a lay member who is interested in the health of the people of Nebraska and is of the age of majority. The members of the Board of Examiners in Pharmacy shall be appointed as follows: As of December 1, 1983, the hospital pharmacist member shall be appointed for a term of five years and the lay member shall be appointed for a term of three years. Upon the expiration of such terms and the terms of existing members, all successors shall be appointed for terms of five years each.

(6) The members of the Board of Examiners of Psychologists appointed as successors to the members serving on February 25, 1984, shall be appointed for terms of five years. The terms of members serving on February 25, 1984, are hereby extended to December 1 of the year in which they would otherwise expire.

(7) The term of each examiner provided for herein shall commence on the first day of December, following the expiration of the term of the member whom such person succeeds, and shall be rotated in such a manner that no more than one examiner shall retire during any year in which a term expires unless the number of members on a board makes it impractical to do so.

(8) Except as otherwise specifically provided, the members of boards for professions coming under the scope of sections 71-101 to 71-1,196 for the first time shall be appointed within thirty days after the effective date of the act providing for licensing or certification of the profession, the terms of the initial board members to be as follows: One member shall hold office until December 1 of the third year, one until December 1 of the fourth year, and two, including the lay member, until December 1 of the fifth year following the year in which the act providing for licensing or certification of the profession became effective.

Sec. 27. That section 71-118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-118. The Department of Health shall have power to remove from office at any time any member of a board of examiners, after a public hearing pursuant to the provisions of Chapter 84, article 9, for physical or mental incapacity to carry out the duties of a board

member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional license or certificate in the profession involved may be suspended or revoked under the provisions of section 71-147, or 71-148, or section 71-1,101, or for a lack of licensure or certification in the profession involved.

Sec. 28. That section 71-125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-125. Any person desiring to take the examination for a license or certificate to practice a profession, shall make application to the Department of Health at least thirty days prior to examination or licensure on a form provided by the department, and sworn to by the applicant. Such application shall be accompanied by the examination fee, and such documents and affidavits as are necessary to show the eligibility of the candidates to take such examination. All applications shall be in accordance with the rules of the department. Applicants, except that those graduating from accredited professional schools in Nebraska less than thirty days preceding the date set for their examination may file their application, accompanied by a statement from one authorized to speak, that the applicant has completed and successfully passed any examinations and in due time will receive a diploma. Upon the payment of the applicable fee, the application may thereupon be received, but before taking the examination, the applicant must file a photostatic copy of his or her diploma.

Sec. 29. That section 71-128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-128. The Department of Health shall prepare and keep up to date a list of accredited colleges in which are taught the professions which are regulated by this act. The board of examiners shall make recommendations relative thereto, and shall approve the list for the profession for which it gives licensure examinations. No school shall be accredited without the formal action of the department and the board of examiners for the profession which that school teaches. Any professional school or college whose graduates or students desire to take the Nebraska State Board examination, shall supply the department with the necessary data to allow the board of examiners and the department to determine whether that school should be



accredited. The Department of Health may adopt any nationally developed standard examination as constituting part of or all of the Nebraska state board examination for any of the professions which are regulated by this act, so long as such examination is approved by the board of examiners for the profession involved and certified by such board as being a part of or all of that board's ~~licensing~~ examination.

Sec. 30. That section 71-131, Revised Statutes Supplement, 1985, be amended to read as follows:

71-131. (1) In the absence of any specific requirement or provision relating to any particular profession:

(a) The Department of Health may adopt and promulgate rules and regulations pertaining to the grading of examination papers;

(b) An examinee must obtain an average grade of seventy-five per cent;

(c) An examinee must obtain a grade of sixty per cent in each subject in which examined; and

(d) An examinee who fails to comply with subdivisions (b) and (c) of this subsection may take the entire examination over without charge at any time within fourteen months, except that in the case in which a national standardized examination is utilized by any examining board, which requires the payment of a fee to purchase such examination, the Department of Health shall require the applicant to pay the appropriate examination fee.

(2) In pharmacy all applicants shall be required to attain a grade to be determined by the Board of Examiners in Pharmacy in an examination in pharmacy and a grade of seventy-five per cent in an examination in jurisprudence of pharmacy. When an applicant falls below the designated grade in one of the two examinations, the applicant may take that examination over without charge at any time within fourteen months at any regular session of such board held for the purpose of giving examinations or at the first regular session of the board held for the purpose of giving examinations thereafter if not held within that time. If an applicant falls below the designated grade in both the examination in pharmacy and the examination in jurisprudence of pharmacy, the applicant shall take both examinations over, and the applicant may do this without charge at any time within fourteen months at any regular session of the board held for the purpose of giving examinations or at the first regular session of the

board held for the purpose of giving examinations thereafter if not held within that time. Notwithstanding any provision of this section, whenever the Board of Examiners in Pharmacy utilizes a national standardized examination, which requires the payment of a fee to purchase such examination, the Department of Health shall require the applicant to pay the appropriate examination fee.

(3) In professional counseling the passing criterion for such examination shall be established and may be changed by the Board of Examiners in Professional Counseling by regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to section 7 of this act or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(4) ~~(3)~~ In medicine and surgery the passing grade shall be determined by the department upon recommendation of the Board of Examiners in Medicine and Surgery. Fees for reexamination shall be determined by the department upon recommendation of the Board of Examiners in Medicine and Surgery.

(5) ~~(4)~~ In psychology the passing grade shall be determined by the department upon recommendation of the Board of Examiners of Psychologists. Fees for reexamination shall be the same as the fee for the initial examination.

Sec. 31. That section 71-133, Revised Statutes Supplement, 1984, be amended to read as follows:

71-133. Except in dentistry, the oral or practical work portion of any examination regulated under this act, shall be given by a majority of the members of the board giving such examination. The members of the board need not be present at the examination given to applicants for licensure when a national standardized examination or any other written examination is utilized. Such board may delegate the administration of such examination to the Department of Health.

In dentistry, the final practical examination in clinical dentistry may be given at the infirmary of each of the dental colleges, schools, or departments legally conducted in the State of Nebraska of which the applicant is a graduate. Regional practical examinations may be used to meet the requirement of a final practical examination in clinical dentistry and for dental hygienists upon the recommendation of the

Board of Examiners in Dentistry and the subsequent approval of the department. Any person who applies for a license to practice dentistry or dental hygiene who has previously failed a state or regional clinical licensing examination two times shall be required to complete a practical course in clinical dentistry recommended by the Board of Examiners in Dentistry and approved by the Department of Health before the department shall consider the results of a third examination as valid qualification for a license to practice dentistry or dental hygiene in the State of Nebraska.

Sec. 32. That section 71-135, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-135. Every examination shall be passed upon in accordance with the established rules of the Department of Health, and, in cases of dispute, a majority of members of the interested board shall decide. After each examination, the board of examiners, or the individual members, shall certify the grades of the applicants to the department in the manner prescribed by it. The department shall then issue the proper license, or certificate and make the required entry in the registry record.

Sec. 33. That section 71-136, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-136. The board of examiners may give a partial or segregated examination for a license or certificate to practice a profession to any applicant who has completed a portion of his or her professional course. For such purposes the Department of Health, upon recommendation of the board, shall establish by rule (1) the portion of the course which shall be completed prior to such examination, and (2) the subjects to be covered by the examination, and the subjects to be covered by the final examination to be taken by such applicant after the completion of his or her professional course and prior to the issuance of his or her license, or certificate, but the subjects covered in the partial or segregated examination shall be the same as those stated in this act for the regular examination.

Sec. 34. That section 71-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-138. (1) All question and answer papers or sheets, or photostatic or other copies of such answer



papers or sheets, connected with any examination for a license or certificate, shall be filed with the Department of Health and preserved for two years as a part of its records, or, whenever national standardized examinations, governed by security considerations, are utilized, they shall be available from the developing testing service for a period of two years, during which time such answer papers or sheets shall be open to inspection by an applicant or by the dean of his or her college or training school or by any other proper representative of either of such college or training school as determined by rules and regulations which the department may is hereby authorized to adopt and promulgate. Any national standardized machine graded or computer scored examination questions or answers which are protected by security agreements, copyright provisions, or departmental or state contractual agreements for use shall not be required to be on file with the department, but must be available for a period of two years, upon demand, from any testing service utilized, at the discretion of the department or upon order of a court of competent jurisdiction.

(2) When any board of examiners has designated the use of a national standardized examination, the papers connected with the examination shall be filed and maintained in the manner outlined in subsection (1) of this section.

Sec. 35. That section 71-139, Revised Statutes Supplement, 1985, be amended to read as follows:

71-139. The Department of Health, without examination, except when a practical examination is required, may issue a license to practice any profession except pharmacy, podiatry, dentistry, medicine and surgery, optometry, osteopathic medicine and surgery, osteopathic medicine, osteopathy, and audiology and speech-language pathology to a person who has been in the active practice of that profession in some other state, territory, or the District of Columbia, upon the certificate of the proper licensing authority of the state, territory, or the District of Columbia, certifying that the applicant is duly licensed, that his or her license has never been suspended or revoked, and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement. The applicant shall also present proof of the following things: (1) That the state, territory, or the District of Columbia from which the applicant comes shall have and maintain standards regulating his or her profession

equal to those maintained in that profession by Nebraska; (2) that his or her license there was based upon a written examination and the grades given at such examination; (3) the date of his or her license; (4) that such licensee has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity; (5) the affidavit of at least two practitioners in that state, territory, or the District of Columbia testifying to the applicant being of good moral character and standing in his or her profession; and (6) that the applicant has been in the active and continuous practice under license by examination in the state, territory, or the District of Columbia from whence he or she comes for at least one year. An applicant for reciprocal registration coming from any state may be licensed by reciprocity if his or her individual qualifications meet the Nebraska legal requirements.

The department may issue a certificate to practice professional counseling on a reciprocal basis. The department may adopt and promulgate rules and regulations for reciprocity pursuant to this section.

Persons who graduate from colleges of osteopathy accredited by the Department of Health on recommendation of the Board of Examiners in Osteopathy since January 1, 1963, and prior to May 23, 1981, and after May 23, 1981, persons who graduate from colleges of osteopathy accredited by the Department of Health on recommendation of the Board of Examiners in Medicine and Surgery who meet the requirements of this section and who have passed a written examination which is equivalent to that required in section 71-1,104 as determined by the Board of Examiners in Medicine and Surgery and who meet the requirements of section 71-1,137 for the practice of osteopathic medicine and surgery as evidenced by a certificate of the Board of Examiners in Medicine and Surgery may be granted a license to practice osteopathic medicine and surgery as defined in section 71-1,137 if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity. Graduates of an accredited school of osteopathy since January 1, 1963, who meet the requirements of this section and who meet the applicable requirements of section 71-1,139.01 as certified by the Board of

Examiners in Medicine and Surgery may be granted a special license as doctor of osteopathic medicine and surgery.

The department may approve without examination any person who has been duly licensed to practice optometry in some other state or territory of the United States of America or in the District of Columbia under conditions and circumstances which the Board of Examiners in Optometry shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice optometry if such person has been actively engaged in the practice under such license for at least one of the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training. The applicant shall submit a certificate of the proper licensing authority of the state, territory, or the District of Columbia where he or she is licensed to practice such profession, that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. If the applicant is found to meet the requirements provided in this section and is qualified to be licensed to practice the profession of optometry in the State of Nebraska, the board shall issue a license to practice optometry in the State of Nebraska to such applicant.

The Board of Examiners in Dentistry may approve without examination any person who has been duly licensed to practice dentistry in some other state or territory of the United States of America or in the District of Columbia under conditions and circumstances which the board shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice dentistry if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training and is possessed of good character and morals as required by the laws of the State of Nebraska. The applicant shall submit a certificate of the proper licensing authority of the state, territory, or the District of Columbia where he or she is licensed to practice such profession, that he



or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. If the applicant is found by the board to meet the requirements provided in this section and is qualified to be licensed to practice the profession of dentistry in the State of Nebraska, the board shall certify such fact to the Department of Health, and the department upon receipt of such certification shall issue a license to practice dentistry in the State of Nebraska to such applicant.

Sec. 36. That section 71-145, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-145. Any licensee or certificate holder who is desirous of changing his or her residence to another state, territory, or the District of Columbia, shall, upon application to the Department of Health and the payment of the legal fee, receive a certified statement that he or she is a duly licensed or certified practitioner in this state.

Sec. 37. That section 71-147, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-147. A license or certificate to practice a profession may be denied, refused renewal, limited, revoked, suspended, or have other disciplinary measures taken against it in accordance with section 71-155 when the applicant, or licensee, or certificate holder is guilty of any of the following acts or offenses: (1) Fraud, forgery, or misrepresentation of material facts, in procuring or attempting to procure a license or certificate; (2) grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state; (3) habitual intoxication or dependency on, or addiction to the use of alcohol or habituation, or dependency on, or addiction to the use of any kind of controlled substance or narcotic drug; (4) conviction of a felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a felony under state law, and which has a rational connection with the applicant's, or licensee's, or certificate holder's fitness or capacity to practice the profession; (5) practice of the profession: (a) fraudulently; (b) beyond its authorized scope; (c) with manifest incapacity; or (d) with gross incompetence; (6) practice of the profession while the ability to practice

is impaired by alcohol, controlled substances or narcotic drugs, physical disability, mental disability, or emotional disability; (7) physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means; (8) permitting, or aiding or abetting the practice of a profession or the performance of activities requiring a license or certificate by a person not licensed or certified to do so; (9) the denial, refusal of renewal, limitation, suspension, revocation, or the taking of other disciplinary measures in accordance with section 71-155 against such individual by another state or jurisdiction to practice the particular profession involved, based upon acts by the applicant, or licensee, or certificate holder similar to acts described in this section, a certified copy of the record of denial, refusal of renewal, limitation, suspension, revocation, or the taking of other disciplinary measures against it of the state or jurisdiction taking such action being conclusive evidence thereof; (10) unprofessional conduct, which term includes all acts specified in section 71-148 and such other acts as may be defined in rules and regulations adopted and promulgated by the board of examiners in the profession of the applicant, or licensee, or certificate holder with the approval of the department; (11) use of untruthful or improbable statements, or flamboyant, exaggerated or extravagant claims, concerning such licensee's or certificate holder's professional excellence or abilities, in advertisements; (12) conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act, Chapter 87, article 3; (13) distribution of intoxicating liquors or controlled substances or drugs for any other than lawful purposes; (14) willful or repeated violations of this act or the rules and regulations of the Department of Health relating to the licensee's or certificate holder's profession, sanitation, quarantine, or school inspection; (15) unlawful invasion of the field of practice of any profession mentioned in this act which the licensee or certificate holder is not licensed or certified to practice; or (16) failure to pay annual renewal fees as outlined in section 71-110. A license or certificate to practice a profession may also be refused renewal or revoked when the licensee or certificate holder is guilty of practicing such profession while his or her license or certificate to do so is suspended or is guilty of practicing such

profession in contravention of any limitation placed upon his or her license or certificate.

Sec. 38. That section 71-148, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-148. For the purpose of section 71-147, unprofessional conduct shall include any of the following acts: (1) Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the licensee or certificate holder; (2) receipt of fees on the assurance that a manifestly incurable disease can be permanently cured; (3) division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a patient; (4) assisting in the care or treatment of a patient without the consent of such patient or his or her legal representative; (5) the use of any letters, words, or term or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a system or mode of healing for which he or she is not licensed or certified; (6) performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion; (7) willful betrayal of a professional secret; (8) making use of any advertising statements of a character tending to deceive or mislead the public; (9) advertising professional superiority or the performance of professional services in a superior manner; (10) advertising to guarantee any professional service, or to perform any operations, painlessly; (11) the performance by a physician of an abortion, as defined in subdivision (1) of section 28-326, under circumstances when he or she will not be available for a period of at least forty-eight hours for post-operative care unless such post-operative care is delegated to and accepted by another physician; and (12) performing an abortion upon a minor without having satisfied the notice requirements of section 28-347; and (13) failure of a professional counselor to abide by section 8 of this act.

Sec. 39. That section 71-149, Revised Statutes Supplement, 1984, be amended to read as follows:

71-149. The Director of Health shall have jurisdiction of proceedings to deny the application of an applicant or refuse renewal of, limit, revoke, suspend or, in accordance with section 71-155, take other disciplinary measures against the license of any



licensee or certificate of any certificate holder practicing under this act. When any licensee or certificate holder shall fail to pay renewal fees, as provided in section 71-110, within thirty days after they become due, as provided in said such section, the license or certificate of such person shall be automatically revoked at the expiration of thirty days after the same became due, without further notice or hearing, and the director shall make proper record of such revocation. For any other cause than the nonpayment of renewal fees, a petition for the refusal of renewal, limitation, revocation, or suspension of or, in accordance with section 71-155, the taking of other disciplinary measures against a license or certificate may be filed; (1) By By the Attorney General in all cases; (2) by the county attorney of the county in which the licensee resides or has practiced; or (3) in medicine and surgery, by the Commission on Medical Qualifications or any similar commission with reference to other professions as defined in section 71-102. Said The petition shall be filed in the office of the Director of the Bureau of Examining Boards of the department; or with some other person designated by its director.

Sec. 40. That section 71-150, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-150. The Department of Health shall direct the Attorney General to file such petition against such licensee or certificate holder upon its own motion, or it may give such directions upon the sworn statement of some person who resides in the county wherein the licensee or certificate holder practices.

Sec. 41. That section 71-151, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-151. The Attorney General shall comply with such directions of the Department of Health or of the director, and prosecute such action on behalf of the state, but the county attorney of any county where a licensee or certificate holder has practiced, at the request of the Attorney General or of the department, shall appear and prosecute such action.

Sec. 42. That section 71-152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-152. The following rules shall govern the form of the petition in such cases: (1) The state shall be named as plaintiff and the licensee or certificate

holder as defendant; (2) the charges against the licensee or certificate holder shall be stated with reasonable definiteness; (3) amendments may be made as in ordinary actions in the district court; and (4) all allegations shall be deemed denied, but the licensee or certificate holder may plead thereto if he or she desires.

Sec. 43. That section 71-154, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-154. Notice of the filing of such petition, and of the time and place of hearing, shall be served upon the licensee or certificate holder at least ten days before the hearing. The notice may be served by any sheriff or constable, or by any person especially appointed by the Director of Health. Such service may be made either upon the licensee or certificate holder personally, or by leaving at his or her usual place of residence.

Sec. 44. That section 71-155, Revised Statutes Supplement, 1984, be amended to read as follows:

71-155. The proceeding shall be summary in its nature, and triable as an equity action. Affidavits may be received in evidence in the discretion of the Director of Health. The Department of Health shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing held hereunder, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers, irrespective of the petition:

(1) Issue a censure or reprimand against the licensee or certificate holder;

(2) Suspend judgment;

(3) Place the licensee or certificate holder on probation;

(4) Place a limitation or limitations on the license or certificate and upon the right of the licensee or certificate holder to practice the profession to such extent, scope, or type of practice, for such time, and under such conditions as is found necessary and proper. The director shall consult with the appropriate board of examiners in all instances prior to issuing an order of limitation;

(5) Enter an order of suspension of the license of the licensee or certificate of the certificate holder;

(6) Enter an order of revocation of the license of the licensee or certificate of the certificate holder; and

(7) Dismiss the action.

The licensee or certificate holder shall not engage in the practice of any profession after a license or certificate to practice the same is revoked, or during the time for which it is suspended. If a license or certificate is suspended, the suspension shall be for a definite period of time to be fixed by the director, and such license or certificate shall be automatically reinstated upon the expiration of such period if all renewal fees have been paid. If such license or certificate is revoked, such revocation shall be for all times, ~~except that~~, ~~PROVIDED, that~~, at any time after the expiration of two years, application may be made for reinstatement of any licensee or certificate holder whose license or certificate shall have been revoked. Such application shall be addressed to the director, but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board of examiners in the profession of the petitioner. The department may adopt and promulgate such rules and regulations, concerning notice and hearing of such application, as are deemed necessary.

Sec. 45. That section 71-155.01, Revised Statutes Supplement, 1984, be amended to read as follows:

71-155.01. The Director of Health shall not reduce any penalty imposed or reinstate any license or certificate revoked or suspended pursuant to Chapter 71, article 1, without first issuing a written public explanation for such action.

Sec. 46. That section 71-156, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-156. In case the licensee or certificate holder fails to appear, either in person or by counsel at the time and place designated in such notice, the Director of Health after receiving satisfactory evidence of the truth of the charges shall order the license or certificate revoked or suspended or shall order any or all of the other appropriate disciplinary measures authorized by section 71-155 to be taken against the licensee or certificate holder.

Sec. 47. That section 71-157, Reissue Revised



Statutes of Nebraska, 1943, be amended to read as follows:

71-157. If the order is adverse to the licensee or certificate holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, ; but if the state is the unsuccessful party, the costs shall be paid out of any money in the Bureau of Examining Boards of the Department of Health available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court.

Sec. 48. That section 71-161.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.02. The authority of the Director of Health to discipline a licensee or certificate holder by placing him or her on probation pursuant to the provisions of section 71-155 includes, but is not limited to, the following:

(1) To require the licensee or certificate holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, or any or all of such combinations of written, oral, practical and clinical, at the option of the director;

(2) To require the licensee or certificate holder to submit to a complete diagnostic examination by one or more physicians appointed by the director. If the director requires the licensee or certificate holder to submit to such an examination, the director shall receive and consider any other report of a complete diagnostic examination given by one or more physicians of the licensee's or certificate holder's choice if the licensee or certificate holder chooses to make available such a report or reports by his or her physician or physicians; and

(3) To restrict or limit the extent, scope, or type of practice of the licensee, or certificate holder upon consultation with the board of examiners.

Sec. 49. That section 71-161.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.04. A person, licensed or certified by the Department of Health, whose license or certificate has been suspended or has had limitations placed thereon, pursuant to the provisions of Chapter 71, article 1, may petition the board of examiners in the profession of the petitioner to recommend the

reinstatement of the license or certificate at any time. A person, licensed or certified by the Department of Health, whose license or certificate has been revoked, pursuant to the provisions of Chapter 71, article 1, may petition the board of examiners to recommend reinstatement after a period of not less than two years has elapsed from the date of revocation.

Sec. 50. That section 71-161.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.05. The petition shall state such pertinent facts as may be required by the board by regulation, with the approval of the department. The petition, except in cases in which the measure was imposed for nonpayment of license or certificate renewal fees, shall be accompanied by at least two verified recommendations from practitioners of the profession of the petitioner licensed or certified in the State of Nebraska and by at least two recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary measure was imposed.

Sec. 51. That section 71-161.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.06. The petition shall be considered at the next meeting of the board that is held not earlier than thirty days after the petition was filed. No public hearing need be held on the petition if the board recommends reinstatement of the license or certificate. Opportunity for a formal public hearing on the petition must shall be granted by the board, if formally requested by the petitioner, prior to any recommendation by the board against reinstatement of the license or certificate. Any petition for reinstatement of the license or certificate accompanied by the requisite information and necessary documents must shall be conclusively acted upon by the board within one hundred eighty days after the filing of the properly prepared petition and necessary accompanying documents with the board. If the petitioner formally requests opportunity for a formal public hearing thereon, or if the board otherwise holds such a hearing, the petitioner shall be given at least thirty days' prior notice thereof by sending a copy of the notice of hearing by means of certified or registered mail directed to the petitioner at his or her last-known residence or business post office address as shown by the files or records of the Department of Health or as otherwise

known, or by means of personal service by being personally served by any sheriff or constable or by any person especially appointed by the board. The hearing may be continued from time to time as the board finds necessary. In no case shall any petition be considered while the petitioner is under sentence for any criminal offense, including any period during which he or she is on probation or parole.

Sec. 52. That section 71-161.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.07. In determining whether the disciplinary measure should be set aside and the terms and conditions which should be imposed if the disciplinary measure is set aside, the board (1) may investigate and consider all activities of the petitioner since the disciplinary action was taken against him or her, including activities prohibited by section 71-147, the act or offense for which he or she was disciplined, his or her activity during the time his or her license or certificate was in good standing, and his or her general reputation for truth, professional ability, and good character, (2) may require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the board, the petitioner being free also to consult a physician or physicians of his or her own choice for a complete diagnostic examination and making available a report or reports thereof to the board, and (3) may require the petitioner to pass an oral or practical examination, or both. The affirmative vote of a majority of the members of the board shall be necessary to recommend the setting aside of a disciplinary measure and the reinstatement of a license or certificate with or without terms, conditions, or restrictions. The board may grant or deny, without a hearing or argument, any petition to recommend reinstatement filed pursuant to this section, when the petitioner has been afforded a hearing or an opportunity for a hearing upon any petition filed pursuant to this section within a period of two years immediately preceding the filing of such petition. Denial by the board of the petition for recommendation of reinstatement of the license or certificate shall be subject to review pursuant to the provisions of Chapter 84, article 9.

Sec. 53. That section 71-161.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.08. The director shall also have



authority to determine to reinstate, or refuse reinstatement, pursuant to an administrative hearing. The director, in making such determination, shall be bound by the identical requirements and follow the identical procedure required in proceedings before the board, as well as having identical authority. All procedure shall be identical, including such matters as notice of hearing and appeal. The director's consideration of the matter shall be subsequent to and not concurrent with that of the board's. A new one hundred eighty-day period of consideration shall commence insofar as the director is concerned.

A petitioner for reinstatement of license or certificate whose license or certificate is reinstated by the director need only pay license or certificate renewal fees due for and during the year the license or certificate is reinstated, unless his or her license or certificate had been revoked solely for nonpayment of license or certificate renewal fees in which case he or she shall also pay all past renewal fees then due.

Sec. 54. That section 71-161.09, Revised Statutes Supplement, 1985, be amended to read as follows:

71-161.09. The board of examiners for any profession or occupation licensed or certified by the Department of Health pursuant to Chapter 71, with the approval of the Department of Health, may adopt and promulgate, by rules and regulations, standards of relicensure and recertification for each Nebraska-licensed and Nebraska-certified practitioner of such profession or occupation in active practice within the State of Nebraska, which may include the requirement to attend a prescribed number of hours, biennially, of such approved scientific schools, clinics, forums, lectures, courses of study, or educational seminars relating to the practice of such profession or occupation, and shall require, as may be set forth by such rules and regulations for the profession or occupation concerned and approved by the department, such standards as a prerequisite for the licensee's or certificate holder's next subsequent license or certificate renewal. The board of examiners and the Department of Health shall consult with the appropriate professional academies, professional societies, and professional associations in the development of such standards. The purpose of any such action by such board shall be to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and

comprehensive service to the public. The number of hours that may be required shall be prescribed by the board in such rules and regulations for any calendar year. Attendance must shall be at a scientific school, clinic, forum, lecture, course of study, or educational seminar approved by the board which may be held either within or outside the state. In no instance may the board require a greater number of hours of approved scientific schools, clinics, forums, lectures, courses of study, or educational seminars than are available at approved scientific schools, clinics, forums, lectures, courses of study, or educational seminars held within the State of Nebraska.

Sec. 55. That section 71-161.10, Revised Statutes Supplement, 1985, be amended to read as follows:

71-161.10. Upon the establishment of such standards for relicensure or recertification by any board of examiners, by rule and regulation, and with the approval of the Department of Health, each licensed or certified practitioner of such profession or occupation in active practice within the state shall, on or before the date of expiration of his or her license or certificate in the year the requirement applies, certify on an affidavit form provided by the board of examiners of the profession or occupation concerned that he or she has complied with section 71-161.09 during the preceding two-year period. Such board shall, on or before the date of expiration of the license or certificate in the year the requirement applies, report all licensees or certificate holders who have complied with the educational requirements to the Director of the Bureau of Examining Boards of the Department of Health. Licensees or certificate holders who have not complied with such requirement shall not be issued a renewal license or certificate, unless exempt or unable to comply due to circumstances beyond their control. Procedures for denial of renewal of the license or certificate of such licensees or certificate holders shall be identical to those for nonpayment of renewal fees as provided in the statutes governing licensure or certification of such profession or occupation, as well as procedures for reinstatement of the same. The department, on the recommendation of the board of examiners of the licensee's or certificate holder's profession, may waive continuing education requirements, in part or in total, for any two-year licensing or certification period when a licensee or certificate holder submits documentation that circumstances beyond

his or her control prevented completion of such requirements. Such circumstances shall include situations in which:

(1) The licensee or certificate holder holds a Nebraska license or certificate but is not practicing his or her profession or occupation in Nebraska;

(2) The licensee or certificate holder has served in the regular armed forces of the United States during part of the twenty-four months immediately preceding the license or certificate renewal date;

(3) The licensee or certificate holder has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the twenty-four months immediately preceding the license or certificate renewal date; and

(4) The licensee or certificate holder was first licensed or certified within the twenty-four months immediately preceding the license or certificate renewal date.

The department, with the consent of the interested board of examiners, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing education requirements.

Sec. 56. That section 71-161.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.12. In addition to the grounds for denial, refusal of renewal, limitation, suspension, or revocation of a license or certificate as otherwise provided by law, a license or certificate to practice any profession or occupation licensed or certified by the Department of Health pursuant to the provisions of Chapter 71 shall be denied, refused renewal, limited, suspended, or revoked automatically by the Director of Health when the applicant, or licensee, or certificate holder is found to be not qualified to practice the particular profession or occupation for which he or she is applying, or licensed, or certified because of physical or mental illness or physical or mental deterioration or disability.

Sec. 57. That section 71-161.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.13. When any complaint has been filed in the office of the Department of Health by any person alleging that an applicant for a license or certificate



or one licensed or certified to practice any profession or occupation in the state licensed or certified by the Department of Health pursuant to the provisions of Chapter 71 is suffering from physical or mental illness or physical or mental deterioration or disability, the Director of Health shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant, or of the licensee, or certificate holder to practice or to continue to practice such profession or occupation. If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge, finds that reasonable cause exists to question the qualification of the applicant, or of the licensee, or certificate holder to practice such profession or occupation because of physical or mental illness or physical or mental deterioration or disability, he or she shall report such finding and evidence supporting it to the board of examiners in the profession or occupation of the applicant, or licensee, or certificate holder, and, if such board agrees that reasonable cause exists to question the qualification of such applicant, or licensee, or certificate holder, it shall appoint a committee of three qualified physicians to examine the applicant, or licensee, or certificate holder and to report their findings and conclusions to the board. The board shall then consider the findings and the conclusions of the physicians and any other evidence or material which may be submitted to that board by the applicant, or licensee, or certificate holder or by the director or by any other person and shall then determine if the applicant, or licensee, or certificate holder is qualified to practice or to continue to practice such profession or occupation in the State of Nebraska. If such board finds the applicant, or licensee, or certificate holder to be not qualified to practice or to continue to practice such profession or occupation because of physical or mental illness or physical or mental deterioration or disability, it shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such license or certificate. The director shall thereupon deny the license or certificate, refuse renewal of, suspend, or revoke the license or certificate, or limit the license or certificate of the licensee or certificate holder to practice such profession or occupation in the state in such manner and to such extent as the director determines to be

necessary for the protection of the public.

Sec. 58. That section 71-161.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.14. The denial, of a license, or the refusal of renewal, limitation, suspension, or revocation of a license or certificate as provided in section 71-161.13 shall continue in effect until reversed on appeal or until the cause of such denial, refusal of renewal, limitation, suspension, or revocation no longer exists and the board of examiners in the profession or occupation of the applicant, former licensee or certificate holder, or licensee or certificate holder finds, upon competent medical evaluation by a qualified physician or physicians, that the applicant, former licensee or certificate holder, or licensee or certificate holder is qualified to engage in the practice of the profession or occupation for which he or she made application, for which he or she was formerly licensed or certified, or for which he or she was licensed or certified subject to limitation and certified certifies that fact to the Director of Health, whereupon the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such license, or certificate or remove any limitation or restrictions on such license or certificate if the person is otherwise qualified as determined by the board of examiners in the profession or occupation of the applicant, former licensee or certificate holder, or licensee or certificate holder to practice or to continue in the practice of such profession or occupation.

Sec. 59. That section 71-161.15, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.15. Refusal of an applicant for a license or certificate or of a licensee or a certificate holder to submit to a physical or mental examination requested by the board of examiners in the profession or occupation of the applicant, or licensee, or certificate holder pursuant to the provisions of sections 71-161.12 to 71-161.16 to determine his or her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which he or she is licensed or certified by the Department of Health pursuant to the provisions of Chapter 71 shall be just cause for denial of the application or for refusal of renewal or suspension of his or her license or certificate automatically by the

director until such examination has been made.

Sec. 60. That section 71-161.16, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.16. Any applicant, ~~or~~ licensee, or certificate holder shall have the right to appeal from an order denying, refusing renewal of, limiting, suspending, or revoking a license or certificate to practice a profession or occupation licensed or certified by the Department of Health pursuant to the provisions of Chapter 71 because of physical or mental illness or physical or mental deterioration or disability. Such appeal shall be taken in accordance with the provisions of Chapter 84, article 9. Unless otherwise ordered by the district court after a hearing, the order of denial, refusal of renewal, limitation, suspension, or revocation of a license or certificate because of physical or mental illness or physical or mental deterioration or disability shall remain in effect pending such appeal until the appeal has been finally terminated and it has been finally determined that no cause exists for further denial, refusal of renewal, limitation, suspension, or revocation of the license or certificate of such applicant, former licensee or certificate holder, or licensee or certificate holder because of physical or mental illness or physical or mental deterioration or disability. If the appeal is denied, such order shall remain in effect pursuant to ~~the provisions of~~ section 71-161.14.

Sec. 61. That section 71-161.17, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.17. (1) The license or certificate of any person to practice any profession or occupation licensed or certified by the Department of Health pursuant to the provisions of Chapter 71 shall be suspended automatically if he or she is determined by legal process to be mentally ill.

(2) A certified copy of the document evidencing that such a licensee or certificate holder has been determined by legal process to be mentally ill shall be transmitted to the Director of Health as soon as possible following such determination.

(3) A suspension under this section may be terminated by the Director of Health when he or she receives competent evidence that such former practitioner is not or is no longer mentally ill and is otherwise satisfied, with due regard for the public interest, that such former practitioner's license or



certificate to practice may be restored.

Sec. 62. That section 71-161.18, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.18. In determining the physical or mental incapacity of any licensee or certificate holder to practice his or her profession, the director may, in addition to the other provisions of this act, appoint one person of the same profession as such licensee or certificate holder as a special department consultant to compile a preliminary report on such licensee or certificate holder for the director.

Sec. 63. That section 71-161.19, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-161.19. No member of a board of examiners for any profession or occupation licensed or certified by the Department of Health pursuant to the provisions of Chapter 71 shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board, if such board member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Sec. 64. That section 71-162, Revised Statutes Supplement, 1985, be amended to read as follows:

71-162. (1) The following fees shall be collected by the Department of Health and turned in to the state treasury as is now provided by law:

(a) Not less than fifty dollars nor more than three hundred dollars for a license issued on the basis of an examination given by the appropriate state or national board of examiners or on the basis of a license granted by another state or territory to practice dental hygiene, embalming, physical therapy, dentistry, podiatry, optometry, pharmacy, chiropractic, audiology, speech-language pathology, or funeral directing and for a license to practice psychology on the basis of such an examination or foreign license, one hundred dollars plus actual costs incurred in issuing the license, as determined by the department, except that the total fee shall not exceed four hundred dollars;

(b) Not less than twenty dollars nor more than one hundred dollars for the biennial renewal of a

license to practice medicine and surgery, osteopathy, or any of the professions enumerated in subdivision (a) of this subsection except psychology, for which the renewal fee shall equal the actual costs incurred for such renewal by the department or one hundred dollars, whichever is less;

(c) For a license to practice medicine and surgery and osteopathy issued upon the basis of an examination given by the board of examiners, three hundred dollars, and this may be adjusted by the Department of Health upon recommendation of the Board of Examiners in Medicine and Surgery to cover necessary expenses;

(d) For a license to practice medicine and surgery and osteopathy issued without examination based on a license granted in another state, territory, or the District of Columbia, two hundred dollars, and this may be adjusted by the Department of Health upon recommendation of the Board of Examiners in Medicine and Surgery to cover necessary expenses;

(e) For a certificate as a certified professional counselor, not to exceed two hundred fifty dollars nor less than one hundred twenty-five dollars. The fee for a certificate as a registered counselor shall not exceed one hundred dollars nor be less than twenty-five dollars. The fee for renewal of a certificate as a certified professional counselor shall not exceed one hundred seventy-five dollars nor be less than one hundred dollars. The fee for renewal of a certificate as a registered counselor shall not exceed seventy-five dollars nor be less than twenty dollars. The fee for certification by reciprocity shall not exceed two hundred fifty dollars nor be less than one hundred twenty-five dollars.

(f) (e) For a certified statement that a licensee or certificate holder is licensed or certified in this state, five dollars; and

(g) (f) For a duplicate original license or certificate, five dollars, except that for a duplicate license to practice psychology the fee shall be ten dollars.

All money paid as license, certificate, and renewal fees shall be kept in a separate fund to be used for the benefit of the profession so paying such fees.

(2) The Department of Health, upon the recommendation of the appropriate examining board, shall determine the exact fee to be charged for a license or license renewal or certificate or certificate renewal in each profession enumerated in subdivisions (1)(a) and

(b), and (e) of this section based on the administrative costs incurred by the board. Such board may provide differing rates for licenses issued on the basis of an examination and licenses issued on the basis of a license from another state or territory.

Sec. 65. That section 71-166, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-166. Any person who shall present to the Department of Health a diploma or certificate, of which he or she is not the rightful owner; for the purpose of procuring a license, or certificate or who shall falsely impersonate any one to whom a license or certificate has been issued by the department; shall be deemed guilty of a fraud in attempting to procure a license, or certificate and shall be guilty of a Class IV felony.

Sec. 66. That section 71-168, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-168. The Department of Health shall enforce the provisions of this act, and for that purpose shall make necessary investigations relative thereto. Every licensee or certificate holder and member of a board of examiners shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated. He or she shall also report to the department the name of every person without a license or certificate that he or she has reason to believe is engaged in practicing any profession for which a license or certificate is required by this act.

Sec. 67. That section 71-170, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-170. The Department of Health shall have printed in pamphlet form for each profession ~~the that~~ following matter which is pertinent to the particular profession for which such pamphlet is published: (1) The law regulating the practice of the profession; (2) the rules of the department relative to licenses and certificates; and (3) the rules relating to examinations adopted by the department on the recommendation of the board of examiners.

Sec. 68. That section 71-171.01, Revised Statutes Supplement, 1984, be amended to read as follows:

71-171.01. The Bureau of Examining Boards shall provide the Attorney General with a copy of all complaints it receives and investigations it makes which



involve any possible statutory violation by the licensee or certificate holder. The Attorney General shall then determine which, if any, statutes the licensee or certificate holder has violated and the appropriate legal action to take.

Sec. 69. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 70. That original sections 33-150, 71-103, 71-104, 71-106, 71-108, 71-111, 71-118, 71-125, 71-128, 71-135, 71-136, 71-138, 71-145, 71-147, 71-148, 71-150 to 71-152, 71-154, 71-156, 71-157, 71-161.02, 71-161.04 to 71-161.08, 71-161.12 to 71-161.19, 71-166, 71-168, and 71-170, Reissue Revised Statutes of Nebraska, 1943, sections 71-101, 71-133, 71-149, 71-155, 71-155.01, and 71-171.01, Revised Statutes Supplement, 1984, and sections 71-102, 71-107, 71-110, 71-112, 71-113, 71-116, 71-131, 71-139, 71-161.09, 71-161.10, and 71-162, Revised Statutes Supplement, 1985, are repealed.