LEGISLATIVE BILL 352

Approved by the Governor May 25, 1989

Introduced by Abboud, 12

AN ACT relating to administrative agencies; to amend sections 60-420 and 60-503, Reissue Revised Statutes of Nebraska, 1943; to change appeal procedures; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 60-420, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-420. (1) Any person who feels aggrieved because of any order of the director on account of a refusal to issue any license contemplated under sections 60-418 and 60-419 may appeal to the district court of the county in which the application for the license was originally made or to the district court of the county in which such person resides in the ~~manner otherwise set forth in the Administrative Procedure Act~~ following manner: The director shall reduce the ruling, order, or decision to writing, file a copy in his or her office, and furnish a copy together with a statement of reasons for the ruling to the applicant or licensee, as the case may be, upon request. The ruling, order, or decision of the director in refusing to issue or reinstate such license or in suspending, canceling, or revoking the same shall be as final and binding as the final order or judgment of a court of general jurisdiction. The applicant, licensee, or appellant shall, within thirty days from the date of the final order complained of, execute a bond for costs to the State of Nebraska in the sum of two hundred dollars with sufficient surety to be approved by the Auditor of Public Accounts. The bond shall be filed in the office of the director. In lieu of the bond, the sum of two hundred dollars in cash, certified check, or money order may be deposited at the office of the director. It shall be the duty of the director, on payment or tender of the cost of preparing the transcript at the rate of ten cents per hundred words, to prepare a complete transcript of the proceedings relating to the refusal to issue or to reinstate any license or relating to the proceedings

concerning the suspension, cancellation, or revocation of such license. The applicant or licensee shall file a petition in such district court within thirty days from the date of filing of the director's final order in the matter and shall file the transcript before answer day which shall be the same as provided in section 25-821. The district court shall hear the appeal as in equity without a jury and determine anew all questions raised before the director. Either party may appeal from the decision of the district court to the Supreme Court.

(2) The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

Sec. 2. That section 60-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-503. (1) Any person aggrieved by an order or act of the department under the Motor Vehicle Safety Responsibility Act may, within ~~twenty~~ thirty days after notice thereof, file a petition in the district court of the county where the aggrieved person resides, but in the event the aggrieved person is a nonresident, then such petition shall be filed in the district court of Lancaster County for a review thereof. The filing of such petition shall suspend the order or act pending a final determination of the review. ~~Such appeal shall otherwise be governed by the Administrative Procedure Act.~~ The license or registration of any person claiming to be aggrieved shall not be restored to such person in the event the final judgment of a court finds against such person until the full time of revocation as fixed by the department shall have elapsed. The court shall summarily hear the petition as a case in equity without a jury and may make any appropriate order or decree.

(2) The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

Sec. 3. This act shall become operative on July 1, 1989.

Sec. 4. That original sections 60-420 and 60-503, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

LEGISLATIVE BILL 353

Approved by the Governor February 16, 1989

Introduced by Wesely, 26

AN ACT relating to drug product selection; to amend section 71-5403, Reissue Revised Statutes of Nebraska, 1943; to authorize the interchange of certain controlled substances; and to repeal the original section.

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

Section 1. That section 71-5403, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5403. (1) Except as limited (a) by this section, when a medical practitioner designates that no drug product selection is permitted, and (b) by subsection (1) of section 71-5404, unless the purchaser instructs otherwise, the pharmacist may drug product select a drug product with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, bioequivalent, except that products designated as controlled substances as listed in Schedule I ~~or II~~ of section 28-405 shall not be interchanged. It shall be the responsibility of the purchaser or the ultimate user to advise or instruct the pharmacist that he or she does not desire drug product selection, and it shall not be mandatory for the pharmacist to drug product select against his or her professional judgment.

(2) The department may adopt and promulgate necessary rules and regulations, upon the joint recommendation of the Board of Examiners in Medicine and Surgery and the Board of Examiners in Pharmacy, relating to (a) bioavailability, (b) fraudulent or misleading advertising pertaining to drug product selection, and (c) the control of conditions in which the prescribing practitioner or purchaser should be advised when drug product selection has been made by the pharmacist.

(3) A medical practitioner duly authorized to prescribe drugs, medicinal substances, or controlled substances may specify in writing or by telephonic communication on each prescription that there shall be no drug product selection for the specified brand name drug in any prescription. The phrase no drug product

selection or the notation N.D.P.S. shall be specified on the prescription form or orally communicated by the medical practitioner. The pharmacist shall note N.D.P.S. on the face of the prescription if such is communicated orally by the prescribing medical practitioner.

(4) Each pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that this pharmacy may be able to select a less expensive drug product which is bioequivalent to the one prescribed by the prescriber unless the purchaser does not approve. The sign shall be provided by the department, at a cost to the pharmacy which shall not exceed the actual cost of printing to the department, and the printing on the sign shall be in block letters not less than one inch in height.

(5) A pharmacist shall not drug product select a product under the provisions of this section unless: (a) The product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit; (b) the product has been labeled with an expiration date; (c) the manufacturer provides reasonable services to accept return products that have reached their expiration date; and (d) the manufacturer maintains recall capabilities for unsafe or defective drugs.

(6) A pharmacist shall not drug product select a product under this section that is:

(a) An enteric-coated tablet or capsule;

(b) An injectable suspension other than an antibiotic or insulin;

(c) A controlled-release product;

(d) A suppository containing active ingredients for which systemic absorption is necessary; or

(e) A different delivery system for aerosol and nebulizer drugs.

(7) The department shall maintain a list of drug products for which bioequivalency has been demonstrated and documented either federally or by the state.

Sec. 2. That original section 71-5403, Reissue Revised Statutes of Nebraska, 1943, is repealed.