

LEGISLATIVE BILL 406

Approved by the Governor March 20, 1978

Introduced by Moylan, 6

AN ACT to amend sections 71-102, 71-107, 71-110, 71-112 to 71-114, 71-116, 71-121, 71-122, 71-138, 71-139, and 71-162, Reissue Revised Statutes of Nebraska, 1943, relating to professional and occupational licenses; to provide for licensure of audiologists and speech pathologists; to provide for a board of examiners; to provide licensure qualifications; to define terms; to specify fees; to provide for temporary licensure; to provide for termination; to provide severability; and to repeal the original sections.

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

Section 1. That section 71-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

Sec. 2. That section 71-107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-107. Every person, licensed under this act to practice a profession, shall keep such license 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 to practice osteopathy, chiropractic, podiatry, optometry, audiology, speech pathology, or physical therapy shall cause to be placed upon such signs, in lettering of equal height, the word, Osteopath, Chiropractor, Podiatrist, Optometrist, Audiologist,

Speech Pathologist, or Physical Therapist, as the case may be; Provided, the same wording shall be used in all signs, announcements, stationery, and advertisements of such licensees.

Sec. 3. That section 71-110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-110. (1) The different licenses to practice a profession shall expire on the first day of the several months as hereinafter indicated. These licenses shall be renewed annually upon request of the licensee without examination. The annual expiration date in the different professions shall be as follows: January, pharmacy; February, embalming; March, dentistry and dental hygiene; April, podiatry and veterinary medicine and surgery; August, chiropractic and optometry; September, osteopathy, audiology, and speech pathology; October, medicine and surgery; and November, physical therapy. 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; Provided, 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 to practice the professions above named shall not be required to pay the annual renewal license fee.

(2) At least thirty days before the expiration of his license, as set forth in subsection (1) of this section, the Department of Health shall notify each licensee by a letter addressed to him at his last place of residence as noted upon its records. Any licensee, who fails to pay the renewal fee, on or before the date of expiration of his license, shall be given a second notice in the same manner advising him (a) of his failure to pay, (b) that his license 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 annual renewal fee, together with an additional fee of one dollar, within that time, no order of revocation will be entered, and (e) that upon the failure to receive the amount then due and one dollar 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 who allows his license 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

profession and the payment of the regular and additional renewal fees then due.

Sec. 4. That section 71-112, Reissue Revised Statutes of Nebraska, 1943, 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, Examiners in Medicine and Surgery; for osteopathy, Examiners in Osteopathy; for chiropractic, Examiners in Chiropractic; for dentistry, Examiners in Dentistry; for optometry, Examiners in Optometry; for physical therapy, Examiners in Physical Therapy; for pharmacy, Examiners in Pharmacy; for audiology and speech pathology, Examiners in Audiology and Speech Pathology; for embalming, Examiners in Embalming; for podiatry, Examiners in Podiatry; and for veterinary medicine and surgery, Examiners in Veterinary Medicine.

Sec. 5. That section 71-113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-113. (1) Each board of examiners shall consist of three members, except that in audiology and speech pathology the board shall consist of four members, and in dentistry and in medicine and surgery the board shall consist of six members.

(2) Membership on the Board of Examiners in Audiology and Speech Pathology shall consist of two members who are audiologists and two members who are speech pathologists. All members shall be qualified to be licensed in accordance with the provisions of this act. The 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 member cannot be licensed within such time period, a new member shall be appointed.

Sec. 6. That section 71-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-114. (1) Every examiner shall be and have been actively engaged in the practice of his profession in the State of Nebraska, under a license issued in this state, for a period of five years just preceding his appointment, except for the members of boards of examiners for professions coming within the scope of sections 71-101 to 71-1,152, for the first time and for a

period of five years thereafter. Examiners appointed during such period shall be required to meet the minimum qualifications for licensure in the profession in this state and shall, insofar as possible, meet the requirements as to years of practice in this state otherwise provided by this section.

(2) Each member of the Board of Examiners in Audiology and Speech Pathology shall have been a resident of the State of Nebraska for at least one year immediately prior to his appointment, and shall also have been engaged in rendering services to the public in audiology or speech pathology for at least three years immediately prior to his appointment.

Sec. 7. That section 71-116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-116. (1) The members of each board of examiners shall be appointed for a term of three years, except as herein otherwise provided.

(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; and as of December 1 of each year thereafter, two members shall be appointed for a term of three years. No member shall be appointed for more than two consecutive full 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 said several 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. Thereafter successors with like qualifications shall be appointed for five-year terms.

(4) The members of the Board of Examiners in Audiology and Speech Pathology shall consist of two audiologists and two speech pathologists and shall be appointed as follows: Within sixty days after the effective date of this act, four members shall be appointed, two of whom shall hold office until December 1, 1979, and two until December 1, 1980. Upon the expiration of such terms the successors shall be appointed for terms of three years each. No member shall be appointed for more than two consecutive three-year terms.

~~(4)~~ (5) 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 one examiner shall retire each year.

(5) (6) The members of boards for professions, coming under the scope of sections 71-101 to 71-1,152, for the first time shall be appointed within thirty days after September 20, 1957 providing for licensing of the profession, the terms of the initial board members to be as follows: One member shall hold office until December 1 of the first year, one until December 1 of the second year, and one until December 1 of the third year following the year 1957.

Sec. 8. That section 71-121, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-121. The Department of Health shall, as far as practicable, provide by rules for the conducting of the business of several boards of examiners by mail. Any official action or vote taken by mail shall be preserved in the records of the department and shall be embodied in the proper minute book by the Director of the Bureau of Examining Boards. At least a majority of each board of examiners shall be present at any examination given in that profession, except for examinations in audiology and speech pathology. The board members who are audiologists shall be present at any examination in audiology, and the board members who are speech pathologists shall be present at any examination in speech pathology.

Sec. 9. That section 71-122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-122. Each member of a board of examiners, except members of the Board of Examiners in Medicine and Surgery, and the Board of Examiners in Dentistry, shall,

in addition to necessary traveling and hotel expenses, receive a per diem for each day actually engaged in the discharge of his duties, including compensation for the time spent in traveling to and from the place of conducting the examination, and for a reasonable number of days for the preparation of examination questions and the reading of the answer papers, in addition to the time actually spent in conducting the examination; Provided, that traveling and hotel expenses shall not exceed the amounts allowed by state administrative departments. The compensation per day in the several professions shall be as follows: (1) in osteopathy, chiropractic, embalming, and pharmacy, fifteen dollars; (2) in podiatry and physical therapy, ten dollars; (3) in audiology and speech pathology, twenty dollars; and ~~(3)~~ (4) in optometry, thirty dollars; Provided, there shall not be paid for examiners' compensation and expenses a greater sum than is received in fees from the applicants taking the examination in any particular profession.

Sec. 10. That section 71-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-138. (1) All question and answer papers connected with any examination for a license shall be filed with the Department of Health and preserved for two years as a part of its records, during which time such papers shall be open to inspection of an applicant or of the superintendent of his training school or other proper representative, under regulations by the department. In medicine and surgery, the questions and results shall be available for two years for review by any person.

(2) When the Board of Examiners in Audiology and Speech Pathology has designated the use of a national examination, the papers connected with the examination shall be filed and maintained for at least two years by the board.

Sec. 11. That section 71-139, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-139. The Department of Health, without examination, except where a practical examination is required, may issue a license to practice any profession except pharmacy, podiatry, dentistry, medicine and surgery, and osteopathic medicine and surgery, and audiology and speech 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 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 profession equal to those maintained in that profession by Nebraska; (2) that his license there was based upon a written examination and the grades given at such examination; (3) the date of his license; (4) that such licensee has been actively engaged in the practice under such license since it was issued; if not, he shall fix the time when he was out of practice; (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 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 comes for at least one year. An applicant for reciprocal registration coming from any state may be licensed by reciprocity; Provided, his individual qualifications meet the Nebraska legal requirements. 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, 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 joint certificate of the Board of Examiners in Osteopathy and 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. 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 jointly certified by the Board of Examiners in Osteopathy and the Board of Examiners in Medicine and Surgery may be granted a special license as doctor of osteopathic medicine and surgery.

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. The applicant shall produce evidence satisfactory to the board that he 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 is licensed to practice such profession, that he is duly licensed, that his license has not been suspended or revoked, and that so far as the records of such authority are concerned he 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. 12. That section 71-162, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(1) For a license to practice osteopathy and dental hygiene issued upon the basis of an examination given by the board of examiners, twenty-five dollars;

(2) For a license to practice medicine and surgery issued upon the basis of an examination given by the board of examiners or without examination based on a license granted in another state, territory, or the District of Columbia, one 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;

(3) For a license to practice embalming issued upon the basis of an examination given by the board of examiners, thirty dollars;

(4) For a license to practice physical therapy issued upon the basis of an examination given by the board of examiners, thirty-five dollars;

(5) For a license to practice chiropractic, dentistry, podiatry, or optometry issued upon the basis of an examination given by the board of examiners, fifty dollars;

(6) For a license to practice pharmacy issued upon the basis of an examination given by the board of examiners, sixty-five dollars;

(7) For a license to practice any of the professions enumerated in subdivisions (1), (3), (4), and (5) of this section, except podiatry, dentistry, and dental hygiene, issued without examination upon a license granted in another state, territory, or the District of Columbia, fifty dollars;

(8) For a license issued to practice dentistry without examination upon a license granted in another state, territory, or the District of Columbia, fifty dollars;

(9) For a license issued to practice podiatry when based upon an examination held by the National Board of Podiatry Examiners, fifty dollars;

(10) For a license to practice audiology or speech pathology issued upon the basis of an examination given by the board of examiners, seventy-five dollars;

~~(10)~~ (11) For a license to practice podiatry issued without an examination based upon a license granted in another state, territory, or the District of Columbia, one hundred dollars;

~~(11)~~ (12) For a license to practice pharmacy issued without an examination upon a license granted in another state, territory, or the District of Columbia, one hundred dollars;

~~(12)~~ (13) For a license to practice dental hygiene issued without examination upon a license granted in another state, territory, or the District of Columbia, twenty-five dollars;

(14) For a license to practice audiology or speech pathology issued without examination upon a license granted in another state, territory, or the District of Columbia, or when examination is waived or a national examination is used, seventy-five dollars;

~~(13)~~ (15) For the annual renewal of a license to practice any of the professions enumerated in this section the fee shall be as follows: Dental hygiene, osteopathy, physical therapy, and embalming, ten dollars; optometry, audiology, and speech pathology, twenty-five dollars; and chiropractic, podiatry, pharmacy, dentistry, and medicine and surgery, fifteen dollars. All money paid as license and renewal fees shall be kept in a

separate fund to be used for the benefit of the profession so paying such fees;

{14} (16) For a certified statement that a licensee is licensed in this state, two dollars; and

{15} (17) For a duplicate original license, two dollars.

Sec. 13. As used in this act, unless the context otherwise requires:

(1) Board shall mean the Board of Examiners in Audiology and Speech Pathology;

(2) Practice of audiology shall mean the application of principles, methods, and procedures for testing, measuring, and monitoring hearing, preparation of ear impressions and selection of hearing aids, aural habilitation, hearing conservation, and instruction related to hearing and disorders of hearing for the purpose of preventing, identifying, evaluating, and minimizing the effects of such disorders and conditions, but shall not include the practice of medical diagnosis, medical treatment, or surgery;

(3) Audiologist shall mean an individual who practices audiology and who presents himself to the public by any title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, or any similar title or description of service;

(4) Practice of speech pathology shall mean the application of principles, methods, and procedures for the evaluation, monitoring, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language for the purpose of preventing, identifying, evaluating, and minimizing the effects of such disorders and conditions, but shall not include the practice of medical diagnosis, medical treatment, or surgery; and

(5) Speech pathologist shall mean an individual who presents himself to the public by any title or description of services incorporating the words speech pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, language clinician, logopedist, communicologist, aphasiologist, aphasia therapist, voice pathologist, voice therapist, voice clinician, phoniatrist, or any similar title, term, or description of services.

Sec. 14. Nothing in this act shall be construed to prevent or restrict:

(1) The practice of audiology or speech pathology or the use of the official title of such practice by a person employed as a speech pathologist or audiologist by the federal government;

(2) A physician from engaging in the practice of medicine and surgery or any individual from carrying out any properly delegated responsibilities within the normal practice of medicine and surgery under the supervision of a physician;

(3) A person licensed as a hearing aid fitter and dealer in this state from engaging in the fitting, selling, and servicing of hearing aids, or performing such other duties as defined in Chapter 71, article 47;

(4) The practice of audiology or speech pathology or the use of the official title of such practice by a person who holds a valid and current credential as a speech or hearing specialist, issued by the State Department of Education, if such person performs speech pathology or audiology services solely as a part of his duties within an agency, institution, or organization for which no fee is paid directly or indirectly by the recipient of such service and under the jurisdiction of the State Department of Education, but such person may elect to be within the jurisdiction of this act;

(5) The clinical practice in audiology or speech pathology required for students enrolled in an accredited college or university pursuing a major in audiology or speech pathology, if such clinical practices are supervised by a person licensed to practice audiology or speech pathology and if the student is designated by a title such as trainee or other title clearly indicating the training status; or

(6) The activities and services of persons fulfilling the supervised clinical experience requirements of this act which shall be performed by persons under the supervision of a person licensed in the area in which the individual is practicing.

Sec. 15. Nothing in this act shall be construed to prevent or restrict (1) a qualified person licensed in this state from engaging in the profession for which he is licensed if he does not present himself to be an audiologist or speech pathologist, or (2) the performance of audiology or speech pathology services in this state by any person not a resident of this state who is not

licensed under the provisions of this act, if such services are performed for not more than thirty days in any calendar year, if such person meets the qualifications and requirements for application for licensure under the provisions of this act, if such person is working under the supervision of a person licensed to practice speech pathology or audiology, and if such person registers with the board prior to initiation of professional services.

Sec. 16. Before any audiologist initiates any aural habilitation, for an individual, the audiologist shall have in his possession evidence of a current otologic examination performed by a physician.

Sec. 17. Every applicant for a license to practice audiology or speech pathology shall submit to the board satisfactory evidence or completion of (1) a master's degree or its equivalent with academic credit distributed as prescribed by the board, (2) at least three hundred hours of clinical experience in audiology and speech pathology with such hours distributed as required by the board, and (3) at least nine calendar months of full-time professional experience or eighteen months of at least half-time professional experience in speech pathology or audiology, supervised in the area in which licensure is sought. The board shall require that the applicant, to qualify for licensure, shall have passed an examination to be determined by the board.

Sec. 18. The Board of Examiners in Audiology and Speech Pathology may recommend to the Department of Health that a national examination in audiology or speech pathology be approved in lieu of or in addition to an examination given by the board. When only a national examination is used, no examination fee will be charged by the board. The board shall recommend a passing score to the Department of Health.

Sec. 19. The Board of Examiners in Audiology and Speech Pathology may approve, without examination, any person who holds credentials either through licensure in another state or territory of the United States or in the District of Columbia or certification by a nationwide professional accrediting organization, recognized as such by the board, if such licensure or certification is equivalent to the requirements of this act.

Sec. 20. The board may contract with institutions of higher learning, professional organizations, or qualified individuals to provide continuing education programs for audiologists and speech pathologists. License fees may be used for such

programs. Any funds set aside for the purposes of continuing education may be treated as state funds for the purposes of applying for and accepting any funds made available under federal law on a matching basis for the promulgation and maintenance of programs of continuing education.

Sec. 21. A temporary license to practice audiology or speech pathology may be granted to persons who establish residence in Nebraska and who meet all the requirements for a license except passage of the examination required by this act. Such temporary license shall be valid only until the next examination, at which time it shall expire. The fee to be paid and procedures for the denial, refusal of renewal, suspension, or revocation of or other disciplinary action against such a temporary license shall be the same as for a license, except that the fee paid shall equal the renewal fee rather than the initial fee for a license.

Sec. 22. The board may, upon request filed within one year of the effective date of this act, waive the educational requirements and the examination required by the provisions of this act for an applicant for licensure who (1) holds at least a bachelor's degree, and (2) has a major as defined by the board in audiology or speech pathology.

Sec. 23. Any audiologist who engages in the sale of hearing aids shall not be exempt from sections 71-4706 to 71-4711.

Sec. 24. The Board of Examiners in Audiology and Speech Pathology shall terminate July 1, 1984, unless revived pursuant to sections 81-199 to 81-1,105.

Sec. 25. 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. 26. That original sections 71-102, 71-107, 71-110, 71-112 to 71-114, 71-116, 71-121, 71-122, 71-138, 71-139, and 71-162, Reissue Revised Statutes of Nebraska, 1943, are repealed.