

## LEGISLATIVE BILL 273

Approved by the Governor February 10, 1988

Introduced by Pirsch, 10; Marsh, 29; Chizek, 31

AN ACT relating to drugs and narcotics; to amend sections 27-504, 28-401, 28-411, 28-414, 28-415, 28-417, and 28-418, Reissue Revised Statutes of Nebraska, 1943, and section 71-148, Revised Statutes Supplement, 1987; to provide an exception to the physician-patient privilege; to provide immunity as prescribed; to redefine a term; to change provisions relating to records for certain controlled substances; to change provisions relating to prescription requirements; to change provisions relating to certain unlawful acts; to make certain acts relating to controlled substances illegal; 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. That section 27-504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

27-504. (1) As used in this rule:

(a) A patient is a person who consults or is examined or interviewed by a physician for purposes of diagnosis or treatment of his or her physical, mental, or emotional condition;

(b) A physician is (i) a person authorized to practice medicine in any state or nation, or who is reasonably believed by the patient so to be, or (ii) a person licensed or certified as a psychologist under the laws of any state or nation, who devotes all or a part of his or her time to the practice of clinical psychology; and

(c) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, ~~or~~ persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient's family.

(2) A patient has a privilege to refuse to

disclose and to prevent any other person from disclosing confidential communications made for the purposes of diagnosis or treatment of his or her physical, mental, or emotional condition, among himself or herself, his or her physician, or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.

(3) The privilege may be claimed by the patient, by his or her guardian or conservator, or by the personal representative of a deceased patient.

The person who was the physician may claim the privilege but only on behalf of the patient. His or her authority so to do is presumed in the absence of evidence to the contrary.

(4)(a) There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for physical, mental, or emotional illness, if the physician, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization.

(b) If the judge orders an examination of the physical, mental, or emotional condition of the patient, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) There is no privilege under this rule as to communications relevant to an issue of the physical, mental, or emotional condition of the patient in any proceeding in which he or she relies upon the condition as an element of his or her claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his or her claim or defense.

(d) There is no privilege under this rule in any judicial proceedings under ~~sections 43-201 to 43-227~~, the Nebraska Juvenile Code regarding injuries to children, incompetents, or disabled persons or in any criminal prosecution involving injury to any such person or the willful failure to report any such injuries.

(e) There is no privilege under this rule in any judicial proceeding regarding unlawfully obtaining or attempting to obtain (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance from a practitioner. For purposes of this subdivision, the definitions found in section 28-401 shall apply.

Sec. 2. (1) Any practitioner who gives

information to a law enforcement officer or professional board shall not be subject to any civil, criminal, or administrative liability or penalty for giving such information.

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

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

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

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

Sec. 3. That section 28-401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-401. As used in this article, unless the context otherwise requires:

(1) Administer shall mean the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (a) A practitioner or, in his or her presence, by his or her authorized agent; or (b) the patient or research subject at the direction and in the presence of the practitioner;

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

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

(4) Controlled substance shall mean a drug, substance, or immediate precursor in Schedules I to V of section 28-405. ~~The term~~ Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer,

distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health; ~~of this state;~~

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce ~~the provisions of~~ this article;

(8) Bureau of Examining Boards shall mean personnel of the department responsible for the enforcement of ~~the provisions of~~ this article in the areas assigned to it by ~~the provisions of~~ this article;

(9) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject ~~by, or pursuant to the lawful order or prescription of,~~ a physician, dentist, veterinarian, or other medical practitioner licensed under the laws of this state to prescribe drugs, including the packaging, labeling, or compounding necessary to prepare the substance for such delivery. Dispenser shall mean the apothecary, pharmacist, or other practitioner, duly licensed, who dispenses a controlled substance to an ultimate user or a research subject;

(10) Distribute shall mean to deliver other than by administering or dispensing a controlled substance. Distributor shall mean a person who so distributes a controlled substance;

(11) Prescribe shall mean the act of a physician, surgeon, dentist, veterinarian, or other medical practitioner licensed under the laws of this state in issuing an order, prescription, or direction to a pharmacist or pharmacy to dispense a drug as required by the laws of this state;

(12) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but ~~does~~ shall not include devices or their components, parts, or accessories;

(13) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one

person to another of a controlled substance, whether or not there is an agency relationship;

(14) Marijuana shall mean all parts of the plant of the genus Cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. ~~Where~~ When the weight of marijuana is referred to in this article it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(15) Manufacture shall mean the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and ~~includes~~ shall include any packaging or repackaging of the substance or labeling or relabeling of its container, except that ~~this term does~~ manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances

referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in this article shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(17) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does Opiate shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. It does Opiate shall include its racemic and levorotatory forms;

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

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

(20) Person shall mean any corporation, association, partnership, or one or more individuals;

(21) Practitioner shall mean a physician, dentist, veterinarian, pharmacist, scientific investigator, pharmacy, or hospital, licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

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

(23) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(24) State shall mean the State of Nebraska;

(25) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(26) Physician shall mean a person authorized

by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state;

(27) Dentist shall mean a person authorized by law to practice dentistry in this state;

(28) Veterinarian shall mean a person authorized by law to practice veterinary medicine in this state;

(29) Hospital shall mean an institution for the care and treatment of sick and injured human beings and approved by the department;

(30) Podiatrist shall mean a person authorized by law to practice podiatry and who has graduated from an accredited school of podiatry in or since 1935;

(31) Apothecary shall mean a licensed pharmacist as defined by the laws of this state and, where when the context so requires, the owner of the store or other place of business where drugs are compounded or dispensed by a licensed pharmacist, but nothing in this subdivision shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him or her by the pharmacy laws of this state;

(32) Nothing ~~contained~~ in this article shall be construed as authority for a practitioner to perform an act for which he or she is not authorized by the laws of this state;

(33) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under sections 28-401 to 28-438;

(34) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(35) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, or (f) pentobarbital; and

(36) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable

person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance.

Sec. 4. That section 28-411, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-411. (1) Every physician, dentist, podiatrist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, controlled substances shall keep a record of such drugs controlled substances received by him, or her and a record of all such drugs controlled substances administered, dispensed, or professionally used by him or her otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients; PROVIDED, that no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight consecutive hours (a) four grains of opium, (b) one-half of a grain of morphine or of any of its salts, (c) two grains of codeine or of any of its salts, (d) one-fourth of a grain of heroin or of any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated; AND PROVIDED FURTHER, that no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, where the amount administered, dispensed, or professionally used for that purpose does not exceed in any thirty-day period twenty tablets of one-fourth grain each of morphine or any of its salts.

(2) Manufacturers and wholesalers shall keep records of all narcotic drugs controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs



controlled substances received and disposed of by them, in accordance with the provisions of subsection (4) of this section.

(3) Apothecaries shall keep records of all narcotic drugs controlled substances received and disposed of by them, in accordance with the provisions of subsection (4) of this section.

(4) The form of records shall be prescribed by the Department of Health of the State of Nebraska. The record of narcotic drugs controlled substances received shall in every case show (a) the date of receipt, (b) the name and address of the person from whom received, (c) the kind and quantity of drugs controlled substances received, (d) the kind and quantity of narcotic drugs controlled substances produced or removed from process of manufacture, and (e) the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all narcotic drugs controlled substances sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs controlled substances were sold, administered, or dispensed, and the kind and quantity of drugs controlled substances. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above in this subsection, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs controlled substances lost, destroyed, or stolen, if any, the kind and quantity of such drugs controlled substances, and the date of the discovery of such loss, destruction, or theft.

Sec. 5. That section 28-414, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-414. (1) Except when dispensed or administered directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule II of section 28-405 may be dispensed without the written prescription of a practitioner, except ; PROVIDED; that in emergency situations, as prescribed by the department by rule and

regulation, such substance may be dispensed upon oral prescription reduced promptly to writing in conformity with subdivision (4)(b) of this section and filed by the pharmacist. No prescription for a Schedule II substance may be refilled.

(2) Except when dispensed or administered directly by a practitioner, other than a pharmacist, to an ultimate user, no other controlled substance included in Schedule III or IV of section 28-405 which is a prescription drug as determined under the laws of this state or the laws of the United States, may be dispensed without a written or oral prescription. Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner of the prescription. Practitioner authorization shall be required to refill any such prescription. Such refills may not occur more than five times within six months after the date of the prescription.

(3) Except when dispensed or administered directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule V of section 28-405 may be dispensed without a written or oral prescription.

(4)(a) Prescriptions for all Schedule II controlled substances shall be kept in a separate file by the pharmacist practitioner, and shall be maintained for a minimum of two years, and shall be available to authorized agents of the Bureau of Examining Boards and the Division of Drug Control for inspection without any requirement for obtaining a search warrant.

(b) All prescriptions for controlled substances in Schedule II of section 28-405 shall contain the name and address of the patient and the name and address of the prescribing practitioner, including the registry number under the federal narcotic laws of the prescribing practitioner. The pharmacist or practitioner filling the prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances in Schedules III, and IV, and V of section 28-405, unless otherwise required by federal or state laws, may shall be filed separately from other prescriptions in a single file by the pharmacist practitioner and shall be maintained for a minimum of

two years. If filed with other prescriptions for substances classified as noncontrolled substances, the pharmacist The practitioner shall be required to make all prescription files readily available and shall maintain these prescriptions for a period of two years. All such files shall be available to authorized agents of the Bureau of Examining Boards and the Division of Drug Control for inspection without any requirement for obtaining a search warrant.

(d) All prescriptions for controlled substances in Schedules III, and IV, and V of section 28-405 shall contain the name and address of the patient and the name and address of the prescribing practitioner, including the registry number of the prescribing practitioner under the federal narcotics laws. If the prescription is for an animal, it shall state the owner's name and address and species of the animal.

(e) All prescriptions for controlled substances listed in Schedule V of section 28-405 may be filed by the pharmacist together with other prescriptions for noncontrolled substances, unless required by other federal or state laws to be filed separately, and must be maintained for a period of two years. These prescriptions shall contain the name and address of the prescribing practitioner, including the registry number of the prescribing practitioner under the federal narcotics laws, and the name and address of the patient and shall be made readily available for inspection by an authorized agent of the Bureau of Examining Boards or Division of Drug Control, without any requirement for obtaining a search warrant.

(e) (f) The owner of any stock of controlled substances in Schedules I and II of section 28-405, upon discontinuance of the dealing in such substances, may sell such substances to a manufacturer, wholesaler, or apothecary, but only on an official order form as required by section 28-413.

(f) (g) An apothecary, only upon an official written order, may sell to a physician, dentist, podiatrist, or veterinarian, in quantities not exceeding one ounce at any time, aqueous or oleaginous solutions of which the content of controlled substances in Schedules I, II, and III of section 28-405 does not exceed a proportion greater than twenty percent of the complete solution to be used for medical purposes.

(g) (h) No pharmacist or dispensing practitioner shall dispense any controlled substance contained in Schedule II of section 28-405 without

affixing to the container in which the substance is dispensed; a label bearing the name and address of the pharmacy or dispensing practitioner, the name and address of the patient, the date compounded, the consecutive number of the prescription under which it is recorded in the pharmacist's practitioner's prescription files, ~~together with~~ the name of the physician, dentist, veterinarian, or other prescribing practitioner, who prescribes it, and the directions for the use of the drug. If indicated by the prescribing practitioner, the label shall bear the name of the substance.

(h) (i) No pharmacist or dispensing practitioner shall dispense any controlled substance contained in Schedules III, IV, and V of section 28-405 without affixing to the container in which the substance is dispensed, a label bearing the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of initial filling, the consecutive number of the prescription under which it is recorded in the pharmacist's practitioner's prescription files, ~~together with~~ the name of the physician, dentist, veterinarian, or other prescribing practitioner, who prescribes it, and the directions for the use of the drug. If indicated by the prescribing practitioner, the label shall bear the name of the substance.

Sec. 6. That section 28-415, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-415. (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him or her, he or she shall securely affix to each package in which the drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this article, shall alter, deface, or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, podiatrist, or veterinarian, he or she shall affix to the container in which such drug is sold or dispensed, a label in accordance with the requirements stated in subdivisions (4)(g) and (h) and (i) of section 28-414. No person shall alter, deface, or remove any label so affixed.

Sec. 7. That section 28-417, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

28-417. (1) It shall be unlawful for any person:

(a) Who is subject to the requirements of sections 28-406 to 28-414 to distribute or dispense a controlled substance in violation of section 28-414;

(b) Who is a registrant to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(c) (a) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Dangerous Substances Act or required by the laws of this state;

(d) (b) To alter, deface, or remove any label affixed to a package of narcotic drugs;

(e) (c) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this article;

(f) (d) To refuse any entry into any premises for inspection authorized by the provisions of this article;

(g) (e) To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which such person knows, or should know, is resorted to by persons using controlled substances in violation of the provisions of this article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of the provisions of this article;

(h) (f) To whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner or the owner of any animal for which any such substance has been prescribed, sold, or dispensed by a veterinarian to possess it in a container other than which it was delivered to him or her by the practitioner; or

(i) (g) To be under the influence of any controlled substance for a purpose other than the treatment of a sickness or injury as prescribed or administered by a person duly authorized by law to treat sick and injured human beings. In a prosecution under this subdivision, it shall not be necessary for the state to prove that the accused was under the influence of any specific controlled substance, but it shall be sufficient for a conviction under this subdivision for the state to prove that the accused was under the influence of some controlled substance by proving that the accused did manifest physical and physiological

symptoms or reactions caused by the use of any controlled substance.

(2) Any person who violates the provisions of this section shall be guilty of a Class III misdemeanor.

Sec. 8. That section 28-418, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-418. (1) It shall be unlawful for any person knowingly or intentionally:

(a) Who is a registrant to distribute a controlled substance classified in Schedule I or II of section 28-405, in the course of his or her legitimate business; except pursuant to an order form as required by section 28-413;

(b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To acquire or obtain or to attempt to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;

(d) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under the provisions of this article, or any record required to be kept by the provisions of this article; or

(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;

(f) Who is subject to sections 28-406 to 28-414 to distribute or dispense a controlled substance in violation of section 28-414;

(g) Who is a registrant to manufacture a controlled substance not authorized by his or her registration or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person;

(h) To possess a false or forged prescription for a controlled substance, except that this subdivision shall not apply to law enforcement officials, practitioners, or attorneys in the performance of their official lawful duties; or

(i) To communicate information to a

practitioner in an effort to unlawfully procure a controlled substance, the administration of a controlled substance, or a prescription for a controlled substance.

(2) Any person who violates the provisions of this section shall be guilty of a Class IV felony.

Sec. 9. That section 71-148, Revised Statutes Supplement, 1987, 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) obtaining any fee for professional services by fraud, deceit, or misrepresentation including, but not limited to, falsification of third-party claim documents; (5) cheating on or attempting to subvert the licensing or certification examination; (6) assisting in the care or treatment of a patient without the consent of such patient or his or her legal representative; (7) 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; (8) performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion; (9) willful betrayal of a professional secret except as otherwise provided by law; (10) making use of any advertising statements of a character tending to deceive or mislead the public; (11) advertising professional superiority or the performance of professional services in a superior manner; (12) advertising to guarantee any professional service or to perform any operations, painlessly; (13) 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 postoperative care unless such postoperative care is delegated to and accepted by another physician; (14) performing an abortion upon a minor without having satisfied the notice requirements of section 28-347; and (15) failure of a professional counselor to abide by section 71-1,272.

Sec. 10. 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. 11. That original sections 27-504, 28-401, 28-411, 28-414, 28-415, 28-417, and 28-418, Reissue Revised Statutes of Nebraska, 1943, and section 71-148, Revised Statutes Supplement, 1987, are repealed.