

LEGISLATIVE BILL 833

Approved by the Governor March 13, 2006

Introduced by Byars, 30; Cunningham, 40; Erdman, 47; Howard, 9; Jensen, 20; Johnson, 37; Stuthman, 22; Price, 26

AN ACT relating to the practice of medicine and surgery; to amend section 71-1,102, Reissue Revised Statutes of Nebraska, and sections 71-104.01 and 71-1,103, Revised Statutes Supplement, 2005; to change provisions relating to the authorized practice of medicine and surgery; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 71-104.01, Revised Statutes Supplement, 2005, is amended to read:

71-104.01 An applicant for an initial license to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. The applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check. This section shall not apply to dentists who are applicants for temporary practice rights under subdivision (5) of section 71-183.01 or to physicians and surgeons who are applicants for temporary practice rights under subdivision ~~(17)~~ (9) of section 71-1,103.

Sec. 2. Section 71-1,102, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,102 For the purpose of the Uniform Licensing Law, and except as provided in section 71-1,103 or as otherwise provided by law, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery: (1) Persons who publicly profess to be physicians, surgeons, or obstetricians, ~~or publicly profess to assume the duties incident to the practice of medicine, surgery, or obstetrics, or any of their branches;~~ (2) persons who prescribe and furnish medicine for some illness, disease, ailment, injury, pain, deformity, or any physical or mental condition, or treat the same by surgery; (3) persons holding themselves out to the public as being qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition, or injuries of human beings; (4) persons who suggest, recommend, or prescribe any form of treatment for the intended palliation, relief, or cure of any physical or mental ailment of any person; (5) persons who maintain an office for the examination or treatment of persons afflicted with ailments, diseases, injuries, pain, deformity, or any physical or mental condition of human beings; (6) persons who attach to their name the title of M.D., surgeon, physician, physician and surgeon, or any word or abbreviation indicating that they are engaged in the treatment or diagnosis of ailments, diseases, injuries, pain, deformity, infirmity, or any physical or mental condition of human beings; and (7) persons who are physically located in another state but who, through the use of any medium, including an electronic medium, perform for compensation any service which constitutes the healing arts that would affect the diagnosis or treatment of an individual located in this state. ~~unless he or she is providing consultation services to a physician and surgeon who is duly licensed in this state and is a treating physician of the individual. For purposes of this subdivision, consultation means the evaluation of the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data.~~

Sec. 3. Section 71-1,103, Revised Statutes Supplement, 2005, is amended to read:

71-1,103 The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

- (1) Persons rendering gratuitous services in cases of emergency;
- (2) Persons administering ordinary household remedies;
- (3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, ~~or surgeons,~~ and such members shall not be exempt from

the quarantine laws of this state;

(4) Students of medicine and surgery who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;

(5) Physicians and surgeons of the United States Armed Forces or Public Health Service or United States Department of Veterans Affairs when acting in the line of such duty in this state;

(6) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and licensed in another good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician and surgeon licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;

(7) Physicians and surgeons who are graduates of an accredited school or college of medicine with the degree of Doctor of Medicine and who reside in a state bordering this state and who are duly licensed under the laws thereof to practice medicine and surgery but who do not open an office or maintain or appoint a place to meet patients or to receive calls within this state unless they are performing services described in subdivision (7) of section 71-1,102 who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;

(8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;

(9) Physicians who are licensed in good standing to practice medicine in another state and who have been recommended by the secretary of the board of examiners in the state of licensure and granted temporary practice rights by the Board of Medicine and Surgery, with the approval of the department, for a period not to exceed three months in any twelve-month period;

~~(8)~~ (10) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a ~~doctor of medicine~~ physician licensed to practice medicine while working under the direction of such physician;

~~(9)~~ (11) Dentists practicing their profession when licensed and practicing in accordance with sections 71-183 to 71-191;

~~(10)~~ (12) Optometrists practicing their profession when licensed and practicing under and in accordance with sections 71-1,133 to 71-1,136;

~~(11)~~ (13) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 71-1,137 and 71-1,141;

~~(12)~~ (14) Chiropractors practicing their profession if licensed and practicing under sections 71-177 to 71-182;

~~(13)~~ (15) Podiatrists practicing their profession when licensed and practicing under and in accordance with sections 71-173 to 71-176;

~~(14)~~ (16) Psychologists practicing their profession when licensed and practicing under and in accordance with sections 71-1,206.01 to 71-1,206.35;

~~(15)~~ ~~Advanced~~ (17) (a) Until July 1, 2007, advanced practice registered nurses and certified registered nurse anesthetists practicing their professions and practicing under and in accordance with the Advanced Practice Registered Nurse Act; and

(b) On and after July 1, 2007, advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Licensure Act and practicing under and in accordance with their respective certification acts;

~~(16)~~ ~~Any person~~ (18) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative

surgery;

~~(17) Physicians and surgeons who are duly licensed to practice medicine and surgery in another state who have been recommended by the secretary of the board of examiners in the state of licensure and who have been granted temporary practice rights by the Board of Medicine and Surgery, with the approval of the department, for a period not to exceed three months in any twelve-month period;~~

~~(18)~~ (19) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens; and

~~(19) Any other trained person~~ (20) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (9) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 71-1,102 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Sec. 4. Original section 71-1,102, Reissue Revised Statutes of Nebraska, and sections 71-104.01 and 71-1,103, Revised Statutes Supplement, 2005, are repealed.