

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 879

Introduced by Cavanaugh, M., 6.

Read first time January 03, 2024

Committee:

1 A BILL FOR AN ACT relating to public health and welfare; to amend
2 sections 38-178, 38-179, 38-192, 38-193, 38-196, 38-2021, and
3 38-2894, Revised Statutes Supplement, 2023; to change provisions
4 relating to discipline under the Uniform Credentialing Act; to
5 eliminate the Let them Grow Act and the Preborn Child Protection
6 Act; to harmonize provisions; to repeal the original sections; and
7 to outright repeal sections 71-6912, 71-6913, 71-6914, 71-6915,
8 71-6916, 71-6917, 71-7301, 71-7302, 71-7303, 71-7304, 71-7305,
9 71-7306, and 71-7307, Revised Statutes Supplement, 2023.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 38-178, Revised Statutes Supplement, 2023, is
2 amended to read:

3 38-178 Except as otherwise provided in sections 38-1,119 to
4 38-1,123, a credential to practice a profession may be ~~issued subject to~~
5 ~~discipline~~, denied, refused renewal, or have other disciplinary measures
6 taken against it in accordance with section ~~38-183~~, 38-185, or 38-186 on
7 any of the following grounds:

8 (1) Misrepresentation of material facts in procuring or attempting
9 to procure a credential;

10 (2) Immoral or dishonorable conduct evidencing unfitness to practice
11 the profession in this state;

12 (3) Abuse of, dependence on, or active addiction to alcohol, any
13 controlled substance, or any mind-altering substance;

14 (4) Failure to comply with a treatment program or an aftercare
15 program, including, but not limited to, a program entered into under the
16 Licensee Assistance Program established pursuant to section 38-175;

17 (5) Conviction of (a) a misdemeanor or felony under Nebraska law or
18 federal law, or (b) a crime in any jurisdiction which, if committed
19 within this state, would have constituted a misdemeanor or felony under
20 Nebraska law and which has a rational connection with the fitness or
21 capacity of the applicant or credential holder to practice the
22 profession;

23 (6) Practice of the profession (a) fraudulently, (b) beyond its
24 authorized scope, (c) with gross incompetence or gross negligence, or (d)
25 in a pattern of incompetent or negligent conduct;

26 (7) Practice of the profession while the ability to practice is
27 impaired by alcohol, controlled substances, drugs, mind-altering
28 substances, physical disability, mental disability, or emotional
29 disability;

30 (8) Physical or mental incapacity to practice the profession as
31 evidenced by a legal judgment or a determination by other lawful means;

1 (9) Illness, deterioration, or disability that impairs the ability
2 to practice the profession;

3 (10) Permitting, aiding, or abetting the practice of a profession or
4 the performance of activities requiring a credential by a person not
5 credentialed to do so;

6 (11) Performing or offering to perform scleral tattooing as defined
7 in section 38-10,172 by a person not credentialed to do so;

8 (12) Having had his or her credential denied, refused renewal,
9 limited, suspended, revoked, or disciplined in any manner similar to
10 section 38-196 by another state or jurisdiction based upon acts by the
11 applicant or credential holder similar to acts described in this section;

12 (13) Use of untruthful, deceptive, or misleading statements in
13 advertisements, including failure to comply with section 38-124;

14 (14) Conviction of fraudulent or misleading advertising or
15 conviction of a violation of the Uniform Deceptive Trade Practices Act;

16 (15) Distribution of intoxicating liquors, controlled substances, or
17 drugs for any other than lawful purposes;

18 (16) Violations of the Uniform Credentialing Act or the rules and
19 regulations relating to the particular profession;

20 (17) Unlawful invasion of the field of practice of any profession
21 regulated by the Uniform Credentialing Act which the credential holder is
22 not credentialed to practice;

23 (18) Violation of the Uniform Controlled Substances Act or any rules
24 and regulations adopted pursuant to the act;

25 (19) Failure to file a report required by section 38-1,124,
26 38-1,125, or 71-552;

27 (20) Failure to maintain the requirements necessary to obtain a
28 credential;

29 (21) Violation of an order issued by the department;

30 (22) Violation of an assurance of compliance entered into under
31 section 38-1,108;

- 1 (23) Failure to pay an administrative penalty;
- 2 (24) Unprofessional conduct as defined in section 38-179;
- 3 (25) Violation of the Automated Medication Systems Act; or
- 4 (26) Failure to comply with section 38-1,147. ~~;~~
- 5 ~~(27) Violation of the Preborn Child Protection Act.~~

6 Sec. 2. Section 38-179, Revised Statutes Supplement, 2023, is
7 amended to read:

8 38-179 For purposes of section 38-178, unprofessional conduct means
9 any departure from or failure to conform to the standards of acceptable
10 and prevailing practice of a profession or the ethics of the profession,
11 regardless of whether a person, consumer, or entity is injured, or
12 conduct that is likely to deceive or defraud the public or is detrimental
13 to the public interest, including, but not limited to:

14 (1) Receipt of fees on the assurance that an incurable disease can
15 be permanently cured;

16 (2) Division of fees, or agreeing to split or divide the fees,
17 received for professional services with any person for bringing or
18 referring a consumer other than (a) with a partner or employee of the
19 applicant or credential holder or his or her office or clinic, (b) with a
20 landlord of the applicant or credential holder pursuant to a written
21 agreement that provides for payment of rent based on gross receipts, or
22 (c) with a former partner or employee of the applicant or credential
23 holder based on a retirement plan or separation agreement;

24 (3) Obtaining any fee for professional services by fraud, deceit, or
25 misrepresentation, including, but not limited to, falsification of third-
26 party claim documents;

27 (4) Cheating on or attempting to subvert the credentialing
28 examination;

29 (5) Assisting in the care or treatment of a consumer without the
30 consent of such consumer or his or her legal representative;

31 (6) Use of any letters, words, or terms, either as a prefix, affix,

1 or suffix, on stationery, in advertisements, or otherwise, indicating
2 that such person is entitled to practice a profession for which he or she
3 is not credentialed;

4 (7) Performing, procuring, or aiding and abetting in the performance
5 or procurement of a criminal abortion;

6 (8) Knowingly disclosing confidential information except as
7 otherwise permitted by law;

8 (9) Commission of any act of sexual abuse, misconduct, or
9 exploitation related to the practice of the profession of the applicant
10 or credential holder;

11 (10) Failure to keep and maintain adequate records of treatment or
12 service;

13 (11) Prescribing, administering, distributing, dispensing, giving,
14 or selling any controlled substance or other drug recognized as addictive
15 or dangerous for other than a medically accepted therapeutic purpose;

16 (12) Prescribing any controlled substance to (a) oneself or (b)
17 except in the case of a medical emergency (i) one's spouse, (ii) one's
18 child, (iii) one's parent, (iv) one's sibling, or (v) any other person
19 living in the same household as the prescriber;

20 (13) Failure to comply with any federal, state, or municipal law,
21 ordinance, rule, or regulation that pertains to the applicable
22 profession;

23 (14) Disruptive behavior, whether verbal or physical, which
24 interferes with consumer care or could reasonably be expected to
25 interfere with such care; and

26 ~~(15) Violation of the Preborn Child Protection Act;~~

27 ~~(16) Beginning October 1, 2023, performing gender-altering~~
28 ~~procedures for an individual younger than nineteen years of age in~~
29 ~~violation of section 71-7304; and~~

30 (15) ~~(17)~~ Such other acts as may be defined in rules and
31 regulations.

1 Nothing in this section shall be construed to exclude determination
2 of additional conduct that is unprofessional by adjudication in
3 individual contested cases.

4 Sec. 3. Section 38-192, Revised Statutes Supplement, 2023, is
5 amended to read:

6 38-192 ~~(1)~~—If the director determines upon completion of a hearing
7 under section ~~38-183~~ or 38-186 that a violation has occurred, the
8 director may, at his or her discretion, consult with the appropriate
9 board concerning sanctions to be imposed or terms and conditions of the
10 sanctions. When the director consults with a board, the credential holder
11 and the Attorney General shall be provided with a copy of the director's
12 request, the recommendation of the board, and an opportunity to respond
13 in such manner as the director determines. ~~The (2) Except as provided in~~
14 ~~subsection (3) of this section,~~ the director shall have the authority
15 through entry of an order to exercise in his or her discretion any or all
16 of the sanctions authorized under ~~subsection (1) of section 38-196.~~

17 ~~(3) If the director determines upon completion of a hearing under~~
18 ~~section 38-183 or 38-186 that a licensee has performed or induced an~~
19 ~~unlawful abortion in violation of section 71-6915, the director shall~~
20 ~~enter an order imposing a sanction authorized under subsection (2) of~~
21 ~~section 38-196.~~

22 Sec. 4. Section 38-193, Revised Statutes Supplement, 2023, is
23 amended to read:

24 38-193 ~~(1)~~—If the petition is brought with respect to subdivision
25 (3) of section 38-2021, the director shall make findings as to whether
26 the licensee's conduct was necessary to save the life of a mother whose
27 life was endangered by a physical disorder, physical illness, or physical
28 injury, including a life-endangering physical condition caused by or
29 arising from the pregnancy itself. The director shall have the authority
30 through entry of an order to exercise in his or her discretion any or all
31 of the sanctions authorized under section 38-196, irrespective of the

1 petition.

2 ~~(2) If the petition is brought with respect to subdivision (5) of~~
3 ~~section 38-2021, the director shall make findings as to whether the~~
4 ~~licensee performed or induced an unlawful abortion in violation of~~
5 ~~section 71-6915. If the director finds such a violation, the director~~
6 ~~shall enter an order revoking the licensee's credential to practice~~
7 ~~pursuant to the Uniform Credentialing Act in the State of Nebraska in~~
8 ~~accordance with subsection (2) of section 38-196 and section 38-1,100.~~

9 Sec. 5. Section 38-196, Revised Statutes Supplement, 2023, is
10 amended to read:

11 38-196 Upon ~~(1) Except as provided in subsection (2) of this~~
12 ~~section, upon~~ the completion of any hearing held regarding discipline of
13 a credential, the director may dismiss the action or impose any of the
14 following sanctions:

- 15 (1) ~~(a)~~ Censure;
- 16 (2) ~~(b)~~ Probation;
- 17 (3) ~~(c)~~ Limitation;
- 18 (4) ~~(d)~~ Civil penalty;
- 19 (5) ~~(e)~~ Suspension; or
- 20 (6) ~~(f)~~ Revocation.

21 ~~(2) Upon completion of any hearing regarding discipline of a~~
22 ~~credential for performing or inducing an unlawful abortion in violation~~
23 ~~of section 71-6915, if the director determines that such violation~~
24 ~~occurred, the director shall impose a sanction of revocation in~~
25 ~~accordance with section 38-1,100.~~

26 Sec. 6. Section 38-2021, Revised Statutes Supplement, 2023, is
27 amended to read:

28 38-2021 Unprofessional conduct means any departure from or failure
29 to conform to the standards of acceptable and prevailing practice of
30 medicine and surgery or the ethics of the profession, regardless of
31 whether a person, patient, or entity is injured, or conduct that is

1 likely to deceive or defraud the public or is detrimental to the public
2 interest, including, but not limited to:

3 (1) Performance by a physician of an abortion as defined in
4 subdivision (1) of section 28-326 under circumstances when he or she will
5 not be available for a period of at least forty-eight hours for
6 postoperative care unless such postoperative care is delegated to and
7 accepted by another physician;

8 (2) Performing an abortion upon a minor without having satisfied the
9 requirements of sections 71-6901 to 71-6911;

10 (3) The intentional and knowing performance of a partial-birth
11 abortion as defined in subdivision (8) of section 28-326, unless such
12 procedure is necessary to save the life of the mother whose life is
13 endangered by a physical disorder, physical illness, or physical injury,
14 including a life-endangering physical condition caused by or arising from
15 the pregnancy itself; and

16 (4) Performance by a physician of an abortion in violation of the
17 Pain-Capable Unborn Child Protection Act, ~~;~~ and

18 ~~(5) Violation of the Preborn Child Protection Act.~~

19 Sec. 7. Section 38-2894, Revised Statutes Supplement, 2023, is
20 amended to read:

21 38-2894 (1) A registration to practice as a pharmacy technician may
22 be denied, refused renewal, removed, or suspended or have other
23 disciplinary measures taken against it by the department, with the
24 recommendation of the board, for failure to meet the requirements of or
25 for violation of any of the provisions of subdivisions (1) through (18)
26 and (20) through (26) ~~(27)~~ of section 38-178 and sections 38-2890 to
27 38-2897 or the rules and regulations adopted under such sections.

28 (2) If the department proposes to deny, refuse renewal of, or remove
29 or suspend a registration, it shall send the applicant or registrant a
30 notice setting forth the action to be taken and the reasons for the
31 determination. The denial, refusal to renew, removal, or suspension shall

1 become final thirty days after mailing the notice unless the applicant or
2 registrant gives written notice to the department of his or her desire
3 for an informal conference or for a formal hearing.

4 (3) Notice may be served by any method specified in section
5 25-505.01, or the department may permit substitute or constructive
6 service as provided in section 25-517.02 when service cannot be made with
7 reasonable diligence by any of the methods specified in section
8 25-505.01.

9 (4) Pharmacy technicians may participate in the Licensee Assistance
10 Program described in section 38-175.

11 Sec. 8. Original sections 38-178, 38-179, 38-192, 38-193, 38-196,
12 38-2021, and 38-2894, Revised Statutes Supplement, 2023, are repealed.

13 Sec. 9. The following sections are outright repealed: Sections
14 71-6912, 71-6913, 71-6914, 71-6915, 71-6916, 71-6917, 71-7301, 71-7302,
15 71-7303, 71-7304, 71-7305, 71-7306, and 71-7307, Revised Statutes
16 Supplement, 2023.