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LEGISLATURE OF NEBRASKA

ONE HUNDRED SEVENTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 231

Introduced by Hunt, 8; Cavanaugh, J., 9; Hansen, M., 26.

Read first time January 11, 2021

Committee:

A BILL FOR AN ACT relating to conversion therapy; to amend sections 38-101, 38-178, and 38-2894, Revised Statutes Cumulative Supplement, 2020; to prohibit conversion therapy and provide for disciplinary sanctions under the Uniform Credentialing Act as prescribed; to provide for a deceptive trade practice; to define terms; to prohibit the use of funds for conversion therapy as prescribed; to eliminate a duty of the Revisor of Statutes; to harmonize provisions; and to repeal the original sections.

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

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Section 1. Section 38-101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

38-101 Sections 38-101 to 38-1,145 and section 3 of this act and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

(1) The Advanced Practice Registered Nurse Practice Act;

(2) The Alcohol and Drug Counseling Practice Act;

(3) The Athletic Training Practice Act;

(4) The Audiology and Speech-Language Pathology Practice Act;

(5) The Certified Nurse Midwifery Practice Act;

(6) The Certified Registered Nurse Anesthetist Practice Act;

(7) The Chiropractic Practice Act;

(8) The Clinical Nurse Specialist Practice Act;

(9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(10) The Dentistry Practice Act;

(11) The Dialysis Patient Care Technician Registration Act;

(12) The Emergency Medical Services Practice Act;

(13) The Environmental Health Specialists Practice Act;

(14) The Funeral Directing and Embalming Practice Act;

(15) The Genetic Counseling Practice Act;

(16) The Hearing Instrument Specialists Practice Act;

(17) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;

(18) The Massage Therapy Practice Act;

(19) The Medical Nutrition Therapy Practice Act;

(20) The Medical Radiography Practice Act;

(21) The Medicine and Surgery Practice Act;

(22) The Mental Health Practice Act;

(23) The Nurse Practice Act;

(24) The Nurse Practitioner Practice Act;

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(25) The Nursing Home Administrator Practice Act;

(26) The Occupational Therapy Practice Act;

(27) The Optometry Practice Act;

(28) The Perfusion Practice Act;

(29) The Pharmacy Practice Act;

(30) The Physical Therapy Practice Act;

(31) The Podiatry Practice Act;

(32) The Psychology Practice Act;

(33) The Respiratory Care Practice Act;

(34) The Surgical First Assistant Practice Act;

(35) The Veterinary Medicine and Surgery Practice Act; and

(36) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,145 and section 3 of this act and any provision of a practice act, the provision of the practice act shall prevail.

~~The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (35) of this section, to articles within Chapter 38.~~

Sec. 2. Section 38-178, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

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

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

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

(4) Failure to comply with a treatment program or an aftercare

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program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

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

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

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

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

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

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

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

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

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

(14) Conviction of fraudulent or misleading advertising or

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conviction of a violation of the Uniform Deceptive Trade Practices Act;

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

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

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

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

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

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

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

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

(23) Failure to pay an administrative penalty;

(24) Unprofessional conduct as defined in section 38-179; ~~or~~

(25) Violation of the Automated Medication Systems Act; or ~~.~~

(26) Providing conversion therapy in violation of section 3 of this act.

Sec. 3. (1) Except as provided in subsection (3) of this section, a person holding a credential under the Medicine and Surgery Practice Act, the Mental Health Practice Act, the Nurse Practice Act, the Pharmacy Practice Act, or the Psychology Practice Act shall not provide conversion therapy to any individual under nineteen years of age.

(2) A violation of subsection (1) of this section shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and shall be subject to any remedies or penalties available for a violation of such act.

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(3) This section does not apply to a practice or treatment conducted by a clergy member or religious counselor who is acting in a pastoral or religious capacity and not in the capacity of a health care professional.

(4) For purposes of this section:

(a)(i) Conversion therapy means a practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender; and

(ii) Conversion therapy does not mean a practice or treatment that does not seek to change an individual's sexual orientation or gender identity and that:

(A) Is neutral with respect to sexual orientation and gender identity;

(B) Provides assistance to a patient or client undergoing gender transition;

(C) Provides acceptance, support, and understanding to a patient or client;

(D) Facilitates a patient's or client's ability to cope, develop social support, and explore or understand the patient or client; or

(E) Addresses unlawful or unsafe sexual activities in a manner that is neutral with respect to sexual orientation and gender identity; and

(b) Gender identity means an individual's internal sense of the individual's own gender, regardless of the sex the individual was assigned at birth.

Sec. 4. (1) No state funds nor any funds belonging to a political subdivision of this state shall be expended for the purpose of:

(a) Conducting conversion therapy;

(b) Referring a person for conversion therapy; or

(c) Providing health benefits coverage for conversion therapy.

(2) For purposes of this section, conversion therapy has the same

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meaning as in section 3 of this act.

Sec. 5. Section 38-2894, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

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

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

Sec. 6. Original sections 38-101, 38-178, and 38-2894, Revised Statutes Cumulative Supplement, 2020, are repealed.