

2011

STATE OF NEBRASKA

**STATUTES RELATING TO
UNIFORM CREDENTIALING ACT
(Sections Relating To Mandatory Reporting)**

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

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CROSS REFERENCE BETWEEN UNIFORM LICENSING LAW AND UNIFORM CREDENTIALING ACT

- 71-147.01. Transferred to section 38-1,128.
- 71-168. Transferred to section 38-1,124.
- 71-168.01. Transferred to section 38-1,138.
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STATUTES RELATING TO UNIFORM CREDENTIALING ACT
Sections Relating To Mandatory Reporting

38-1,124. Enforcement; investigations; violations; credential holder; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report. (1) The department shall enforce the Uniform Credentialing Act and for that purpose shall make necessary investigations. Every credential holder and every member of a board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credential holder shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The appropriate board may issue an order to cease and desist the unauthorized practice of such profession or the unauthorized operation of such business as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credential holder who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

Source: Laws 1927, c. 167, § 67, p. 472; C.S.1929, § 71-901; R.S.1943, § 71-168; Laws 1986, LB 286, § 74; Laws 1986, LB 579, § 66; Laws 1991, LB 456, § 23; Laws 1994, LB 1210, § 50; Laws 1994, LB 1223, § 10; Laws 1995, LB 563, § 2; Laws 1996, LB 414, § 1; Laws 1997, LB 138, § 42; Laws 1997, LB 222, § 4; Laws 1999, LB 828, § 55; Laws 2000, LB 1115, § 12; Laws 2005, LB 256, § 21; Laws 2005, LB 306, § 3; Laws 2005, LB 361, § 32; Laws 2005, LB 382, § 5; R.S.Supp.,2006, § 71-168; Laws 2007, LB236, § 7; Laws 2007, LB463, § 124. The changes made by LB 236 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1,125. Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report. (1) Every credential holder, except pharmacist interns and pharmacy technicians, shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession:

(i) Has acted with gross incompetence or gross negligence;

(ii) Has engaged in a pattern of incompetent or negligent conduct as defined in section 38-177;

(iii) Has engaged in unprofessional conduct as defined in section 38-179;

(iv) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(v) Has otherwise violated the regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession:

(i) Has acted with gross incompetence or gross negligence; or

(ii) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from the staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) An adverse judgment, settlement, or award arising out of a professional liability claim, including a settlement made prior to suit in which the consumer releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define what constitutes a settlement that would be reportable when a credential holder refunds or reduces a fee or makes no charge for reasons related to a consumer complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any jurisdiction due to alleged

incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by any jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in, or discipline of a credential related to the applicable profession by, a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other jurisdiction.

(2) The requirement to file a report under subdivision (1)(a) or (b) of this section shall not apply:

(a) To the spouse of the credential holder;

(b) To a practitioner who is providing treatment to such credential holder in a practitioner-consumer relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the credential holder may be of a nature which constitutes a danger to the public health and safety by the credential holder's continued practice; or

(c) When a credential holder who is chemically impaired enters the Licensee Assistance Program authorized by section 38-175 except as otherwise provided in such section.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in subsection (1) of this section shall be sufficient to satisfy the credential holder's reporting requirement under subsection (1) of this section.

Source: Laws 2007, LB247, § 61; Laws 2007, LB463, § 125. Operative date December 1, 2008.

38-1,126. Report; confidential; immunity; use of documents. (1) A report made to the department under section 38-1,124 or 38-1,125 shall be confidential.

(2) Any person making such a report to the department, except a person who is self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under section 38-1,124 or 38-1,125.

(3) Persons who are members of committees established under the Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 or witnesses before such committees shall not be required to report under section 38-1,124 or 38-1,125. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under section 38-1,124 or 38-1,125 only because he or she attended or testified before such committee.

(4) Documents from original sources shall not be construed as immune from discovery or use in actions under section 38-1,125.

Source: Laws 2007, LB463, § 126; Laws 2011, LB431, § 12. Effective Date: April 27, 2011.

38-1,127. Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity; civil penalty. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a profession regulated under the Uniform Credentialing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a credential holder, including settlements made prior to suit, arising out of the acts or omissions of the credential holder; or

(b) Takes action adversely affecting the privileges or membership of a credential holder in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 1994, LB 1223, § 12; Laws 1995, LB 563, § 3; Laws 1996, LB 414, § 2; Laws 1997, LB 138, § 43; Laws 1997, LB 222, § 5; Laws 2000, LB 819, § 84; Laws 2000, LB 1115, § 13; Laws 2005, LB 256, § 22; Laws 2005, LB 361, § 33; R.S.Supp.,2006, § 71-168.02; Laws 2007, LB463, § 127; Laws 2011, LB431, § 13. Effective Date: April 27, 2011.

38-1,128. Peer review committee; health practitioners; immunity from liability; when. No member of a peer review committee of a state or local association or society composed of persons credentialed under the Uniform Credentialing Act shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such committee, if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to such member after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 1976, LB 586, § 1; R.S.1943, (2003), § 71-147.01; Laws 2007, LB463, § 128. Operative date December 1, 2008.

38-1,129. Insurer; report violation to department. Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(1) Any insurer having knowledge of any violation of any of the Uniform Credentialing Act governing the profession of the person being reported whether or not such person is credentialed shall report the facts of such violation as known to such insurer to the department; and

(2) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be credentialed whether or not such person is credentialed.

Source: Laws 1982, LB 421, § 2; Laws 1994, LB 1223, § 20; Laws 1999, LB 828, § 133; R.S.1943, (2003), § 71-1,199; Laws 2007, LB463, § 129. Operative date December 1, 2008.

38-1,130. Insurer; report to department; form. Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the credential holder and consumer, when the insurer:

(1) Has reasonable grounds to believe that a person required to be credentialed has committed a violation of the provisions of the Uniform Credentialing Act governing the profession of such person whether or not such person is credentialed;

(2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility or health care service as defined in the Health Care Facility Licensure Act, or a person required to be credentialed whether or not such person is credentialed, including settlements made prior to suit in which the consumer releases any professional liability claim against the insurer, health care facility or health care service, or person required to be credentialed, arising out of the acts or omissions of such person;

(3) Takes an adverse action affecting the coverage provided by the insurer to a person required to be credentialed, whether or not such person is credentialed, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action does not include raising rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

Source: Laws 1982, LB 421, § 3; Laws 1991, LB 456, § 30; Laws 1994, LB 1223, § 21; Laws 1999, LB 828, § 134; Laws 2000, LB 819, § 93; R.S.1943, (2003), § 71-1,200; Laws 2007, LB152, § 1; Laws 2007, LB247, § 62; Laws 2007, LB463, § 130. The changes made by LB 152 became effective September 1, 2007. The changes made by LB 247 and LB 463 became operative December 1, 2008.

38-1,131. Insurer; report to department; when. A report made under section 38-1,129 or 38-1,130 shall be made within thirty days after the date of the violation, action, event, or request. Nothing in such sections shall be construed to require an insurer to report based on information gained due to the filing of a claim for payment under a health insurance policy by or on behalf of a person required to be credentialed whether or not such

person is credentialed.

Source: Laws 2007, LB463, § 131. Operative date December 1, 2008.

38-1,132. Insurer; alternative reports authorized; supplemental report. For purposes of sections 38-1,129 and 38-1,130, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as such act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department. For purposes of sections 38-1,129 and 38-1,130, the department shall accept a copy of a report made to any governmental agency charged by law with carrying out any of the provisions of the Uniform Credentialing Act or any person authorized by law to make arrests within the State of Nebraska and may require a supplemental report to the extent such copy does not contain the information required by the department.

Source: Laws 2007, LB463, § 132. Operative date December 1, 2008.

38-1,133. Insurer; failure to make report or provide information; penalty. Any insurer who fails or neglects to make a report to or provide such information as requested by the department pursuant to section 38-1,129 or 38-1,130 within thirty days after the violation, action, event, or request is guilty of a Class III misdemeanor. Any insurer who violates this section a second or subsequent time is guilty of a Class II misdemeanor.

Source: Laws 1982, LB 421, § 4; Laws 1999, LB 828, § 135; R.S.1943, (2003), § 71-1,201; Laws 2007, LB463, § 133. Operative date December 1, 2008.

38-1,134. Insurer; reports; disclosure restricted. To the extent that reports made under section 38-1,129 or 38-1,130 contain or relate to privileged communications between consumer and credential holder, such reports shall be treated by the department as privileged communications and shall be considered to be part of the investigational records of the department. Such reports may not be obtained by legal discovery proceedings or otherwise disclosed unless the privilege is waived by the consumer involved or the reports are made part of the record in a contested case under section 38-186, in which case such reports shall only be disclosed to the extent they are made a part of such record.

Source: Laws 1982, LB 421, § 5; Laws 1991, LB 456, § 31; Laws 1994, LB 1223, § 22; R.S.1943, (2003), § 71-1,202; Laws 2007, LB463, § 134. Operative date December 1, 2008.

38-1,135. Insurer; immunity from liability. Any insurer or employee of an insurer making a report as required by section 38-1,129 or 38-1,130 shall be immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the privilege between consumer and physician or between consumer and professional counselor, or violation of the laws of the State of Nebraska relating to the business of insurance that may be incurred or imposed on account of or in connection with the making of such report.

Source: Laws 1982, LB 421, § 7; Laws 1993, LB 130, § 5; Laws 1994, LB 1223, § 23; R.S.1943, (2003), § 71-1,204; Laws 2007, LB463, § 135. Operative date December 1, 2008.

38-1,136. Violation of credential holder-consumer privilege; sections, how construed. Nothing contained in sections 38-1,129 to 38-1,136 shall be construed so as to require any credential holder to violate a privilege between a credential holder and a consumer.

Source: Laws 1982, LB 421, § 8; R.S.1943, (2003), § 71-1,205; Laws 2007, LB463, § 136. Operative date December 1, 2008.

38-1,137. Clerk of county or district court; report convictions and judgments of credentialed person; Attorney General or prosecutor; duty. The clerk of any county or district court in this state shall report to the department the conviction of any person credentialed by the department under the Uniform Credentialing Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such credential holder arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the credential of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the director and the State Court Administrator.

Source: Laws 1994, LB 1223, § 24; Laws 1995, LB 563, § 39; Laws 1996, LB 414, § 10; Laws 1996, LB 1044, § 480; Laws 1997, LB 138, § 45; Laws 2000, LB 1115, § 24; Laws 2005, LB 256, § 32; R.S.Supp.,2006, § 71-1,339; Laws 2007, LB296, § 362; Laws 2007, LB463, § 137. The changes made by LB 296 became

operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-1,138. Complaint; investigation; confidentiality; immunity; department; powers and duties. (1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Credentialing Act or rules and regulations issued under such act. A complaint submitted to the department shall be confidential, and a person making a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

(2) The department shall review all complaints and determine whether to conduct an investigation and in making such determination may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

Source: Laws 1991, LB 456, § 6; Laws 1993, LB 536, § 46; Laws 1994, LB 1223, § 11; Laws 1999, LB 828, § 56; R.S.1943, (2003), § 71-168.01; Laws 2007, LB463, § 138. Operative date December 1, 2008.

CROSS REFERENCE BETWEEN UNIFORM LICENSING LAW AND UNIFORM CREDENTIALING ACT

71-147.01. Transferred to section 38-1,128.

71-168. Transferred to section 38-1,124.

71-168.01. Transferred to section 38-1,138.

71-168.02. Transferred to section 38-1,127.

71-1,199. Transferred to section 38-1,129.

71-1,200. Transferred to section 38-1,130.

71-1,201. Transferred to section 38-1,133.

71-1,202. Transferred to section 38-1,134.

71-1,204. Transferred to section 38-1,135.

71-1,205. Transferred to section 38-1,136.

71-1,339. Transferred to section 38-1,137.