

**Senate Counsel, Research,
and Fiscal Analysis**

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State of Minnesota

S.F. No. 1204 - Penalty Fees for Speech Language Pathology, Audiology, Occupational Therapy, Alcohol and Drug Counselors, and Hearing Instrument Dispensers

Author: Senator Becky Lourey

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) *KTC*

Date: March 25, 2005

S.F. No. 1204 establishes certain penalties for speech language pathologists, audiologists, occupational therapists, and hearing instrument dispensers.

Sections 1 to 3 establish the following penalty fees for speech language pathologists, audiologists, and occupational therapists:

- For practicing without a current license, the penalty is the amount of the license renewal fee for any part of the first month, plus the license renewal fee for any subsequent month up to 36 months;
- For practicing before a license is issued, the penalty is the amount of the license application fee for any part of the first month, plus the license application fee for any part of any subsequent month up to 36 months;
- For failing to submit continuing education reports, the penalty is \$100, plus \$20 for each missing clock hour and the licensee must complete the required number of hours by the end of the next reporting due date; and
- States that civil penalties and discipline incurred by licensees before August 1, 2005, for any of the above reasons are to be recorded as nondisciplinary penalty fees and after August 1, 2005, the payment of a penalty for practicing without a license or before a license is issued for a period longer than 12 months does not preclude further disciplinary action if justified by the individual case.

Section 4 establishes the following penalties for hearing instrument dispensers:

- For practicing with an expired certificate, the penalty is one-half the amount of the certificate renewal fee for any part of the first day, plus one half the certificate renewal fee for any part of any subsequent days up to 30 days;
- For practicing after expiration of the trainee period and before a certificate is issued, the penalty is one-half the amount of the certificate application fee for any part of the first day, plus one half the certificate application fee for any part of any subsequent days up to 30 days;
- For failing to submit continuing education reports, the penalty is \$200, plus \$200 for each missing clock hour and the dispenser must complete the required clock hours by the next reporting due date; and
- States that civil penalties and discipline incurred before August 1, 2005, for any of the reasons stated above will be recorded as nondisciplinary penalty fees but payment of a penalty does not preclude disciplinary action if justified by the individual case.

KC:vs

Senator Lourey introduced--

S.F. No. 1204: Referred to the Committee on Health and Family Security.

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A bill for an act

relating to health; establishing penalty fees for certain credentialed health occupations; amending Minnesota Statutes 2004, sections 148.5194, by adding a subdivision; 148.6445, by adding a subdivision; 148C.12, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 153A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 148.5194, is amended by adding a subdivision to read:

Subd. 7. [PENALTY FEES.] (a) The penalty fee for practicing speech language pathology or audiology without a current license after the credential has expired and before it is renewed is the amount of the license renewal fee for any part of the first month, plus the license renewal fee for any part of any subsequent month up to 36 months.

(b) The penalty fee for applicants who engage in the unauthorized practice of speech language pathology or audiology before being issued a license is the amount of the license application fee for any part of the first month, plus the license application fee for any part of any subsequent month up to 36 months. This paragraph does not apply to applicants not qualifying for a license who engage in the unauthorized practice of speech language pathology or audiology.

(c) The penalty fee for failing to submit a continuing education report by the due date with the correct number or type

1 of hours in the correct time period is \$100 plus \$20 for each
2 missing clock hour. The licensee must obtain the missing number
3 of continuing education hours by the next reporting due date.

4 (d) Civil penalties and discipline incurred by licensees
5 prior to August 1, 2005, for conduct described in paragraph (a),
6 (b), or (c) shall be recorded as nondisciplinary penalty fees.
7 For conduct described in paragraph (a) or (b) occurring after
8 August 1, 2005, and exceeding 12 months, payment of a penalty
9 fee does not preclude any disciplinary action reasonably
10 justified by the individual case.

11 Sec. 2. Minnesota Statutes 2004, section 148.6445, is
12 amended by adding a subdivision to read:

13 Subd. 11. [PENALTY FEES.] (a) The penalty fee for
14 practicing occupational therapy without a current license after
15 the credential has expired and before it is renewed is the
16 amount of the license renewal fee for any part of the first
17 month, plus the license renewal fee for any part of any
18 subsequent month up to 36 months.

19 (b) The penalty fee for applicants who engage in the
20 unauthorized practice of occupational therapy before being
21 issued a license is the amount of the license application fee
22 for any part of the first month, plus the license application
23 fee for any part of any subsequent month up to 36 months. This
24 paragraph does not apply to applicants not qualifying for a
25 license who engage in the unauthorized practice of occupational
26 therapy.

27 (c) The penalty fee for failing to submit a continuing
28 education report by the due date with the correct number or type
29 of hours in the correct time period is \$100 plus \$20 for each
30 missing clock hour. The licensee must obtain the missing number
31 of continuing education hours by the next reporting due date.

32 (d) Civil penalties and discipline incurred by licensees
33 prior to August 1, 2005, for conduct described in paragraph (a),
34 (b), or (c) shall be recorded as nondisciplinary penalty fees.
35 For conduct described in paragraph (a) or (b) occurring after
36 August 1, 2005, and exceeding 12 months, payment of a penalty

1 fee does not preclude any disciplinary action reasonably
2 justified by the individual case.

3 Sec. 3. Minnesota Statutes 2004, section 148C.12, is
4 amended by adding a subdivision to read:

5 Subd. 11. [PENALTY FEES.] (a) The penalty fee for
6 practicing alcohol and drug counseling without a current license
7 after the credential has expired and before it is renewed is the
8 amount of the license renewal fee for any part of the first
9 month, plus the license renewal fee for any part of any
10 subsequent month up to 36 months.

11 (b) The penalty fee for applicants who engage in the
12 unauthorized practice of alcohol and drug counseling before
13 being issued a license is the amount of the license application
14 fee for any part of the first month, plus the license
15 application fee for any part of any subsequent month up to 36
16 months. This paragraph does not apply to applicants not
17 qualifying for a license who engage in the unauthorized practice
18 of alcohol and drug counseling.

19 (c) The penalty fee for failing to submit a continuing
20 education report by the due date with the correct number or type
21 of hours in the correct time period is \$100 plus \$20 for each
22 missing clock hour. The licensee must obtain the correct number
23 of continuing education hours by the next reporting due date.

24 (d) Civil penalties and discipline incurred by licensees
25 prior to August 1, 2005, for conduct described in paragraph (a),
26 (b), or (c) shall be recorded as nondisciplinary penalty fees.
27 For conduct described in paragraph (a) or (b) occurring after
28 August 1, 2005, and exceeding 12 months, payment of a penalty
29 fee does not preclude any disciplinary action reasonably
30 justified by the individual case.

31 Sec. 4. [153A.175] [PENALTY FEES.]

32 (a) The penalty fee for holding oneself out as a hearing
33 instrument dispenser without a current certificate after the
34 credential has expired and before it is renewed is one-half the
35 amount of the certificate renewal fee for any part of the first
36 day, plus one-half the certificate renewal fee for any part of

1 any subsequent days up to 30 days.

2 (b) The penalty fee for applicants who hold themselves out
3 as hearing instrument dispensers after expiration of the trainee
4 period and before being issued a certificate is one-half the
5 amount of the certificate application fee for any part of the
6 first day, plus one-half the certificate application fee for any
7 part of any subsequent days up to 30 days. This paragraph does
8 not apply to applicants not qualifying for a certificate who
9 hold themselves out as hearing instrument dispensers.

10 (c) The penalty fee for failing to submit a continuing
11 education report by the due date with the correct number or type
12 of hours in the correct time period is \$200 plus \$200 for each
13 missing clock hour. The certificate holder must obtain the
14 missing number of continuing education hours by the next
15 reporting due date.

16 (d) Civil penalties and discipline incurred by certificate
17 holders prior to August 1, 2005, for conduct described in
18 paragraph (a), (b), or (c) shall be recorded as nondisciplinary
19 penalty fees. Payment of a penalty fee does not preclude any
20 disciplinary action reasonably justified by the individual case.

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S.F. No. 1488 - Respiratory Therapists

Author: Senator Rod Skoe

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) *KTC*

Date: March 29, 2005

S.F. No.1488 states that the scope of practice of respiratory care does not prohibit an individual who is licensed or registered as a respiratory therapist in another state or country from providing respiratory care in the case of an emergency, as a member of an organ harvesting team, or as part of an ambulance treatment team on board an ambulance.

KC:ph

Senators Skoe, Stumpf, Langseth, Kiscaden and Lourey introduced--
S.F. No. 1488: Referred to the Committee on Health and Family Security.

1 A bill for an act
2 relating to respiratory therapists; providing
3 recognition for the practice of respiratory therapy in
4 emergency situations; amending Minnesota Statutes
5 2004, section 147C.05.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

7 Section 1. Minnesota Statutes 2004, section 147C.05, is
8 amended to read:

9 147C.05 [SCOPE OF PRACTICE.]

10 (a) The practice of respiratory care by a registered
11 respiratory care practitioner includes, but is not limited to,
12 the following services:

13 (1) providing and monitoring therapeutic administration of
14 medical gases, aerosols, humidification, and pharmacological
15 agents related to respiratory care procedures, but not including
16 administration of general anesthesia;

17 (2) carrying out therapeutic application and monitoring of
18 mechanical ventilatory support;

19 (3) providing cardiopulmonary resuscitation and maintenance
20 of natural airways and insertion and maintenance of artificial
21 airways;

22 (4) assessing and monitoring signs, symptoms, and general
23 behavior relating to, and general physical response to,
24 respiratory care treatment or evaluation for treatment and
25 diagnostic testing, including determination of whether the

1 signs, symptoms, reactions, behavior, or general response
2 exhibit abnormal characteristics;

3 (5) obtaining physiological specimens and interpreting
4 physiological data including:

5 (i) analyzing arterial and venous blood gases;
6 (ii) assessing respiratory secretions;
7 (iii) measuring ventilatory volumes, pressures, and flows;
8 (iv) testing pulmonary function;
9 (v) testing and studying the cardiopulmonary system; and
10 (vi) diagnostic testing of breathing patterns related to
11 sleep disorders;

12 (6) assisting hemodynamic monitoring and support of the
13 cardiopulmonary system;

14 (7) assessing and making suggestions for modifications in
15 the treatment regimen based on abnormalities, protocols, or
16 changes in patient response to respiratory care treatment;

17 (8) providing cardiopulmonary rehabilitation including
18 respiratory-care related educational components, postural
19 drainage, chest physiotherapy, breathing exercises, aerosolized
20 administration of medications, and equipment use and
21 maintenance;

22 (9) instructing patients and their families in techniques
23 for the prevention, alleviation, and rehabilitation of
24 deficiencies, abnormalities, and diseases of the cardiopulmonary
25 system; and

26 (10) transcribing and implementing physician orders for
27 respiratory care services.

28 (b) Patient service by a practitioner must be limited to:

29 (1) services within the training and experience of the
30 practitioner; and

31 (2) services within the parameters of the laws, rules, and
32 standards of the facilities in which the respiratory care
33 practitioner practices.

34 (c) Respiratory care services provided by a registered
35 respiratory care practitioner, whether delivered in a health
36 care facility or the patient's residence, must not be provided

1 except upon referral from a physician.

2 (d) This section does not prohibit an individual licensed
3 or registered as a respiratory therapist in another state or
4 country from providing respiratory care in an emergency in this
5 state, providing respiratory care as a member of an organ
6 harvesting team, or from providing respiratory care on board an
7 ambulance as part of an ambulance treatment team.



**Public Policy & External Relations
March 14, 2005**

**Emergency Reciprocity for Respiratory Therapists
Minnesota Legislative Talking Points**

Educational Standards: Respiratory therapists must complete a nationally-accredited respiratory care program and obtain national credentials (Certified Respiratory Therapist or Registered Respiratory Therapist) from the National Board for Respiratory Care. Most state respiratory care credentialing boards rely on the national credentials to guarantee a sound base of training provided by an accredited respiratory care program.

The Problem: MeritCare's respiratory therapists who provide emergency care on a transport team are required to hold separate licenses and registration in each of the three states (North Dakota, Minnesota, and South Dakota) that we provide transport service to.

License renewal and other rules vary from state to state. The time and effort necessary to maintain multiple separate licenses place an unnecessary burden on respiratory therapists and the organizations that employ them. In North Dakota, for example, licenses are renewable in December of each year, requiring 10 continuing education credits for annual re-licensing. In Minnesota, registration is renewable in June of every other year, requiring 24 continuing education credits. In South Dakota, licenses are renewable in December of each year, requiring 10 continuing education credits for annual re-licensing. South Dakota also requires that the transport team's medical director be licensed in the state—thus MeritCare's neonatal transport physician also had to become licensed in South Dakota so that the respiratory therapists could be. What is considered a continued education credit varies little within each state.

The Solution: H.F. 1594 and S.F. 1488 would eliminate the burden of maintaining multiple and separate credentials for respiratory therapists who practice across state lines in emergency situations. A similar bill is being considered by the North Dakota Legislature (S.B. 2388). Impacted professionals and organizations such as MeritCare intend to collaborate in an effort to pursue legislation in South Dakota and potentially in Montana in the 2006/2007 legislative cycles.

Source: Susan Bosak, Public Affairs Officer
701.234.6332 or susan.bosak@meritcare.com
MeritCare Health System

1 Senator moves to amend S.F. No. 619 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [LICENSE ISSUANCE.]

4 Notwithstanding any other law to the contrary, the Board of
5 Physical Therapy shall grant a physical therapist license to an
6 individual who has been issued physical therapy licenses between
7 1980 and 1995 in at least three other states and at least one
8 foreign country."

9 Delete the title and insert:

10 "A bill for an act
11 relating to physical therapists; providing for certain
12 physical therapist licensing."

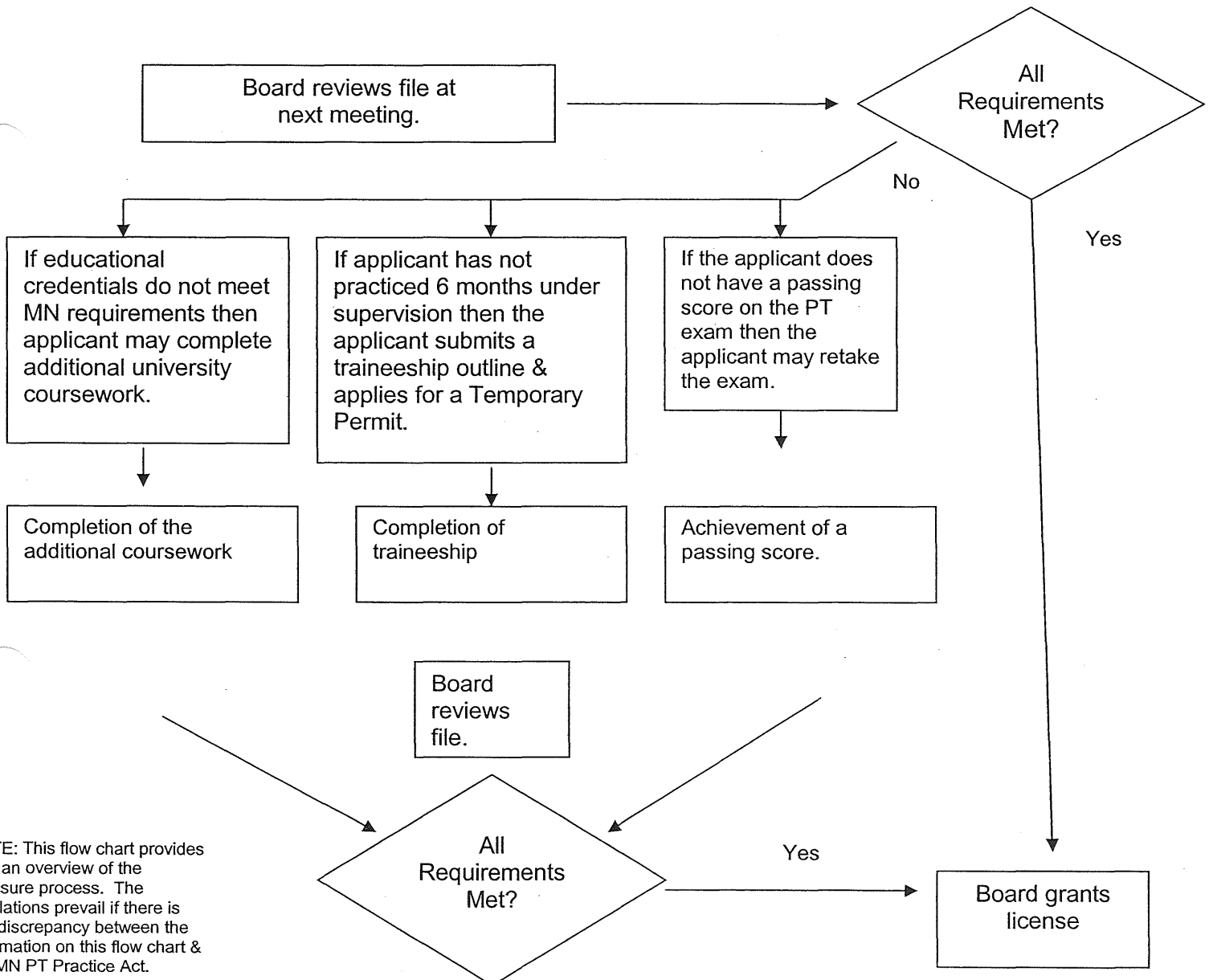
FOREIGN-EDUCATED PHYSICAL THERAPIST LICENSED IN ANOTHER STATE

APPLICATION FLOW CHART

Application and fees received

Requirements include:

1. Educational Credentials evaluation.
2. Verification of all PT licenses/registrations.
3. Six month traineeship may be waived if the applicant has practiced under supervision at least months in another state.
4. Passing PT Exam score; passing=1 std dev below mean before 7/95 or 600 on NPTE 7/95 – present.



NOTE: This flow chart provides only an overview of the licensure process. The regulations prevail if there is any discrepancy between the information on this flow chart & the MN PT Practice Act.

American Physical Therapy Association 2003 Median Income of Physical Therapists Summary Report

The Practice Profile Survey describes a series of data collection efforts conducted by the American Physical Therapy Association (APTA) to elicit information from its members on a number of issues that are important to the profession. This report will present salary data from the three most recent surveys, representing calendar years 1999, 2000, and 2002. Data were not collected for 2001. APTA conducted the survey using a web-based format for the first time this year, enabling us to collect data from members without the costs associated with a mail survey.

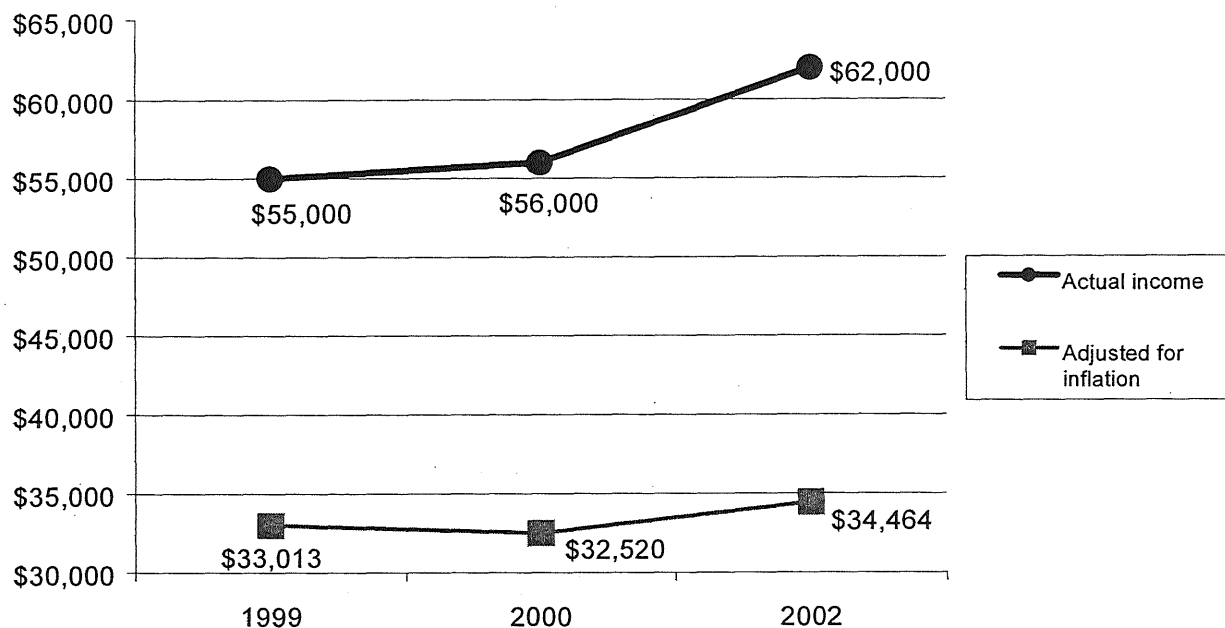
The following tables present salary data for physical therapists by geographic region, employment setting, years of experience, highest earned academic degree, level of professional degree, and sex. The data reflect the median gross earned income reported by respondents who were employed on a full-time basis. Median (rather than mean) salaries are presented because the median statistic is not as sensitive to extreme values and the data reported were not normally distributed. To ensure the confidentiality of respondents, salaries are not reported unless there were at least 25 cases in each group.

The report presents salary using two methods. In addition to reporting income based on current actual dollars, APTA adjusted income figures for inflation using the Consumer Price Index (CPI) – a means of adjusting dollar values that is used by the Bureau of Labor Statistics. The added benefit of reporting adjusted income is that current incomes can be expressed in “real” dollars and an accurate barometer of changes in salaries can be established.

There was an expectation that salaries would increase since 1999. Recent APTA surveys focusing on employment patterns of physical therapists indicated that the employment market has improved substantially. The most recent employment survey, conducted in fall 2001 indicated that the unemployment rate among physical therapists was 1.1%, down sharply from the reported rate of 3.2% in fall 1999¹. Additionally, fewer physical therapists are reporting reduction in hours, and job satisfaction increased as well. It is plausible to assume that these improvements in the employment market are accompanied by a commensurate increase in salaries.

Between 1999 and 2002 actual median income of physical therapists increased by 12.7%, while the adjusted income increased by 4.4% (Figure 1). The results from reported adjusted income are quite positive. Between 1996 and 1998, adjusted income declined by 15.5%, attributed to the impact of the BBA. A very slight increase (0.6%) was reported between 1999 and 2000. The current reported increase should be interpreted as a substantial improvement in the employment market for physical therapists.

Figure 1



The remaining data presented in this report were calculated in actual dollars.

Geographic regions. In 2002, median incomes ranged from \$59,500 to \$65,000 (Table 1). Overall, the Northeast saw the greatest increase between 1999 and 2002 (18%). The three sub-regions with the highest increases (19%) were the West North Central, South Atlantic, and Mountain regions. Conversely, the geographic area that exhibited the smallest increase was the West South Central sub-region (12%).

Table 1. Median Gross Earned Income of Physical Therapists by Geographic Region

| | 1999 | 2000 | 2002 | increase from 1999-2002 |
|--------------------|-----------------|-----------------|-----------------|-------------------------|
| Northeast | \$54,569 | \$58,537 | \$64,259 | 18% |
| New England | \$53,000 | \$55,000 | \$62,500 | 18% |
| Middle Atlantic | \$55,000 | \$60,000 | \$65,000 | 18% |
| Midwest | \$52,057 | \$54,244 | \$59,805 | 15% |
| East North Central | \$53,000 | \$55,500 | \$60,000 | 13% |
| West North Central | \$50,000 | \$52,000 | \$59,500 | 19% |
| South | \$55,217 | \$57,829 | \$63,512 | 15% |
| South Atlantic | \$53,000 | \$56,750 | \$63,000 | 19% |
| East South Central | \$56,000 | \$58,000 | \$63,000 | 13% |
| West South Central | \$58,000 | \$60,000 | \$65,000 | 12% |
| West | \$54,025 | \$53,820 | \$63,180 | 17% |
| Mountain | \$50,000 | \$52,000 | \$59,500 | 19% |
| Pacific | \$56,000 | \$55,000 | \$65,000 | 16% |

Census Geographic Regions and Divisions with Corresponding States:

| | | |
|------------------|--------------------|--|
| Northeast | New England | <i>Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont</i> |
| | Middle Atlantic | <i>New Jersey, New York, Pennsylvania</i> |
| Midwest | East North Central | <i>Illinois, Indiana, Michigan, Ohio, Wisconsin</i> |
| | West North Central | <i>Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota</i> |
| South | South Atlantic | <i>Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia</i> |
| | East South Central | <i>Alabama, Kentucky, Mississippi, Tennessee</i> |
| | West South Central | <i>Arkansas, Louisiana, Oklahoma, Texas</i> |
| West | Mountain | <i>Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming</i> |
| | Pacific | <i>Alaska, California, Hawaii, Oregon, Washington</i> |

Practice settings. The largest change in income was reported by physical therapists employed in acute care settings (Table 2). The median income among these respondents increased by 28% between 1999 and 2002. Although this finding seemed somewhat surprising at first, it appears to be logical as the increase is likely due, in large part, to another variable. More specifically, those respondents from an acute care setting have been practicing within that setting for a longer period of time than respondents in other settings. Therefore, the increases that were noted were likely a function of years of employment, rather than a specific setting. Conversely, median income of physical therapists employed in home care settings and school systems was unchanged over the time frame (\$60,000 and \$50,000, respectively.)

Table 2. Median Gross Earned Income of Physical Therapists by Employment Setting

| | 1999 | 2000 | 2002 | Increase from 1999-2002 |
|---|----------|----------|----------|-------------------------|
| Academic Institution (post-secondary) | \$60,000 | \$63,000 | \$65,000 | 8% |
| Acute care hospital | \$50,000 | \$56,500 | \$64,000 | 28% |
| Private out-patient office or group practice | \$58,000 | \$60,000 | \$63,000 | 9% |
| SNF/ECF/ICF | \$55,000 | \$55,000 | \$60,500 | 10% |
| Patient's home/Home care | \$60,000 | \$60,000 | \$60,000 | 0% |
| Sub-acute rehab hospital (in-patient) | \$50,000 | \$51,000 | \$59,490 | 19% |
| Health system or hospital based outpatient facility or clinic | \$50,000 | \$52,374 | \$59,000 | 18% |
| School System (preschool/primary/secondary) | \$50,000 | \$50,000 | \$50,000 | 0% |
| Health and Wellness Facility | * | * | * | * |
| Research Center | * | * | * | * |
| Industry | * | * | * | * |
| Other | \$56,000 | \$53,500 | \$62,200 | 11% |

Years of experience. As would be expected, and as was cited above, income continues to increase along with years of experience (Table 3). Over the period studied however, incomes of physical therapists with the least experience (0-3 years) and those with the most experience (16+ years) saw the highest increases (10% and 11%, respectively). Median income of respondents with 4 to 15 years of experience increased at a rate of between 4% and 8%.

Table 3. Median Gross Earned Income of Physical Therapists by Years of Experience

| | 1999 | 2000 | 2002 | Increase from 1999-2002 |
|-------|----------|----------|----------|-------------------------|
| 0-3 | \$42,000 | \$43,000 | \$46,000 | 10% |
| 4-6 | \$50,000 | \$51,500 | \$52,000 | 4% |
| 7-9 | \$56,000 | \$58,000 | \$59,990 | 7% |
| 10-15 | \$60,000 | \$64,000 | \$65,000 | 8% |
| 16+ | \$65,000 | \$68,000 | \$72,000 | 11% |

Highest earned degree. Respondents whose highest earned degree was a Master's degree experienced the highest percentage increase in median income (16%), while median income of physical therapists with doctoral degrees (other than the DPT) increased by a percentage (7%) less than half that reported by respondents with a Master's degree (Table 4). One final note, median income of DPTs increased by 8%.

Table 4. Median Gross Earned Income of Physical Therapists by Highest Earned Academic Degree

| | 1999 | 2000 | 2002 | Increase from 1999-2002 |
|-------------------------------|----------|----------|----------|-------------------------|
| No Academic Degree | * | * | --- | --- |
| Baccalaureate | \$59,000 | \$60,000 | \$65,000 | 10% |
| Master's | \$50,000 | \$51,000 | \$58,000 | 16% |
| Doctorate in Physical Therapy | \$55,000 | \$51,000 | \$59,500 | 8% |
| Other Doctorate | \$72,000 | \$70,000 | \$77,000 | 7% |
| Other | * | * | --- | --- |

Professional education program. As with highest earned degree, those respondents whose professional education program was at the Master's level reported the most substantial increase (15%) in median income. Those who completed a baccalaureate or postbaccalaureate certificate program had the highest overall income. However, these respondents tended to be older and had more experience (Table 5). It was likely this latter variable that exerted the larger influence on reported salary. This was confirmed when degree and years of experience were analyzed. DPT recipients with 1-3 years of experience earned slightly more than Master's recipients with similar years of experience.

**Table 5. Median Gross Earned Income of Physical Therapists
by Level of Professional Education Program**

| | 1999 | 2000 | 2002 | Increase from 1999-2002 |
|-------------------|----------|----------|----------|----------------------------|
| Baccalaureate | \$60,000 | \$61,000 | \$65,000 | 8% |
| Postbaccalaureate | \$68,000 | \$68,000 | \$75,000 | 10% |
| Master's | \$46,000 | \$48,000 | \$53,000 | 15% |
| Doctoral | * | * | \$48,000 | * |
| Other | * | \$64,750 | \$65,500 | * |

Sex. Although there continues to be differences between the income of men and women, the percentage difference between the sexes decreased slightly. Further, the median income among female respondents increased by 20% while the increase in income among men increased by 14% (Table 6). The differences noted between males and females are largely attributable to the cohort of individuals that is self-employed. The median income of self-employed females was 72% of the median income of their male colleagues.

However, further analysis of this cohort of respondents indicates that these differences are likely attributable to salary discrepancies among female respondents. The salary distribution for self-employed females is positively skewed (as evidenced by the finding that mean income exceeds median income). These results reveal a small number of female respondents whose income is high. The larger proportion of self-employed females earn substantially less.

When discussing differences among salaries for males and females, previous research conducted among men and women in the profession² may further explicate these differences among females. The research disclosed that women perceive career success differently, when compared to male perceptions of success. Females place significantly greater emphasis on family responsibilities and less on income. This emphasis, in turn, affects career patterns and, ultimately, income. It is conceivable that females in private practice simply charge less or accept lower payment for the provision of services. This hypothesis seems to be reinforced as only slight differences were found in the years of experienced and hours per week respondents practice between males and females. These discrepant perceptions, therefore, must be factored into the differ-

Table 6. Median Gross Earned Income of Physical Therapists by Sex

| | 1999 | 2000 | 2002 | Increase from 1999-2002 |
|--------|----------|----------|----------|----------------------------|
| Female | \$50,000 | \$52,000 | \$60,000 | 20% |
| Male | \$61,500 | \$64,000 | \$70,000 | 14% |

ences in income noted between male and female respondents.

References

- ¹ APTA Physical Therapist Employment Survey Fall 2001- Executive Summary. American Physical Therapy Association. Available at [http://www.apta.org/Research/surveys and stats](http://www.apta.org/Research/surveys%20and%20stats). Accessed August 18, 2003
- ² Rozier CK, Raymond MJ, Goldstein MS, Hamilton BL. Gender and Physical Therapy Career Success Factors. *Physical Therapy*. 1998; 78: 690-704.

* To ensure confidentiality of respondents, salaries are not reported unless there were at least 25 cases in each group.

--- These categories were not included in the most recent survey.



American Physical Therapy Association

MINNESOTA CHAPTER

April 1, 2005

My name is Kathleen Picard. I am a Physical Therapist, licensed in the state of MN. I chair the Government Affairs Committee of the Minnesota Chapter of the American Physical Therapy Association (MN APTA), an organization that includes over 1,200 licensed physical therapists in MN.

Chairwoman Lourey and members of the committee, thank you for this opportunity to testify in **opposition to SF619.**

On behalf of the professional association in this state, I make the following arguments in opposition of this bill:

1. This is a state's rights issue. The state of Minnesota has the right to license and regulate professional practice that occurs in this state. This bill would change minimum standards which have been established by the State, for Physical Therapy licensure to the lowest standard in the country. We believe that all physical therapists, coming from another state, or jurisdiction, must achieve the minimum required score on the licensure examination.
2. Today you are being asked to lower the standards of healthcare in Minnesota. MN has long been known for having high standards of health care. We believe there are many reasons for this, and we believe that our licensure standards are one of those reasons. Furthermore, I ask, if the State is willing to apply this notion of reciprocity to ALL licensed healthcare providers in Minnesota?
3. The bill allows for licensure WITHOUT examination under two circumstances and our concern about this particular section relates to line 1.20 of the bill, which reads, "has practiced physical therapy under the laws of another state of the United States, its possessions, or the District of Columbia . . ." This bill does not take into consideration those who may have practiced in another state and whose licenses may have been revoked under disciplinary action. There is no provision stopping those physical therapists from moving to Minnesota and gaining licensure to practice physical therapy in our state.
4. The MN Board of Physical Therapy has been accused of attempting to limit the number of licensed Physical Therapists in this state. The fact is that the number of licensees has increased by 12.2% over the past five years. The Board licensed 3,425 Physical Therapists for 2005 as compared to 3,050 for 2001.
5. We have the support of the Minnesota Provider Coalition, a broad coalition of health care providers of all specialties, who voted unanimously to oppose this bill. As with Physical Therapists, these providers have licensure standards and do not support changing them to meet the needs of a single individual.
6. Attached to my testimony are letters in opposition to SF619. Among them is a letter from the Federation of State Boards of Physical Therapy which recognizes the importance of preserving the Minnesota Board of Physical Therapy's "reputation of strong public protection and responsible regulation."

I urge you to vote NO to SF619.

Thank you for this opportunity and I will answer any questions you may have.
Kathleen Picard, PT

TESTIMONY- Senate Health and Family Security Committee
April 1, 2005

Chairwoman Lourey and Members of the Committee:

My name is CARMELA JURADO CLAYPOOL; I am licensed to practice Physical Therapy in Minnesota. I also happen to have been foreign-trained.

I am here to urge you to **VOTE NO on SF 619**, the Physical Therapist licensure reciprocity bill.

I have been a Physical Therapist for 33 years and for 17 of those years I have practiced in Minnesota.

I graduated from San Marcos University in Lima, Peru in 1972. I came to the University of Minnesota in 1986 as a Fulbright Scholar and took some classes in geriatrics. I then returned to Peru.

In 1988 I returned to the US and started the process to practice Physical Therapy in Minnesota.

I had to send my transcript from San Marcos University to the US credentialing service office in order to verify that I had the equivalent academic credits of someone who graduated from an accredited Physical Therapy program in the US. There are many Physical Therapy Programs around the world and each country has their own minimum accreditation standards for their educational programs. Fortunately, my University credits exceeded the US requirements. I also had to pass the TOEFL test of English as a second language. I then did six months of clinical practice under the supervision of a licensed Physical Therapist.

Once I finished the clinical practice I was allowed to sit to take the national Physical Therapy Licensure Exam. I knew that in order to practice in MN, the minimum score that I needed to achieve on the exam had to be higher than the minimum that is set in many other states. I wanted to practice in MN, and so I took the test knowing that I had to meet a higher minimum standard. **I passed the Exam.** Only after passing that exam was I allowed to practice Physical Therapy in Minnesota.

I am in favor of maintaining the licensure standards required to practice in Minnesota in order to protect the public safety and to maintain the professional level of Physical Therapy in our state.

Please know that I support foreign-trained Physical Therapists being licensed in our state as long they comply with all of the Physical Therapy Licensure regulations.

Again, I urge you to **VOTE NO on SF 619**.

Thank you for the opportunity to testify.

Carmela Jurado Claypool PT,CLT-LANA

30 March 2005

TO: MN Senate Health and Family Security Committee, 1 April, 2005
RE: SF619 – PT Reciprocity

I am Lynda Griffith, Licensed Physical Therapist in the State of Minnesota. I am writing this letter to urge you to **VOTE NO** on **SF619** please.

I was first licensed in Minnesota in 1993 after moving here from Washington State. I graduated from a California PT school, passed the national PT board exam in California and practiced in that state for a brief time. I then moved home to practice in Washington State.

Both California and Washington required a set minimum passing score on the board exam when I applied for licensure in those states. As I anticipated a move to Minnesota, I had to meet the unique requirements set by Minnesota in order to become licensed here. While this seemed redundant since I had practiced successfully in California and Washington, and while going through this process was something I did not wish to do, I recognized then and recognize now that this process insures that PT's achieve the standards set by each state in order to maintain the highest quality of care to protect the residents of that state.

When I graduated from PT school twenty-one years ago, one of my capable classmates did not wish to take the board exam. He moved to Hawaii from California to practice because PT licensure was not required at that time. Hawaii now has a practice act and PTs there were grandfathered into continuing practice when that statute took effect in 1986. If SF619 were to pass, it is possible that a PT moving to Minnesota from Hawaii could be licensed here by reciprocity despite never having taken the national exam, and just by virtue of having practiced for many years in Hawaii or any other state whose history resembles that of Hawaii.

If SF619 were to pass, it would be possible for any new-graduate applicant in Minnesota, not having passed the board exam at the score required by Minnesota, to practice for five years in another state which sets a lower standard, and then move back to this state to practice.

SF619 would serve to diminish the high quality of PT practice we enjoy in the State of Minnesota and jeopardize public safety. I am not in favor of its passage and therefore must respectfully urge you to **VOTE NO** on **SF619**. If you wish to enquire further, please do not hesitate to call me at 218-245-2858 (Mondays and Wednesdays) or 218-326-7529 (Tuesdays, Thursdays and Fridays).

Sincerely,

Lynda Griffith, PT license #5168
Bovey, Minnesota

Senator Brian LeClair
129 State Office Building
100 Rev Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

Dear Senator LeClair,

17 March 2005

Minnesota bills HF 575 and SF 619 have come to the attention of the Federation of State Boards of Physical Therapy because it contains statutory language that may allow foreign educated physical therapists, who do not meet the standards the state has established to protect Minnesota citizens, to become licensed to practice physical therapy.

Domestically trained physical therapists must demonstrate that they meet essentially the same established and accepted standard for education and licensure and endorsement, but foreign trained physical therapists go through an endorsement process that is far from being standardized and varies dramatically from state to state. There are multiple states that do not require the same academic credentials review process as Minnesota and may grant a license to someone who does not meet the standards required of a graduate of a domestic program like that of the University of Minnesota or Mayo Clinic College of Medicine.

To my knowledge those involved in regulation and public protection for the citizens of the state of Minnesota have never set one standard for graduates from the state university system and another (lower standard) for those who graduate from a school outside of the state, much less the country.

The proposed Minnesota bill contains language similar to a bill proposed in the Washington State Senate several years ago. The bill was pulled, prior to any vote, because the bill's author discovered that it placed all the responsibility for the safety of the citizens of Washington on the state from which the physical therapist was coming and not on the state physical therapy regulatory board, in the state where patients were being treated. In addition the bill had been written by a senator, graciously attempting to assist his constituent, a Swedish educated physical therapist, seeking licensure by endorsement and not written to improve the safety, health and welfare of all the citizens of the state.

Historically the national physical therapy examination was scored on a "curve" and all states used to set their own passing score and the scores varied from state to state. Foreign educated physical therapist that were licensed in states with low passing scores wanting to move to a different state still seek out states that have laws like this the one being proposed for Minnesota. The costs for licensure would have to increase to accommodate for the time required of board staff to process applications and historically there would be a higher incidence of discipline needed for physical therapists who have deliberately sought licensure in states with lesser standards, such as Minnesota, if bills HF 575 and SF 619 pass.

If Minnesota were to pass this legislation they would be at risk of becoming the state of choice for any physical therapist that has practiced in another state for five of the last seven years, period, rather than meeting the high standards currently required in the state to provide public protection. It would destroy the reputation of a well respected licensing board that has always had a reputation of strong public protection and responsible regulation.

Sincerely,

Christine A. Larson, P.T.
Director of Professional Standards

**Senate Counsel, Research,
and Fiscal Analysis**

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Senate

State of Minnesota

S.F. No. 765 - Psychology Practice Act

Author: Senator Steve Kelley

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) | CTC

Date: March 31, 2005

S.F. No. 765 modifies the Psychology Practice Act by phasing out the licensure of licensed psychological practitioners.

Section 1 (148.89, subdivision 5) clarifies that the practice of psychology means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, or procedures for any reason.

Section 2 (148.90, subdivision 1) makes technical and conforming changes to the makeup of the Board of Psychology.

Section 3 (148.907, subdivision 5) establishes the requirements for converting from a licensed psychological practitioner to a licensed psychologist. In order for a licensed psychological practitioner to obtain a license as a licensed psychologist, the licensed psychological practitioner must have:

- (1) completed an application provided by the board;
- (2) paid a nonrefundable fee of \$500;
- (3) documented successful completion of two full years or the equivalent of supervised postlicensure employment meeting specified requirements; and
- (4) no unresolved disciplinary action or complaints pending, or incomplete disciplinary orders or corrective action agreements.

Section 4 (148.908, subdivision 2) modifies the requirements for licensure as a licensed psychological practitioner. An applicant must:

- (1) complete the educational degree requirements by December 31, 2005;
- (2) complete the application for admission to the examination and pay the application fee by December 31, 2005;
- (3) complete the application for the professional responsibility examination by December 31, 2005;
- (4) pass the examination for professional practice in psychology by December 31, 2005;
- (5) pass the professional responsibility examination by December 31, 2006;
- (6) complete an application for licensure and pay the fee by March 1, 2007; and
- (7) have reached the age of majority, be of good moral character, and have no unresolved disciplinary action or complaints pending.

Section 5 (148.908, subdivision 3) states that effective December 31, 2011, the licensure of all licensed psychological practitioners shall be terminate without further notice and licensure for psychological practitioners shall be eliminated.

Section 6 (148.909) modifies the licensure for volunteer practice by striking language requiring the applicant to be a former licensee and requiring the applicant to have held a license, certificate, or registration for at least 15 years.

Section 7 (148.916, subdivision 2) permits a nonresident who is not seeking licensure to serve as an organizational consultant.

Section 8 (148.925, subdivision 6) makes a technical change.

Section 9 (148.941, subdivision 2) makes a technical change.

Section 10 (148.96, subdivision 3) makes a technical change.

KC:ph

Senators Kelley, Senjem, Kiscaden, Koering and Higgins introduced--
S.F. No. 765: Referred to the Committee on Health and Family Security.

1 A bill for an act

2 relating to health occupations; modifying the
3 Psychology Practice Act; phasing out licensure as a
4 licensed psychological practitioner; amending
5 Minnesota Statutes 2004, sections 148.89, subdivision
6 5; 148.90, subdivision 1; 148.907, by adding a
7 subdivision; 148.908, subdivision 2, by adding a
8 subdivision; 148.909; 148.916, subdivision 2; 148.925,
9 subdivision 6; 148.941, subdivision 2; 148.96,
10 subdivision 3.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

12 Section 1. Minnesota Statutes 2004, section 148.89,
13 subdivision 5, is amended to read:

14 Subd. 5. [PRACTICE OF PSYCHOLOGY.] "Practice of
15 psychology" means the observation, description, evaluation,
16 interpretation, or modification of human behavior by the
17 application of psychological principles, methods, or
18 procedures for any reason, including to prevent, eliminate, or
19 manage symptomatic, maladaptive, or undesired behavior and to
20 enhance interpersonal relationships, work, life and
21 developmental adjustment, personal and organizational
22 effectiveness, behavioral health, and mental health. The
23 practice of psychology includes, but is not limited to, the
24 following services, regardless of whether the provider receives
25 payment for the services:

26 (1) psychological research and teaching of psychology;

27 (2) assessment, including psychological testing and other
28 means of evaluating personal characteristics such as

1 intelligence, personality, abilities, interests, aptitudes, and
2 neuropsychological functioning;

3 (3) a psychological report, whether written or oral,
4 including testimony of a provider as an expert witness,
5 concerning the characteristics of an individual or entity;

6 (4) psychotherapy, including but not limited to, categories
7 such as behavioral, cognitive, emotive, systems,
8 psychophysiological, or insight-oriented therapies; counseling;
9 hypnosis; and diagnosis and treatment of:

10 (i) mental and emotional disorder or disability;

11 (ii) alcohol and substance dependence or abuse;

12 (iii) disorders of habit or conduct;

13 (iv) the psychological aspects of physical illness or
14 condition, accident, injury, or disability;

15 (v) life adjustment issues, including work-related and
16 bereavement issues; and

17 (vi) child, family, or relationship issues;

18 (5) psychoeducational services and treatment; and

19 (6) consultation and supervision.

20 Sec. 2. Minnesota Statutes 2004, section 148.90,
21 subdivision 1, is amended to read:

22 Subdivision 1. [BOARD OF PSYCHOLOGY.] (a) The Board of
23 Psychology is created with the powers and duties described in
24 this section. The board has 11 members who consist of:

25 (1) three ~~persons~~ individuals licensed as licensed
26 psychologists who have a doctoral degree degrees in psychology;

27 (2) two ~~persons~~ individuals licensed as licensed
28 psychologists who have a master's degree degrees in psychology;

29 (3) two psychologists, not necessarily licensed, one with a
30 doctoral degree in psychology who represents a doctoral training
31 program in psychology, and one who represents a master's degree
32 training program in psychology;

33 (4) one ~~person~~ individual licensed or qualified to be

34 licensed as: (i) through December 31, 2010, a licensed
35 psychological practitioner; and (ii) after December 31, 2010, a
36 licensed psychologist; and

1 (5) three public members.

2 (b) After the date on which fewer than 30 percent of the
 3 ~~persons~~ individuals licensed by the board as licensed
 4 psychologists qualify for licensure under section 148.907,
 5 subdivision 3, paragraph (b), ~~the-first-vacaney~~ vacancies filled
 6 under paragraph (a), clause (2), shall be filled by ~~a-person~~ an
 7 individual with either a master's or doctoral degree in
 8 psychology licensed or qualified to be licensed as a
 9 licensed ~~psychological-practitioner~~. ~~---From-this-date-on,~~ ~~this~~
 10 ~~position-when-vacant-shall-be-filled-by-a-person-licensed-or~~
 11 ~~qualified-to-be-licensed-as-a-licensed-psychological~~
 12 ~~practitioner~~ psychologist.

13 (c) After the date on which fewer than 15 percent of the
 14 ~~persons~~ individuals licensed by the board as licensed
 15 psychologists qualify for licensure under section 148.907,
 16 subdivision 3, paragraph (b), ~~the-first-vacaney~~ vacancies under
 17 paragraph (a), clause (2), ~~for-a-licensed-psychologist~~ shall be
 18 filled by an individual with either a master's or doctoral
 19 degree in psychology ~~shall-be-filled-by-a~~ licensed or qualified
 20 to be licensed as a licensed psychologist. ~~From-this-date-on,~~
 21 ~~this-position-when-vacant-shall-be-filled-by-a-person-licensed~~
 22 ~~as-a-licensed-psychologist~~.

23 Sec. 3. Minnesota Statutes 2004, section 148.907, is
 24 amended by adding a subdivision to read:

25 Subd. 5. [CONVERTING FROM A LICENSED PSYCHOLOGICAL
 26 PRACTITIONER TO A LICENSED PSYCHOLOGIST.] Notwithstanding
 27 subdivision 3, to convert from licensure as a licensed
 28 psychological practitioner to licensure as a licensed
 29 psychologist, a licensed psychological practitioner shall have:

30 (1) completed an application provided by the board for
 31 conversion from licensure as a licensed psychological
 32 practitioner to licensure as a licensed psychologist;

33 (2) paid a nonrefundable fee of \$500;

34 (3) documented successful completion of two full years, or
 35 the equivalent, of supervised postlicensure employment meeting
 36 the requirements of section 148.925, subdivision 5, as it

1 relates to preparation for licensure as a licensed psychologist
 2 as follows:

3 (i) for individuals licensed as licensed psychological
 4 practitioners on or before December 31, 2006, the supervised
 5 practice must be completed by December 31, 2010; and

6 (ii) for individuals licensed as licensed psychological
 7 practitioners after December 31, 2006, the supervised practice
 8 must be completed within four years from the date of licensure;
 9 and

10 (4) no unresolved disciplinary action or complaints
 11 pending, or incomplete disciplinary orders or corrective action
 12 agreements in Minnesota or any other jurisdiction.

13 Sec. 4. Minnesota Statutes 2004, section 148.908,
 14 subdivision 2, is amended to read:

15 Subd. 2. [REQUIREMENTS FOR LICENSURE AS A LICENSED
 16 PSYCHOLOGICAL PRACTITIONER.] To become licensed by the board as
 17 a licensed psychological practitioner, an applicant shall comply
 18 with the following requirements:

19 (1) ~~pass-an-examination-in-psychology;~~

20 ~~{2}-pass-a-professional-responsibility-examination-on-the~~
 21 ~~practice-of-psychology;~~

22 ~~{3}-pass-any-other-examinations-as-required-by-board-rules;~~

23 ~~{4}-pay-nonrefundable-fees-to-the-board-for-applications,~~
 24 ~~processing,-testing,-renewals,-and-materials;~~

25 ~~{5}-have-attained-the-age-of-majority,-be-of-good-moral~~
 26 ~~character,-and-have-no-unresolved-disciplinary-action-or~~
 27 ~~complaints-pending-in-the-state-of-Minnesota-or-any-other~~
 28 ~~jurisdiction,-and~~

29 {6} have earned a doctoral or master's degree or the
 30 equivalent of a master's degree in a doctoral program with a
 31 major in psychology from a regionally accredited educational
 32 institution meeting the standards the board has established by
 33 rule. The degree requirements must be completed by December 31,
 34 2005;

35 (2) complete an application for admission to the
 36 examination for professional practice in psychology and pay the

1 nonrefundable application fee by December 31, 2005;

2 (3) complete an application for admission to the

3 professional responsibility examination and pay the

4 nonrefundable application fee by December 31, 2005;

5 (4) pass the examination for professional practice in

6 psychology by December 31, 2005;

7 (5) pass the professional responsibility examination by

8 December 31, 2006;

9 (6) complete an application for licensure as a licensed

10 psychological practitioner and pay the nonrefundable application

11 fee by March 1, 2007; and

12 (7) have attained the age of majority, be of good moral

13 character, and have no unresolved disciplinary action or

14 complaints pending in the state of Minnesota or any other

15 jurisdiction.

16 Sec. 5. Minnesota Statutes 2004, section 148.908, is

17 amended by adding a subdivision to read:

18 Subd. 3. [TERMINATION OF LICENSURE.] Effective December

19 31, 2011, the licensure of all licensed psychological

20 practitioners shall be terminated without further notice and

21 licensure as a licensed psychological practitioner in Minnesota

22 shall be eliminated.

23 Sec. 6. Minnesota Statutes 2004, section 148.909, is

24 amended to read:

25 148.909 [LICENSURE FOR VOLUNTEER PRACTICE.]

26 The board, at its discretion, may grant licensure for

27 volunteer practice to an applicant who:

28 (1) ~~is-a-former-licensee-who~~ is completely retired from the

29 practice of psychology;

30 (2) has no unresolved disciplinary action or complaints

31 pending in the state of Minnesota or any other jurisdiction; and

32 (3) has held a license, certificate, or registration to

33 practice psychology in any jurisdiction ~~for-at-least-15-years.~~

34 Sec. 7. Minnesota Statutes 2004, section 148.916,

35 subdivision 2, is amended to read:

36 Subd. 2. [PSYCHOLOGICAL CONSULTATIONS.] Notwithstanding

1 subdivision 1, a nonresident of the state of Minnesota, who is
2 not seeking licensure in this state, may serve as an expert
3 witness, organizational consultant, presenter, or educator
4 without obtaining guest licensure, provided the person is
5 appropriately trained, educated, or has been issued a license,
6 certificate, or registration by another jurisdiction.

7 Sec. 8. Minnesota Statutes 2004, section 148.925,
8 subdivision 6, is amended to read:

9 Subd. 6. [SUPERVISEE DUTIES.] Individuals preparing for
10 licensure as a licensed psychologist during their postdegree
11 supervised employment may perform as part of their training any
12 functions specified in section 148.89, subdivision 5, but only
13 under qualified supervision.

14 Sec. 9. Minnesota Statutes 2004, section 148.941,
15 subdivision 2, is amended to read:

16 Subd. 2. [GROUNDS FOR DISCIPLINARY ACTION; FORMS OF
17 DISCIPLINARY ACTION.] (a) The board may impose disciplinary
18 action as described in paragraph (b) against an applicant or
19 licensee whom the board, by a preponderance of the evidence,
20 determines:

21 (1) has violated a statute, rule, or order that the board
22 issued or is empowered to enforce;

23 (2) has engaged in fraudulent, deceptive, or dishonest
24 conduct, whether or not the conduct relates to the practice of
25 psychology, that adversely affects the person's ability or
26 fitness to practice psychology;

27 (3) has engaged in unprofessional conduct or any other
28 conduct which has the potential for causing harm to the public,
29 including any departure from or failure to conform to the
30 minimum standards of acceptable and prevailing practice without
31 actual injury having to be established;

32 (4) has been convicted of or has pled guilty or nolo
33 contendere to a felony or other crime, an element of which is
34 dishonesty or fraud, or has been shown to have engaged in acts
35 or practices tending to show that the applicant or licensee is
36 incompetent or has engaged in conduct reflecting adversely on

1 the applicant's or licensee's ability or fitness to engage in
2 the practice of psychology;

3 (5) has employed fraud or deception in obtaining or
4 renewing a license, in requesting approval of continuing
5 education activities, or in passing an examination;

6 (6) has had a license, certificate, charter, registration,
7 privilege to take an examination, or other similar authority
8 denied, revoked, suspended, canceled, limited, reprimanded, or
9 otherwise disciplined, or not renewed for cause in any
10 jurisdiction; or has surrendered or voluntarily terminated a
11 license or certificate during a board investigation of a
12 complaint, as part of a disciplinary order, or while under a
13 disciplinary order;

14 (7) has been subject to a corrective action or similar
15 action in another jurisdiction or by another regulatory
16 authority;

17 (8) has failed to meet any requirement for the issuance or
18 renewal of the person's license. The burden of proof is on the
19 applicant or licensee to demonstrate the qualifications or
20 satisfy the requirements for a license under the Psychology
21 Practice Act;

22 (9) has failed to cooperate with an investigation of the
23 board as required under subdivision 4;

24 (10) has demonstrated an inability to practice psychology
25 with reasonable skill and safety to clients due to any mental or
26 physical illness or condition; or

27 (11) has engaged in fee splitting. This clause does not
28 apply to the distribution of revenues from a partnership, group
29 practice, nonprofit corporation, or professional corporation to
30 its partners, shareholders, members, or employees if the
31 revenues consist only of fees for services performed by the
32 licensee or under a licensee's administrative authority. This
33 clause also does not apply to the charging of a general
34 membership fee by a licensee or applicant to health care
35 providers, as defined in section 144.335, for participation in a
36 referral service, provided that the licensee or applicant

1 discloses in advance to each referred client the financial
2 nature of the referral arrangement. Fee splitting includes, but
3 is not limited to:

4 (i) paying, offering to pay, receiving, or agreeing to
5 receive a commission, rebate, or remuneration, directly or
6 indirectly, primarily for the referral of clients;

7 (ii) dividing client fees with another individual or
8 entity, unless the division is in proportion to the services
9 provided and the responsibility assumed by each party;

10 (iii) referring an individual or entity to any health care
11 provider, as defined in section 144.335, or for other
12 professional or technical services in which the referring
13 licensee or applicant has a significant financial interest
14 unless the licensee has disclosed the financial interest in
15 advance to the client; and

16 (iv) dispensing for profit or recommending any instrument,
17 test, procedure, or device that for commercial purposes the
18 licensee or applicant has developed or distributed, unless the
19 licensee or applicant has disclosed any profit interest in
20 advance to the client.

21 (b) If grounds for disciplinary action exist under
22 paragraph (a), the board may take one or more of the following
23 actions:

24 (1) refuse to grant or renew a license;

25 (2) revoke a license;

26 (3) suspend a license;

27 (4) impose limitations or conditions on a licensee's
28 practice of psychology, including, but not limited to, limiting
29 the scope of practice to designated competencies, imposing
30 retraining or rehabilitation requirements, requiring the
31 licensee to practice under supervision, or conditioning
32 continued practice on the demonstration of knowledge or skill by
33 appropriate examination or other review of skill and competence;

34 (5) censure or reprimand the licensee;

35 (6) refuse to permit an applicant to take the licensure
36 examination or refuse to release an applicant's examination

1 grade if the board finds that it is in the public interest; or

2 (7) impose a civil penalty not exceeding \$7,500 for each
3 separate violation. The amount of the penalty shall be fixed so
4 as to deprive the applicant or licensee of any economic
5 advantage gained by reason of the violation charged, to
6 discourage repeated violations, or to recover the board's costs
7 that occur in bringing about a disciplinary order. For purposes
8 of this clause, costs are limited to legal, paralegal, and
9 investigative charges billed to the board by the Attorney
10 General's Office, witness costs, consultant and expert witness
11 fees, and charges attendant to the use of an administrative law
12 judge.

13 (c) In lieu of or in addition to paragraph (b), the board
14 may require, as a condition of continued licensure, termination
15 of suspension, reinstatement of license, examination, or release
16 of examination grades, that the applicant or licensee:

17 (1) submit to a quality review, as specified by the board,
18 of the applicant's or licensee's ability, skills, or quality of
19 work;

20 (2) complete to the satisfaction of the board educational
21 courses specified by the board; and

22 (3) reimburse to the board all costs incurred by the board
23 that are the result of a provider failing, neglecting, or
24 refusing to fully comply, or not complying in a timely manner,
25 with any part of the remedy section of a stipulation and consent
26 order or the corrective action section of an agreement for
27 corrective action. For purposes of this clause, costs are
28 limited to legal, paralegal, and investigative charges billed to
29 the board by the Attorney General's Office, witness costs,
30 consultant and expert witness fees, and charges attendant to the
31 use of an administrative law judge.

32 (d) Service of the order is effective if the order is
33 served on the applicant, licensee, or counsel of record
34 personally or by mail to the most recent address provided to the
35 board for the licensee, applicant, or counsel of record. The
36 order shall state the reasons for the entry of the order.

1 Sec. 10. Minnesota Statutes 2004, section 148.96,
2 subdivision 3, is amended to read:

3 Subd. 3. [REQUIREMENTS FOR REPRESENTATIONS TO PUBLIC.] (a)
4 Unless licensed under sections 148.88 to 148.98, except as
5 provided in paragraphs (b) through (e), persons shall not
6 represent themselves or permit themselves to be represented to
7 the public by:

8 (1) using any title or description of services
9 incorporating the words "psychology," "psychological,"
10 "psychological practitioner," or "psychologist"; or

11 (2) representing that the person has expert qualifications
12 in an area of psychology.

13 (b) Psychologically trained individuals who are employed by
14 an educational institution recognized by a regional accrediting
15 organization, by a federal, state, county, or local government
16 institution, ~~by agencies~~ agency, or by research
17 ~~facilities~~ facility, may represent themselves by the title
18 designated by that organization provided that the title does not
19 indicate that the individual is credentialed by the board.

20 (c) A psychologically trained individual from an
21 institution described in paragraph (b) may offer lecture
22 services and is exempt from the provisions of this section.

23 (d) A person who is preparing for the practice of
24 psychology under supervision in accordance with board statutes
25 and rules may be designated as a "psychological intern,"
26 "psychological trainee," or by other terms clearly describing
27 the person's training status.

28 (e) Former licensees who are completely retired from the
29 practice of psychology may represent themselves using the
30 descriptions in paragraph (a), clauses (1) and (2), but shall
31 not represent themselves or allow themselves to be represented
32 as current licensees of the board.

33 (f) Nothing in this section shall be construed to prohibit
34 the practice of school psychology by a person licensed in
35 accordance with chapters 122A and 129.

1 Senator moves to amend S.F. No. 765 as follows:
2 Page 5, line 6, delete "2005" and insert "2006"
3 Page 10, after line 35, insert:
4 "Section 11. [EFFECTIVE DATE.]
5 Sections 1 to 10 are effective the day following final
6 enactment."

**Senate Counsel, Research,
and Fiscal Analysis**


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Senate

State of Minnesota

S.F. No. 1289 - Board of Social Work Recodification

Author: Senator Sheila Kiscaden

Prepared by: David Giel, Senate Research (296-7178) 

Date: March 31, 2005

S.F. No. 1289 repeals the statute governing the Board of Social Work (Minnesota Statutes, sections 148B.18 to 148B.289) and the board's rules, and recodifies the language, with some policy changes, into a new Chapter 148D.

**ARTICLE 1
GENERAL**

Section 1 (148D.001) is the citation.

Section 2 (148D.005) states the purpose of this chapter to promote and protect the public health, safety, and welfare through the licensure and regulation of persons who practice social work in Minnesota.

Section 3 (148D.010) defines terms used in the chapter.

Section 4 (148D.015) establishes the scope of the board's regulatory authority.

Section 5 (148D.020) states that Chapter 214, the statute generally governing all licensing boards, applies to the Board of Social Work unless superseded by this new chapter.

Section 6 (148D.025) establishes the board, prescribes membership and membership qualifications, requires an annual election of officers, requires bylaws to be adopted, and requires the appointment of an executive director.

Section 7 (148D.030) outlines board duties.

Section 8 (148D.035) authorizes the board to grant variances from requirements of this chapter, excluding core licensing standards, under certain conditions, if the variance is consistent with protection of public health, safety, and welfare.

Section 9 (148D.040) grants immunity to board members, employees, and agents during the lawful conduct of their duties under this chapter.

Section 10 (148D.045) grants applicants and licensees who are subject to a disciplinary or adversarial action by the board the right to a contested case hearing.

Section 11 (148D.050) outlines the scope of practice for the following licensed practitioners: social workers, graduate social workers, independent social workers, and independent clinical social workers.

Section 12 (148D.055) requires persons who practice or teach social work to be licensed, unless exempted later in this chapter. Qualifications for licensure by examination are outlined for various levels of practice. This section establishes criteria for determining the sufficiency of education obtained outside of the United States or Canada. It establishes a procedure for licensure by endorsement for persons currently licensed or credentialed in another jurisdiction. It establishes board policy with respect to background checks, licensure effective dates and expiration dates, and changes between levels of licensure.

Section 13 (148D.060) authorizes temporary licensure.

Section 14 (148D.065) provides exemptions from licensure.

Section 15 (148D.070) establishes licensure renewal procedures.

Section 16 (148D.075) authorizes inactive licensure when the licensee is granted a temporary leave from active practice or is granted an emeritus license.

Section 17 (148D.080) establishes procedures for reactivating a license that is in temporary leave status or emeritus status, or has expired or been voluntarily terminated.

Section 18 (148D.085) establishes policy governing voluntary license termination.

Section 19 (148D.090) governs reporting of licensee names, addresses, and telephone numbers. A licensee may use the person's legal name or a professional name.

Section 20 (148D.095) governs issuance of license wall certificates and license cards.

Section 21 (148D.100) establishes supervision requirements for licensed social workers.

Section 22 (148D.105) establishes supervision requirements for licensed graduate social workers.

Section 23 (148D.110) establishes supervision requirements for licensed independent social workers.

Section 24 (148D.115) establishes supervision requirements for licensed independent clinical social workers.

Section 25 (148D.120) establishes requirements for persons serving as supervisors and allows for alternative supervisors under certain circumstances.

Section 26 (148D.125) establishes procedures for documenting and verifying the completion of required supervision.

Section 27 (148D.135) requires 30 hours of continuing education every 24 months.

Section 28 (148D.135) establishes criteria for approving continuing education hours.

Section 29 (148D.140) allows the board to grant temporary variances of continuing education requirements under certain circumstances.

Section 30 (148D.145) establishes criteria for board approval of continuing education providers.

Section 31 (148D.150) establishes criteria for continuing education providers approved by an entity other than the board.

Section 32 (148D.155) establishes criteria for continuing education programs approved by the National Association of Social Workers.

Section 33 (148D.160) establishes criteria for board approval of continuing education programs.

Section 34 (148D.165) requires licensees to maintain documentation of continuing education hours earned and authorizes the board to audit applications to determine compliance with continuing education requirements.

Section 35 (148D.170) authorizes the board to revoke the approval of a continuing education program or provider for failure to meet statutory requirements.

Section 36 (148D.175) provides that board fees are nonrefundable and must be deposited in the state government special revenue fund.

Section 37 (148D.180) sets board fee amounts, which are unchanged from current law.

Section 38 (148D.185) states the purpose of the board's compliance statutes is to protect the public by ensuring that all licensees meet minimum standards or practice. The board must investigate complaints and take appropriate corrective action when warranted to protect the public.

Section 39 (148D.190) establishes grounds for board action to enforce licensing requirements. Conduct that occurs before licensure and unauthorized practice may warrant board action under certain circumstances.

Section 40 (148D.195) establishes the standard of practice with respect to representations to clients and the public.

Section 41 (148D.200) sets standards for the provision of competent social work services.

Section 42 (148D.205) establishes grounds for board action when a licensee is impaired due to illness, use of chemicals, or as a result of any mental, physical, or psychological condition. Licensees who are unable to practice competently due to an impairment are required to report to the board or to the Health Professionals Services Program.

Section 43 (148D.210) establishes grounds for board action if a licensee engages in unprofessional or unethical conduct or in other proscribed activities.

Section 44 (148D.215) establishes the responsibilities social workers have with respect to clients.

Section 45 (148D.220) requires social workers to act professionally in relationships with clients and former clients and maintain professional boundaries. This section establishes standards for permissible personal and business relationships with clients and former clients.

Section 46 (148D.225) establishes standards for treatment and intervention services.

Section 47 (148D.230) establishes requirements with respect to confidentiality and records.

Section 48 (148D.235) establishes requirements with respect to social worker fees and billing practices.

Section 49 (148D.240) establishes social worker reporting requirements.

Section 50 (148D.245) establishes the board's investigative powers and procedures.

Section 51 (148D.250) requires applicants or licensees who are the subject of a board investigation or are questioned by the board in connection with an investigation to cooperate fully.

Section 52 (148D.255) authorizes the board to take various types of disciplinary actions against applicants and licensees to address complaints alleging a violation of a statute or rule the board is empowered to enforce.

Section 53 (148D.260) outlines the various disciplinary options available to the board.

Section 54 (148D.265) outlines adversarial but nondisciplinary actions the board may take, including automatic suspensions and cease-and-desist orders.

Section 55 (148D.270) outlines voluntary disciplinary actions the board and an applicant or licensee may agree to, including an agreement for corrective action and a stipulation to cease practicing.

Section 56 (148D.275) prohibits the practice of social work or the provision of social work services without a license, unless the person is exempt from licensure under section 14.

Section 57 (148D.280) prohibits use of the title “social worker” by unlicensed persons unless they practice in a setting exempt from licensure under section 14.

Section 58 (148D.285) requires a variety of public and private entities to report to the board disciplinary action against a person for conduct that might constitute grounds for disciplinary action by the board or the resignation of an applicant or licensee prior to the conclusion of this type of disciplinary action.

Section 59 (148D.290) makes it a misdemeanor to violate sections 56 to 58.

Section 60 is a blank appropriation to the board from the state government special revenue fund for fiscal years 2006 and 2007.

Section 61 repeals the boards current statutes and rules.

Section 62 is the effective date. The appropriations section is effective July 1, 2005. The remainder of the article is effective January 1, 2006.

ARTICLE 2 CONFORMING AMENDMENTS

Article 2 makes conforming changes in other statutes to reflect the recodification of the Board of Social Work statute into a new Chapter 148D. This article is effective January 1, 2006.

DG:rdr

Senators Kiscaden and Lourey introduced--

S.F. No. 1289: Referred to the Committee on Health and Family Security.

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A bill for an act

relating to health; recodifying statutes and rules
relating to social work; authorizing rulemaking;
providing penalties; appropriating money; amending
Minnesota Statutes 2004, sections 13.383, subdivision
10; 13.411, subdivision 5; 144.335, subdivision 1;
144A.46, subdivision 2; 147.09; 214.01, subdivision 2;
245.462, subdivision 18; 245.4871, subdivision 27;
256B.0625, subdivision 38; 256J.08, subdivision 73a;
319B.02, subdivision 19; 319B.40; proposing coding for
new law as Minnesota Statutes, chapter 148D; repealing
Minnesota Statutes 2004, sections 148B.18; 148B.185;
148B.19; 148B.20; 148B.21; 148B.215; 148B.22;
148B.224; 148B.225; 148B.226; 148B.24; 148B.25;
148B.26; 148B.27; 148B.28; 148B.281; 148B.282;
148B.283; 148B.284; 148B.285; 148B.286; 148B.287;
148B.288; 148B.289; Minnesota Rules, parts 8740.0100;
8740.0110; 8740.0120; 8740.0122; 8740.0130; 8740.0155;
8740.0185; 8740.0187; 8740.0200; 8740.0240; 8740.0260;
8740.0285; 8740.0300; 8740.0310; 8740.0315; 8740.0320;
8740.0325; 8740.0330; 8740.0335; 8740.0340; 8740.0345.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

23 ARTICLE 1

24 GENERAL

25 CITATION; DEFINITIONS

26 Section 1. [148D.001] [CITATION.]

27 This chapter may be cited as the "Minnesota Board of Social
28 Work Practice Act."

29 Sec. 2. [148D.005] [PURPOSE.]

30 The purpose of this chapter is to promote and protect the
31 public health, safety, and welfare through the licensure and
32 regulation of persons who practice social work in this state.

33 Sec. 3. [148D.010] [DEFINITIONS.]

1 Subdivision 1. [SCOPE.] For the purpose of this chapter,
2 the terms in this section have the meanings given.

3 Subd. 2. [APPLICANT.] "Applicant" means a person who
4 submits an application to the board for a new license, a license
5 renewal, a change in license, an inactive license, reactivation
6 of a license, or a voluntary termination.

7 Subd. 3. [APPLICATION.] "Application" means an application
8 to the board for a new license, a license renewal, a change in
9 license, an inactive license, reactivation of a license, or
10 voluntary termination.

11 Subd. 4. [BOARD.] "Board" means the Board of Social Work
12 created under section 148D.025.

13 Subd. 5. [CLIENT.] "Client" means an individual, couple,
14 family, group, community, or organization that receives or has
15 received social work services as described in subdivision 9.

16 Subd. 6. [CLINICAL PRACTICE.] "Clinical practice" means
17 applying professional social work knowledge, skills, and values
18 in the differential diagnosis and treatment of psychosocial
19 function, disability, or impairment, including addictions and
20 emotional, mental, and behavioral disorders. Treatment includes
21 a plan based on a differential diagnosis. Treatment may
22 include, but is not limited to, the provision of psychotherapy
23 to individuals, couples, families, and groups. Clinical social
24 workers may also provide the services described in subdivision 9.

25 Subd. 7. [INTERN.] "Intern" means a student in field
26 placement working under the supervision or direction of a social
27 worker.

28 Subd. 8. [PERSON-IN-ENVIRONMENT PERSPECTIVE.]
29 "Person-in-environment perspective" means viewing human
30 behavior, development, and function in the context of one or
31 more of the following: the environment, social functioning,
32 mental health, and physical health.

33 Subd. 9. [PRACTICE OF SOCIAL WORK.] "Practice of social
34 work" means working to maintain, restore, or improve behavioral,
35 cognitive, emotional, mental, or social functioning of clients,
36 in a manner that applies accepted professional social work

1 knowledge, skills, and values, including the
2 person-in-environment perspective, by providing in person or
3 through telephone, video conferencing, or electronic means one
4 or more of the social work services described in clauses (1) to
5 (3). Social work services may address conditions that impair or
6 limit behavioral, cognitive, emotional, mental, or social
7 functioning. Such conditions include, but are not limited to,
8 the following: abuse and neglect of children or vulnerable
9 adults, addictions, developmental disorders, disabilities,
10 discrimination, illness, injuries, poverty, and trauma. Social
11 work services include:

12 (1) providing assessment and intervention through direct
13 contact with clients, developing a plan based on information
14 from an assessment, and providing services which include, but
15 are not limited to, assessment, case management, client-centered
16 advocacy, client education, consultation, counseling, crisis
17 intervention, and referral;

18 (2) providing for the direct or indirect benefit of clients
19 through administrative, educational, policy, or research
20 services including, but not limited to:

21 (i) advocating for policies, programs, or services to
22 improve the well-being of clients;

23 (ii) conducting research related to social work services;

24 (iii) developing and administering programs which provide
25 social work services;

26 (iv) engaging in community organization to address social
27 problems through planned collective action;

28 (v) supervising individuals who provide social work
29 services to clients;

30 (vi) supervising social workers in order to comply with the
31 supervised practice requirements specified in sections 148D.100
32 to 148D.125; and

33 (vii) teaching professional social work knowledge, skills,
34 and values to students; and

35 (3) engaging in clinical practice.

36 Subd. 10. [PROFESSIONAL NAME.] "Professional name" means

1 the name a licensed social worker uses in making representations
2 of the social worker's professional status to the public and
3 which has been designated to the board in writing pursuant to
4 section 148D.090.

5 Subd. 11. [PROFESSIONAL SOCIAL WORK KNOWLEDGE, SKILLS, AND
6 VALUES.] "Professional social work knowledge, skills, and values"
7 means the knowledge, skills, and values taught in programs
8 accredited by the Council on Social Work Education, the Canadian
9 Association of Schools of Social Work, or a similar
10 accreditation body designated by the board. Professional social
11 work knowledge, skills, and values include, but are not limited
12 to, principles of person-in-environment and the values,
13 principles, and standards described in the Code of Ethics of the
14 National Association of Social Workers.

15 Subd. 12. [SEXUAL CONDUCT.] "Sexual conduct" means any
16 physical contact or conduct that may be reasonably interpreted
17 as sexual, or any oral, written, electronic, or other
18 communication that suggests engaging in physical contact or
19 conduct that may be reasonably interpreted as sexual.

20 Subd. 13. [SOCIAL WORKER.] "Social worker" means an
21 individual who:

22 (1) is licensed as a social worker; or

23 (2) has obtained a social work degree from a program
24 accredited by the Council on Social Work Education, the Canadian
25 Association of Schools of Social Work, or a similar
26 accreditation body designated by the board and engages in the
27 practice of social work.

28 Subd. 14. [STUDENT.] "Student" means an individual who is
29 taught professional social work knowledge, skills, and values in
30 a program that has been accredited by the Council on Social Work
31 Education, the Canadian Association of Schools of Social Work,
32 or a similar accreditation body designated by the board.

33 Subd. 15. [SUPERVISEE.] "Supervisee" means an individual
34 provided evaluation and supervision or direction by a social
35 worker.

36 Subd. 16. [SUPERVISION.] "Supervision" means a

1 professional relationship between a supervisor and a social
2 worker in which the supervisor provides evaluation and direction
3 of the services provided by the social worker to promote
4 competent and ethical services to clients through the continuing
5 development of the social worker's knowledge and application of
6 accepted professional social work knowledge, skills, and values.

7 APPLICABILITY

8 Sec. 4. [148D.015] [SCOPE.]

9 This chapter applies to all applicants and licensees, all
10 persons who use the title social worker, and all persons in or
11 out of this state who provide social work services to clients
12 who reside in this state unless there are specific applicable
13 exemptions provided by law.

14 Sec. 5. [148D.020] [CHAPTER 214.]

15 Chapter 214 applies to the Board of Social Work unless
16 superseded by this chapter.

17 BOARD

18 Sec. 6. [148D.025] [BOARD OF SOCIAL WORK.]

19 Subdivision 1. [CREATION.] The Board of Social Work
20 consists of 15 members appointed by the governor. The members
21 are:

22 (1) ten social workers licensed pursuant to section
23 148D.055; and

24 (2) five public members as defined in section 214.02.

25 Subd. 2. [QUALIFICATIONS OF BOARD MEMBERS.] (a) All social
26 worker members must have engaged in the practice of social work
27 in Minnesota for at least one year during the ten years
28 preceding their appointments.

29 (b) Five social worker members must be licensed social
30 workers. The other five members must be a licensed graduate
31 social worker, a licensed independent social worker, or a
32 licensed independent clinical social worker.

33 (c) Eight social worker members must be engaged at the time
34 of their appointment in the practice of social work in Minnesota
35 in the following settings:

36 (1) one member must be engaged in the practice of social

1 work in a county agency;

2 (2) one member must be engaged in the practice of social
3 work in a state agency;

4 (3) one member must be engaged in the practice of social
5 work in an elementary, middle, or secondary school;

6 (4) one member must be employed in a hospital or nursing
7 home licensed under chapter 144 or 144A;

8 (5) two members must be engaged in the practice of social
9 work in a private agency;

10 (6) one member must be engaged in the practice of social
11 work in a clinical social work setting; and

12 (7) one member must be an educator engaged in regular
13 teaching duties at a program of social work accredited by the
14 Council on Social Work Education or a similar accreditation body
15 designated by the board.

16 (d) At the time of their appointments, at least six members
17 must reside outside of the seven-county metropolitan area.

18 (e) At the time of their appointments, at least five
19 members must be persons with expertise in communities of color.

20 Subd. 3. [OFFICERS.] The board must annually elect from
21 its membership a chair, vice-chair, and secretary-treasurer.

22 Subd. 4. [BYLAWS.] The board must adopt bylaws to govern
23 its proceedings.

24 Subd. 5. [EXECUTIVE DIRECTOR.] The board must appoint and
25 employ an executive director who is not a member of the board.

26 Sec. 7. [148D.030] [DUTIES OF THE BOARD.]

27 Subdivision 1. [DUTIES.] The board must perform the duties
28 necessary to promote and protect the public health, safety, and
29 welfare through the licensure and regulation of persons who
30 practice social work in this state. These duties include, but
31 are not limited to:

32 (1) establishing the qualifications and procedures for
33 individuals to be licensed as social workers;

34 (2) establishing standards of practice for social workers;

35 (3) holding examinations or contracting with the

36 Association of Social Work Boards or a similar examination body

1 designated by the board to hold examinations to assess
2 applicants' qualifications;

3 (4) issuing licenses to qualified individuals pursuant to
4 sections 148D.055 and 148D.060;

5 (5) taking disciplinary, adversarial, corrective, or other
6 action pursuant to sections 148D.255 to 148D.270 when an
7 individual violates the requirements of this chapter;

8 (6) assessing fees pursuant to sections 148D.175 and
9 148D.180; and

10 (7) educating social workers and the public on the
11 requirements of the board.

12 Subd. 2. [RULES.] The board may adopt and enforce rules to
13 carry out the duties specified in subdivision 1.

14 Sec. 8. [148D.035] [VARIANCES.]

15 If the effect of a requirement pursuant to this chapter is
16 unreasonable, impossible to execute, absurd, or would impose an
17 extreme hardship on a licensee, the board may grant a variance
18 if the variance is consistent with promoting and protecting the
19 public health, safety, and welfare. A variance must not be
20 granted for core licensing standards such as substantive
21 educational and examination requirements.

22 Sec. 9. [148D.040] [IMMUNITY.]

23 Board members, board employees, and persons engaged on
24 behalf of the board are immune from civil liability and criminal
25 prosecution for any actions, transactions, or publications in
26 the lawful execution of or relating to their duties under this
27 chapter.

28 CONTESTED CASES

29 Sec. 10. [148D.045] [CONTESTED CASE HEARING.]

30 An applicant or a licensee who is the subject of a
31 disciplinary or adversarial action by the board pursuant to this
32 chapter may request a contested case hearing under sections
33 14.57 to 14.62. An applicant or a licensee who desires to
34 request a contested case hearing must submit a written request
35 to the board within 90 days after the date on which the board
36 mailed the notification of the adverse action, except as

1 otherwise provided in this chapter.

2 LICENSING

3 Sec. 11. [148D.050] [LICENSING; SCOPE OF PRACTICE.]

4 Subdivision 1. [REQUIREMENTS.] The practice of social work
5 must comply with the requirements of subdivision 2, 3, 4, or 5.

6 Subd. 2. [LICENSED SOCIAL WORKER.] A licensed social
7 worker may engage in social work practice except that a licensed
8 social worker must not engage in clinical practice.

9 Subd. 3. [LICENSED GRADUATE SOCIAL WORKER.] A licensed
10 graduate social worker may engage in social work practice except
11 that a licensed graduate social worker must not engage in
12 clinical practice except under the supervision of a licensed
13 independent clinical social worker or an alternate supervisor
14 pursuant to section 148D.120.

15 Subd. 4. [LICENSED INDEPENDENT SOCIAL WORKER.] A licensed
16 independent social worker may engage in social work practice
17 except that a licensed independent social worker must not engage
18 in clinical practice except under the supervision of a licensed
19 independent clinical social worker or an alternate supervisor
20 pursuant to section 148D.120.

21 Subd. 5. [LICENSED INDEPENDENT CLINICAL SOCIAL WORKER.] A
22 licensed independent clinical social worker may engage in social
23 work practice, including clinical practice.

24 Sec. 12. [148D.055] [LICENSE REQUIREMENTS.]

25 Subdivision 1. [LICENSE REQUIRED.] (a) In order to
26 practice social work, an individual must have a social work
27 license under this section or section 148D.060, except when the
28 individual is exempt from licensure pursuant to section 148D.065.

29 (b) Individuals who teach professional social work
30 knowledge, skills, and values to students and who have a social
31 work degree from a program accredited by the Council on Social
32 Work Education, the Canadian Association of Schools of Social
33 Work, or a similar accreditation body designated by the board
34 must have a social work license under this section or section
35 148D.060, except when the individual is exempt from licensure
36 pursuant to section 148D.065.

1 Subd. 2. [QUALIFICATIONS FOR LICENSURE BY EXAMINATION AS A
2 LICENSED SOCIAL WORKER.] (a) Except as provided in paragraph
3 (i), to be licensed as a licensed social worker, an applicant
4 for licensure by examination must provide evidence satisfactory
5 to the board that the applicant:

6 (1) has received a baccalaureate degree in social work from
7 a program accredited by the Council on Social Work Education,
8 the Canadian Association of Schools of Social Work, or a similar
9 accreditation body designated by the board;

10 (2) has passed the bachelors or equivalent examination
11 administered by the Association of Social Work Boards or a
12 similar examination body designated by the board. Unless an
13 applicant applies for licensure by endorsement pursuant to
14 subdivision 7, an examination is not valid if it was taken and
15 passed eight or more years prior to submitting a completed,
16 signed application form provided by the board. The examination
17 may be taken prior to completing degree requirements;

18 (3) has submitted a completed, signed application form
19 provided by the board, including the applicable application fee
20 specified in section 148D.180. For applications submitted
21 electronically, a "signed application" means providing an
22 attestation as specified by the board;

23 (4) has submitted the criminal background check fee and a
24 form provided by the board authorizing a criminal background
25 check pursuant to subdivision 8;

26 (5) has paid the applicable license fee specified in
27 section 148D.180; and

28 (6) has not engaged in conduct that was or would be in
29 violation of the standards of practice specified in sections
30 148D.195 to 148D.240. If the applicant has engaged in conduct
31 that was or would be in violation of the standards of practice,
32 the board may take action pursuant to sections 148D.255 to
33 148D.270.

34 (b) An application that is not completed and signed, or
35 that is not accompanied by the correct fee, must be returned to
36 the applicant, along with any fee submitted, and is void.

1 (c) A licensee granted a license by the board pursuant to
2 paragraph (a) must meet the supervised practice requirements
3 specified in sections 148D.100 to 148D.125. If a licensee does
4 not meet the supervised practice requirements, the board may
5 take action pursuant to sections 148D.255 to 148D.270.

6 (d) By submitting an application for licensure, an
7 applicant authorizes the board to investigate any information
8 provided or requested in the application. The board may request
9 that the applicant provide additional information, verification,
10 or documentation.

11 (e) Within one year of the time the board receives an
12 application for licensure, the applicant must meet all the
13 requirements specified in paragraph (a) and must provide all of
14 the information requested by the board pursuant to paragraph
15 (d). If within one year the applicant does not meet all the
16 requirements, or does not provide all of the information
17 requested, the applicant is considered ineligible and the
18 application for licensure must be closed.

19 (f) Except as provided in paragraph (g), an applicant may
20 not take more than three times the bachelors or equivalent
21 examination administered by the Association of Social Work
22 Boards, or a similar examination body designated by the board.
23 An applicant must receive a passing score on the bachelors or
24 equivalent examination administered by the Association of Social
25 Work Boards or a similar examination body designated by the
26 board in no more than 18 months after the date the applicant
27 first failed the examination.

28 (g) Notwithstanding paragraph (f), the board may allow an
29 applicant to take, for a fourth or subsequent time, the
30 bachelors or equivalent examination administered by the
31 Association of Social Work Boards or a similar examination body
32 designated by the board if the applicant:

33 (1) meets all requirements specified in paragraphs (a) to
34 (e) other than passing the bachelors or equivalent examination
35 administered by the Association of Social Work Boards or a
36 similar examination body designated by the board;

1 (2) provides to the board a description of the efforts the
2 applicant has made to improve the applicant's score and
3 demonstrates to the board's satisfaction that the efforts are
4 likely to improve the score; and

5 (3) provides to the board letters of recommendation from
6 two licensed social workers attesting to the applicant's ability
7 to practice social work competently and ethically in accordance
8 with professional social work knowledge, skills, and values.

9 (h) An individual must not practice social work until the
10 individual passes the examination and receives a social work
11 license under this section or section 148D.060. If the board
12 has reason to believe that an applicant may be practicing social
13 work without a license, and the applicant has failed the
14 bachelors or equivalent examination administered by the
15 Association of Social Work Boards or a similar examination body
16 designated by the board, the board may notify the applicant's
17 employer that the applicant is not licensed as a social worker.

18 (i) An applicant who was born in a foreign country, who has
19 taken and failed to pass the examination specified in paragraph
20 (a), clause (2), at least once since January 1, 2000, and for
21 whom English is a second language, is eligible for licensure as
22 a social worker if the applicant:

23 (1) provides evidence to the board of compliance with the
24 requirements in paragraph (a), clauses (1) and (3) to (6), and
25 in paragraphs (b) to (e) and (h); and

26 (2) provides to the board letters of recommendation and
27 experience ratings from two licensed social workers and one
28 professor from the applicant's social work program who can
29 attest to the applicant's competence.

30 This paragraph expires August 1, 2007.

31 Subd. 3. [QUALIFICATIONS FOR LICENSURE BY EXAMINATION AS A
32 LICENSED GRADUATE SOCIAL WORKER.] (a) Except as provided in
33 paragraph (i), to be licensed as a licensed graduate social
34 worker, an applicant for licensure by examination must provide
35 evidence satisfactory to the board that the applicant:

36 (1) has received a graduate degree in social work from a

1 program accredited by the Council on Social Work Education, the
2 Canadian Association of Schools of Social Work, or a similar
3 accreditation body designated by the board;

4 (2) has passed the masters or equivalent examination
5 administered by the Association of Social Work Boards or a
6 similar examination body designated by the board. Unless an
7 applicant applies for licensure by endorsement pursuant to
8 section 148D.055, subdivision 7, an examination is not valid if
9 it was taken and passed eight or more years prior to submitting
10 a completed, signed application form provided by the board. The
11 examination may be taken prior to completing degree
12 requirements;

13 (3) has submitted a completed, signed application form
14 provided by the board, including the applicable application fee
15 specified in section 148D.180. For applications submitted
16 electronically, a "signed application" means providing an
17 attestation as specified by the board;

18 (4) has submitted the criminal background check fee and a
19 form provided by the board authorizing a criminal background
20 check pursuant to subdivision 8;

21 (5) has paid the applicable license fee specified in
22 section 148D.180; and

23 (6) has not engaged in conduct that was or would be in
24 violation of the standards of practice specified in sections
25 148D.195 to 148D.240. If the applicant has engaged in conduct
26 that was or would be in violation of the standards of practice,
27 the board may take action pursuant to sections 148D.255 to
28 148D.270.

29 (b) An application which is not completed and signed, or
30 which is not accompanied by the correct fee, must be returned to
31 the applicant, along with any fee submitted, and is void.

32 (c) A licensee granted a license by the board pursuant to
33 paragraph (a) must meet the supervised practice requirements
34 specified in sections 148D.100 to 148D.125. If a licensee does
35 not meet the supervised practice requirements, the board may
36 take action pursuant to sections 148D.255 to 148D.270.

1 (d) By submitting an application for licensure, an
2 applicant authorizes the board to investigate any information
3 provided or requested in the application. The board may request
4 that the applicant provide additional information, verification,
5 or documentation.

6 (e) Within one year of the time the board receives an
7 application for licensure, the applicant must meet all the
8 requirements specified in paragraph (a) and must provide all of
9 the information requested by the board pursuant to paragraph
10 (d). If within one year the applicant does not meet all the
11 requirements, or does not provide all of the information
12 requested, the applicant is considered ineligible and the
13 application for licensure must be closed.

14 (f) Except as provided in paragraph (g), an applicant may
15 not take more than three times the masters or equivalent
16 examination administered by the Association of Social Work
17 Boards or a similar examination body designated by the board.
18 An applicant must receive a passing score on the masters or
19 equivalent examination administered by the Association of Social
20 Work Boards or a similar examination body designated by the
21 board in no more than 18 months after the date the applicant
22 first failed the examination.

23 (g) Notwithstanding paragraph (f), the board may allow an
24 applicant to take, for a fourth or subsequent time, the masters
25 or equivalent examination administered by the Association of
26 Social Work Boards or a similar examination body designated by
27 the board if the applicant:

28 (1) meets all requirements specified in paragraphs (a) to
29 (e) other than passing the masters or equivalent examination
30 administered by the Association of Social Work boards or a
31 similar examination body designated by the board;

32 (2) provides to the board a description of the efforts the
33 applicant has made to improve the applicant's score and
34 demonstrates to the board's satisfaction that the efforts are
35 likely to improve the score; and

36 (3) provides to the board letters of recommendation from

1 two licensed social workers attesting to the applicant's ability
2 to practice social work competently and ethically in accordance
3 with professional social work knowledge, skills, and values.

4 (h) An individual must not practice social work until the
5 individual passes the examination and receives a social work
6 license under this section or section 148D.060. If the board
7 has reason to believe that an applicant may be practicing social
8 work without a license, and the applicant has failed the masters
9 or equivalent examination administered by the Association of
10 Social Work Boards or a similar examination body designated by
11 the board, the board may notify the applicant's employer that
12 the applicant is not licensed as a social worker.

13 (i) An applicant who was born in a foreign country, who has
14 taken and failed to pass the examination specified in paragraph
15 (a), clause (2), at least once since January 1, 2000, and for
16 whom English is a second language, is eligible for licensure as
17 a social worker if the applicant:

18 (1) provides evidence to the board of compliance with the
19 requirements in paragraph (a), clauses (1) and (3) to (6), and
20 in paragraphs (b) to (e) and (h); and

21 (2) provides to the board letters of recommendation and
22 experience ratings from two licensed social workers and one
23 professor from the applicant's social work program who can
24 attest to the applicant's competence.

25 This paragraph expires August 1, 2007.

26 Subd. 4. [QUALIFICATIONS FOR LICENSURE BY EXAMINATION AS A
27 LICENSED INDEPENDENT SOCIAL WORKER.] (a) Except as provided in
28 paragraph (i), to be licensed as a licensed independent social
29 worker, an applicant for licensure by examination must provide
30 evidence satisfactory to the board that the applicant:

31 (1) has received a graduate degree in social work from a
32 program accredited by the Council on Social Work Education, the
33 Canadian Association of Schools of Social Work, or a similar
34 accreditation body designated by the board;

35 (2) has practiced social work as defined in section
36 148D.010, and has met the supervised practice requirements

1 specified in sections 148D.100 to 148D.125;

2 (3) has passed the advanced generalist or equivalent
3 examination administered by the Association of Social Work
4 Boards or a similar examination body designated by the board.

5 Unless an applicant applies for licensure by endorsement
6 pursuant to subdivision 7, an examination is not valid if it was
7 taken and passed eight or more years prior to submitting a
8 completed, signed application form provided by the board;

9 (4) has submitted a completed, signed application form
10 provided by the board, including the applicable application fee
11 specified in section 148D.180. For applications submitted
12 electronically, a "signed application" means providing an
13 attestation as specified by the board;

14 (5) has submitted the criminal background check fee and a
15 form provided by the board authorizing a criminal background
16 check pursuant to subdivision 8;

17 (6) has paid the applicable license fee specified in
18 section 148D.180; and

19 (7) has not engaged in conduct that was or would be in
20 violation of the standards of practice specified in sections
21 148D.195 to 148D.240. If the applicant has engaged in conduct
22 that was or would be in violation of the standards of practice,
23 the board may take action pursuant to sections 148D.255 to
24 148D.270.

25 (b) An application which is not completed and signed, or
26 which is not accompanied by the correct fee, must be returned to
27 the applicant, along with any fee submitted, and is void.

28 (c) A licensed independent social worker who practices
29 clinical social work must meet the supervised practice
30 requirements specified in sections 148D.100 to 148D.125. If a
31 licensee does not meet the supervised practice requirements, the
32 board may take action pursuant to sections 148D.255 to 148D.270.

33 (d) By submitting an application for licensure, an
34 applicant authorizes the board to investigate any information
35 provided or requested in the application. The board may request
36 that the applicant provide additional information, verification,

1 or documentation.

2 (e) Within one year of the time the board receives an
3 application for licensure, the applicant must meet all the
4 requirements specified in paragraph (a) and must provide all of
5 the information requested by the board pursuant to paragraph
6 (d). If within one year the applicant does not meet all the
7 requirements, or does not provide all of the information
8 requested, the applicant is considered ineligible and the
9 application for licensure must be closed.

10 (f) Except as provided in paragraph (g), an applicant may
11 not take more than three times the advanced generalist or
12 equivalent examination administered by the Association of Social
13 Work Boards or a similar examination body designated by the
14 board. An applicant must receive a passing score on the masters
15 or equivalent examination administered by the Association of
16 Social Work Boards or a similar examination body designated by
17 the board in no more than 18 months after the first time the
18 applicant failed the examination.

19 (g) Notwithstanding paragraph (f), the board may allow an
20 applicant to take, for a fourth or subsequent time, the advanced
21 generalist or equivalent examination administered by the
22 Association of Social Work Boards or a similar examination body
23 designated by the board if the applicant:

24 (1) meets all requirements specified in paragraphs (a) to
25 (e) other than passing the advanced generalist or equivalent
26 examination administered by the Association of Social Work
27 Boards or a similar examination body designated by the board;

28 (2) provides to the board a description of the efforts the
29 applicant has made to improve the applicant's score and
30 demonstrates to the board's satisfaction that the efforts are
31 likely to improve the score; and

32 (3) provides to the board letters of recommendation from
33 two licensed social workers attesting to the applicant's ability
34 to practice social work competently and ethically in accordance
35 with professional social work knowledge, skills, and values.

36 (h) An individual must not practice social work until the

1 individual passes the examination and receives a social work
2 license under this section or section 148D.060. If the board
3 has reason to believe that an applicant may be practicing social
4 work without a license, except as provided in section 148D.065,
5 and the applicant has failed the advanced generalist or
6 equivalent examination administered by the Association of Social
7 Work Boards or a similar examination body designated by the
8 board, the board may notify the applicant's employer that the
9 applicant is not licensed as a social worker.

10 (i) An applicant who was born in a foreign country, who has
11 taken and failed to pass the examination specified in paragraph
12 (a), clause (3), at least once since January 1, 2000, and for
13 whom English is a second language, is eligible for licensure as
14 a social worker if the applicant:

15 (1) provides evidence to the board of compliance with the
16 requirements in paragraph (a), clauses (1), (2), and (4) to (7),
17 and in paragraphs (b) to (e) and (h); and

18 (2) provides to the board letters of recommendation and
19 experience ratings from two licensed social workers and one
20 professor from the applicant's social work program who can
21 attest to the applicant's competence.

22 This paragraph expires August 1, 2007.

23 Subd. 5. [QUALIFICATIONS FOR LICENSURE BY EXAMINATION AS A
24 LICENSED INDEPENDENT CLINICAL SOCIAL WORKER.] (a) Except as
25 provided in paragraph (h), to be licensed as a licensed
26 independent clinical social worker, an applicant for licensure
27 by examination must provide evidence satisfactory to the board
28 that the applicant:

29 (1) has received a graduate degree in social work from a
30 program accredited by the Council on Social Work Education, the
31 Canadian Association of Schools of Social Work, or a similar
32 accreditation body designated by the board;

33 (2) has practiced clinical social work as defined in
34 section 148D.010, including both diagnosis and treatment, and
35 has met the supervised practice requirements specified in
36 sections 148D.100 to 148D.125;

1 (3) has passed the clinical or equivalent examination
2 administered by the Association of Social Work Boards or a
3 similar examination body designated by the board. Unless an
4 applicant applies for licensure by endorsement pursuant to
5 subdivision 7, an examination is not valid if it was taken and
6 passed eight or more years prior to submitting a completed,
7 signed application form provided by the board;

8 (4) has submitted a completed, signed application form
9 provided by the board, including the applicable application fee
10 specified in section 148D.180. For applications submitted
11 electronically, a "signed application" means providing an
12 attestation as specified by the board;

13 (5) has submitted the criminal background check fee and a
14 form provided by the board authorizing a criminal background
15 check pursuant to subdivision 8;

16 (6) has paid the license fee specified in section 148D.180;
17 and

18 (7) has not engaged in conduct that was or would be in
19 violation of the standards of practice specified in sections
20 148D.195 to 148D.240. If the applicant has engaged in conduct
21 that was or would be in violation of the standards of practice,
22 the board may take action pursuant to sections 148D.255 to
23 148D.270.

24 (b) An application which is not completed and signed, or
25 which is not accompanied by the correct fee, must be returned to
26 the applicant, along with any fee submitted, and is void.

27 (c) By submitting an application for licensure, an
28 applicant authorizes the board to investigate any information
29 provided or requested in the application. The board may request
30 that the applicant provide additional information, verification,
31 or documentation.

32 (d) Within one year of the time the board receives an
33 application for licensure, the applicant must meet all the
34 requirements specified in paragraph (a) and must provide all of
35 the information requested by the board pursuant to paragraph
36 (c). If within one year the applicant does not meet all the

1 requirements, or does not provide all of the information
2 requested, the applicant is considered ineligible and the
3 application for licensure must be closed.

4 (e) Except as provided in paragraph (f), an applicant may
5 not take more than three times the clinical or equivalent
6 examination administered by the Association of Social Work
7 Boards or a similar examination body designated by the board.
8 An applicant must receive a passing score on the clinical or
9 equivalent examination administered by the Association of Social
10 Work Boards or a similar examination body designated by the
11 board no later than 18 months after the first time the applicant
12 failed the examination.

13 (f) Notwithstanding paragraph (e), the board may allow an
14 applicant to take, for a fourth or subsequent time, the clinical
15 or equivalent examination administered by the Association of
16 Social Work Boards or a similar examination body designated by
17 the board if the applicant:

18 (1) meets all requirements specified in paragraphs (a) to
19 (d) other than passing the clinical or equivalent examination
20 administered by the Association of Social Work Boards or a
21 similar examination body designated by the board;

22 (2) provides to the board a description of the efforts the
23 applicant has made to improve the applicant's score and
24 demonstrates to the board's satisfaction that the efforts are
25 likely to improve the score; and

26 (3) provides to the board letters of recommendation from
27 two licensed social workers attesting to the applicant's ability
28 to practice social work competently and ethically in accordance
29 with professional social work knowledge, skills, and values.

30 (g) An individual must not practice social work until the
31 individual passes the examination and receives a social work
32 license under this section or section 148D.060. If the board
33 has reason to believe that an applicant may be practicing social
34 work without a license, and the applicant has failed the
35 clinical or equivalent examination administered by the
36 Association of Social Work Boards or a similar examination body

1 designated by the board, the board may notify the applicant's
2 employer that the applicant is not licensed as a social worker.

3 (h) An applicant who was born in a foreign country, who has
4 taken and failed to pass the examination specified in paragraph
5 (a), clause (3), at least once since January 1, 2000, and for
6 whom English is a second language, is eligible for licensure as
7 a social worker if the applicant:

8 (1) provides evidence to the board of compliance with the
9 requirements in paragraph (a), clauses (1), (2), and (4) to (7),
10 and paragraphs (b) to (d) and (g); and

11 (2) provides to the board letters of recommendation and
12 experience ratings from two licensed social workers and one
13 professor from the applicant's social work program who can
14 attest to the applicant's competence.

15 This paragraph expires August 1, 2007.

16 Subd. 6. [DEGREES FROM OUTSIDE THE UNITED STATES OR
17 CANADA.] If an applicant receives a degree from a program
18 outside the United States or Canada that is not accredited by
19 the Council on Social Work Education, the Canadian Association
20 of Schools of Social Work, or a similar examination body
21 designated by the board, the degree does not fulfill the
22 requirements specified in subdivision 2, paragraph (a), clause
23 (1); 3, paragraph (a), clause (1); 4, paragraph (a), clause (1);
24 or 5, paragraph (a), clause (1), unless the Council on Social
25 Work Education or a similar accreditation body designated by the
26 board has determined through the council's international
27 equivalency determination service that the degree earned is
28 equivalent to the degree required.

29 Subd. 7. [LICENSURE BY ENDORSEMENT.] (a) An applicant for
30 licensure by endorsement must hold a current license or
31 credential to practice social work in another jurisdiction.

32 (b) An applicant for licensure by endorsement who meets the
33 qualifications of paragraph (a) and who demonstrates to the
34 satisfaction of the board that the applicant passed the
35 examination administered by the Association of Social Work
36 Boards or a similar examination body designated by the board for

1 the applicable license in Minnesota is not required to retake
2 the licensing examination.

3 (c) An application for licensure by endorsement must meet
4 the applicable license requirements specified in subdivisions 1
5 to 6 and submit the licensure by endorsement application fee
6 specified in section 148D.180.

7 Subd. 8. [CRIMINAL BACKGROUND CHECKS.] (a) Except as
8 provided in paragraph (b), an initial license application must
9 be accompanied by:

10 (1) a form provided by the board authorizing the board to
11 complete a criminal background check; and

12 (2) the criminal background check fee specified by the
13 Bureau of Criminal Apprehension.

14 Criminal background check fees collected by the board must
15 be used to reimburse the Bureau of Criminal Apprehension for the
16 criminal background checks.

17 (b) An applicant who has previously submitted a license
18 application authorizing the board to complete a criminal
19 background check is exempt from the requirement specified in
20 paragraph (a).

21 (c) If a criminal background check indicates that an
22 applicant has engaged in criminal behavior, the board may take
23 action pursuant to sections 148D.255 to 148D.270.

24 Subd. 9. [EFFECTIVE DATE.] The effective date of an
25 initial license is the day on which the board receives the
26 applicable license fee from an applicant approved for licensure.

27 Subd. 10. [EXPIRATION DATE.] The expiration date of an
28 initial license is the last day of the licensee's birth month in
29 the second calendar year following the effective date of the
30 initial license.

31 Subd. 11. [CHANGE IN LICENSE.] (a) A licensee who changes
32 from a licensed social worker to a licensed graduate social
33 worker, or from a licensed graduate social worker to a licensed
34 independent social worker, or from a licensed graduate social
35 worker or licensed independent social worker to a licensed
36 independent clinical social worker, must pay the prorated share

1 of the fee for the new license.

2 (b) The effective date of the new license is the day on
3 which the board receives the applicable license fee from an
4 applicant approved for the new license.

5 (c) The expiration date of the new license is the same date
6 as the expiration date of the license held by the licensee prior
7 to the change in the license.

8 Sec. 13. [148D.060] [TEMPORARY LICENSES.]

9 Subdivision 1. [STUDENTS AND OTHER PERSONS NOT CURRENTLY
10 LICENSED IN ANOTHER JURISDICTION.] The board may issue a
11 temporary license to practice social work to an applicant who is
12 not licensed or credentialed to practice social work in any
13 jurisdiction but has:

14 (1) applied for a license under section 148D.055;

15 (2) applied for a temporary license on a form provided by
16 the board;

17 (3) submitted a form provided by the board authorizing the
18 board to complete a criminal background check;

19 (4) passed the applicable licensure examination provided
20 for in section 148D.055;

21 (5) attested on a form provided by the board that the
22 applicant has completed the requirements for a baccalaureate or
23 graduate degree in social work from a program accredited by the
24 Council on Social Work Education, the Canadian Association of
25 Schools of Social Work, or a similar accreditation body
26 designated by the board; and

27 (6) not engaged in conduct that was or would be in
28 violation of the standards of practice specified in sections
29 148D.195 to 148D.240. If the applicant has engaged in conduct
30 that was or would be in violation of the standards of practice,
31 the board may take action pursuant to sections 148D.255 to
32 148D.270.

33 Subd. 2. [EMERGENCY SITUATIONS AND PERSONS CURRENTLY
34 LICENSED IN ANOTHER JURISDICTION.] The board may issue a
35 temporary license to practice social work to an applicant who is
36 licensed or credentialed to practice social work in another

1 jurisdiction, may or may not have applied for a license under
2 section 148D.055, and has:

3 (1) applied for a temporary license on a form provided by
4 the board;

5 (2) submitted a form provided by the board authorizing the
6 board to complete a criminal background check;

7 (3) submitted evidence satisfactory to the board that the
8 applicant is currently licensed or credentialed to practice
9 social work in another jurisdiction;

10 (4) attested on a form provided by the board that the
11 applicant has completed the requirements for a baccalaureate or
12 graduate degree in social work from a program accredited by the
13 Council on Social Work Education, the Canadian Association of
14 Schools of Social Work, or a similar accreditation body
15 designated by the board; and

16 (5) not engaged in conduct that was or would be in
17 violation of the standards of practice specified in sections
18 148D.195 to 148D.240. If the applicant has engaged in conduct
19 that was or would be in violation of the standards of practice,
20 the board may take action pursuant to sections 148D.255 to
21 148D.270.

22 Subd. 3. [TEACHERS.] The board may issue a temporary
23 license to practice social work to an applicant whose permanent
24 residence is outside the United States, who is teaching social
25 work at an academic institution in Minnesota for a period not to
26 exceed 12 months, who may or may not have applied for a license
27 under section 148D.055, and who has:

28 (1) applied for a temporary license on a form provided by
29 the board;

30 (2) submitted a form provided by the board authorizing the
31 board to complete a criminal background check;

32 (3) attested on a form provided by the board that the
33 applicant has completed the requirements for a baccalaureate or
34 graduate degree in social work; and

35 (4) has not engaged in conduct that was or would be in
36 violation of the standards of practice specified in sections

1 148D.195 to 148D.240. If the applicant has engaged in conduct
2 that was or would be in violation of the standards of practice,
3 the board may take action pursuant to sections 148D.255 to
4 148D.270.

5 Subd. 4. [TEMPORARY LICENSE APPLICATION FEE.] An applicant
6 for a temporary license must pay the application fee described
7 in section 148D.180 plus the required fee for the cost of the
8 criminal background check. Only one fee for the cost of the
9 criminal background check must be submitted when the applicant
10 is applying for both a temporary license and a license under
11 section 148D.055.

12 Subd. 5. [TEMPORARY LICENSE TERM.] (a) A temporary license
13 is valid until expiration, or until the board issues or denies
14 the license pursuant to section 148D.055, or until the board
15 revokes the temporary license, whichever comes first. A
16 temporary license is nonrenewable.

17 (b) A temporary license issued pursuant to subdivision 1 or
18 2 expires after six months.

19 (c) A temporary license issued pursuant to subdivision 3
20 expires after 12 months.

21 Subd. 6. [LICENSEE WITH A TEMPORARY LICENSE WHO HAS
22 COMPLETED REQUIREMENTS FOR A BACCALAUREATE DEGREE.] A licensee
23 with a temporary license who has provided evidence to the board
24 that the licensee has completed the requirements for a
25 baccalaureate degree in social work from a program accredited by
26 the Council on Social Work Education, the Canadian Association
27 of Schools of Social Work, or a similar accreditation body
28 designated by the board may temporarily engage in social work
29 practice except that a licensee with a temporary license may not
30 engage in clinical social work practice.

31 Subd. 7. [LICENSEE WITH A TEMPORARY LICENSE WHO HAS
32 COMPLETED REQUIREMENTS FOR A GRADUATE DEGREE.] A licensee with a
33 temporary license who has provided evidence to the board that
34 the licensee has completed the requirements for a graduate
35 degree in social work from a program accredited by the Council
36 on Social Work Education, the Canadian Association of Schools of

1 Social Work, or a similar accreditation body designated by the
2 board may temporarily engage in social work practice, including
3 clinical practice.

4 Subd. 8. [SUPERVISION REQUIREMENTS.] (a) Except as
5 provided in paragraph (b), an applicant who is not currently
6 licensed or credentialed to practice social work in another
7 jurisdiction and who obtains a temporary license may practice
8 social work only under the supervision of an individual licensed
9 as a social worker who is eligible to provide supervision under
10 sections 148D.100 to 148D.125. Before the applicant is approved
11 for licensure, the applicant's supervisor must attest to the
12 board's satisfaction that the applicant has practiced social
13 work under supervision. This supervision applies toward the
14 supervision required after licensure.

15 (b) If an applicant is currently licensed or credentialed
16 to practice social work in another jurisdiction, and receives a
17 temporary license pursuant to subdivision 3, the requirements
18 specified in paragraph (a) do not apply. However, if an
19 applicant with a temporary license chooses to practice social
20 work under supervision, the supervision applies to the
21 requirements specified in sections 148D.100 to 148D.125.

22 Subd. 9. [PROHIBITION ON PRACTICE.] An applicant for a
23 temporary license must not practice social work in Minnesota,
24 except as provided in section 148D.065, until the applicant has
25 been granted a temporary license.

26 Subd. 10. [REPRESENTATION OF PROFESSIONAL STATUS.] In
27 making representations of professional status to the public, a
28 licensee with a temporary license must state that the licensee
29 has a temporary license.

30 Subd. 11. [STANDARDS OF PRACTICE.] A licensee with a
31 temporary license must conduct all professional activities as a
32 social worker in accordance with the requirements of sections
33 148D.195 to 148D.240.

34 Subd. 12. [INELIGIBILITY.] An applicant who is currently
35 practicing social work in Minnesota in a setting that is not
36 exempt under section 148D.065 at the time of application is

1 ineligible for a temporary license.

2 Subd. 13. [REVOCATION OF TEMPORARY LICENSE.] The board may
3 immediately revoke the temporary license of any licensee who
4 violates any requirements of this section. The revocation must
5 be made for cause, without notice or opportunity to be heard. A
6 licensee whose temporary license is revoked must immediately
7 return the temporary license to the board.

8 Sec. 14. [148D.065] [EXEMPTIONS.]

9 Subdivision 1. [OTHER PROFESSIONALS.] Nothing in this
10 chapter may be construed to prevent members of other professions
11 or occupations from performing functions for which they are
12 qualified or licensed. This exception includes but is not
13 limited to: licensed physicians, registered nurses, licensed
14 practical nurses, licensed psychologists, psychological
15 practitioners, probation officers, members of the clergy,
16 attorneys, marriage and family therapists, alcohol and drug
17 counselors, professional counselors, school counselors, and
18 registered occupational therapists or certified occupational
19 therapist assistants. These persons must not, however, hold
20 themselves out to the public by any title or description stating
21 or implying that they are engaged in the practice of social
22 work, or that they are licensed to engage in the practice of
23 social work. Persons engaged in the practice of social work are
24 not exempt from the board's jurisdiction solely by the use of
25 one of the titles in this subdivision.

26 Subd. 2. [STUDENTS.] An internship, externship, or any
27 other social work experience that is required for the completion
28 of an accredited program of social work does not constitute the
29 practice of social work under this chapter.

30 Subd. 3. [GEOGRAPHIC WAIVER.] A geographic waiver may be
31 granted by the board on a case-by-case basis to agencies with
32 special regional hiring problems. The waiver is for the purpose
33 of permitting agencies to hire individuals who do not meet the
34 qualifications of section 148D.055 or 148D.060 to practice
35 social work.

36 Subd. 4. [CITY, COUNTY, AND STATE AGENCY SOCIAL

1 WORKERS.] The licensure of city, county, and state agency social
2 workers is voluntary. City, county, and state agencies
3 employing social workers are not required to employ licensed
4 social workers.

5 Subd. 5. [FEDERALLY RECOGNIZED TRIBES AND PRIVATE
6 NONPROFIT AGENCIES WITH A MINORITY FOCUS.] The licensure of
7 social workers who are employed by federally recognized tribes,
8 or by private nonprofit agencies whose primary service focus
9 addresses ethnic minority populations, and who are themselves
10 members of ethnic minority populations within those agencies, is
11 voluntary.

12 Sec. 15. [148D.070] [LICENSE RENEWALS.]

13 Subdivision 1. [LICENSE RENEWAL TERM.] (a) If a license is
14 renewed, the license must be renewed for a two-year renewal
15 term. The renewal term is the period from the effective date of
16 an initial or renewed license to the expiration date of the
17 license.

18 (b) The effective date of a renewed license is the day
19 following the expiration date of the expired license.

20 (c) The expiration date of a renewed license is the last
21 day of the licensee's birth month in the second calendar year
22 following the effective date of the renewed license.

23 Subd. 2. [MAILING LICENSE RENEWAL NOTICES.] The board must
24 mail a notice for license renewal to a licensee at least 45 days
25 before the expiration date of the license. Mailing the notice
26 by United States mail to the licensee's last known mailing
27 address constitutes valid mailing. Failure to receive the
28 renewal notice does not relieve a licensee of the obligation to
29 renew a license and to pay the renewal fee.

30 Subd. 3. [SUBMITTING LICENSE RENEWAL APPLICATIONS.] (a) In
31 order to renew a license, a licensee must submit:

32 (1) a completed, signed application for license renewal;
33 and

34 (2) the applicable renewal fee specified in section
35 148D.180.

36 The completed, signed application and renewal fee must be

1 received by the board prior to midnight of the day of the
2 license expiration date. For renewals submitted electronically,
3 a "signed application" means providing an attestation as
4 specified by the board.

5 (b) An application which is not completed and signed, or
6 which is not accompanied by the correct fee, must be returned to
7 the applicant, along with any fee submitted, and is void.

8 (c) The completed, signed application must include
9 documentation that the licensee has met the continuing education
10 requirements specified in sections 148D.130 to 148D.170 and, if
11 applicable, the supervised practice requirements specified in
12 sections 148D.100 to 148D.125.

13 (d) By submitting a renewal application, an applicant
14 authorizes the board to:

15 (1) investigate any information provided or requested in
16 the application. The board may request that the applicant
17 provide additional information, verification, or documentation;

18 (2) conduct an audit to determine if the applicant has met
19 the continuing education requirements specified in sections
20 148D.130 to 148D.170; and

21 (3) if applicable, conduct an audit to determine whether
22 the applicant has met the supervision requirements specified in
23 sections 148D.100 to 148D.125.

24 (e) If a licensee's application for license renewal meets
25 the requirements specified in paragraph (a), the licensee may
26 continue to practice after the license expiration date until the
27 board approves or denies the application.

28 Subd. 4. [RENEWAL LATE FEE.] An application that is
29 received after the license expiration date must be accompanied
30 by the renewal late fee specified in section 148D.180 in
31 addition to the applicable renewal fee. The application,
32 renewal fee, and renewal late fee must be received by the board
33 within 60 days of the license expiration date, or the license
34 automatically expires.

35 Subd. 5. [EXPIRED LICENSE.] (a) If an application does not
36 meet the requirements specified in subdivisions 3 and 4, the

1 license automatically expires. A licensee whose license has
2 expired may reactivate a license by meeting the requirements in
3 section 148D.080 or be relicensed by meeting the requirements
4 specified in section 148D.055.

5 (b) The board may take action pursuant to sections 148D.255
6 to 148D.270 based on a licensee's conduct before the expiration
7 of the license.

8 (c) An expired license may be reactivated within one year
9 of the expiration date specified in section 148D.080. After one
10 year of the expiration date, an individual may apply for a new
11 license pursuant to section 148D.055.

12 Sec. 16. [148D.075] [INACTIVE LICENSES.]

13 Subdivision 1. [INACTIVE STATUS.] (a) A licensee qualifies
14 for inactive status under either of the circumstances described
15 in paragraph (b) or (c).

16 (b) A licensee qualifies for inactive status when the
17 licensee is granted temporary leave from active practice. A
18 licensee qualifies for temporary leave from active practice if
19 the licensee demonstrates to the satisfaction of the board that
20 the licensee is not engaged in the practice of social work in
21 any setting, including settings in which social workers are
22 exempt from licensure pursuant to section 148D.065. A licensee
23 who is granted temporary leave from active practice may
24 reactivate the license pursuant to section 148D.080.

25 (c) A licensee qualifies for inactive status when a
26 licensee is granted an emeritus license. A licensee qualifies
27 for an emeritus license if the licensee demonstrates to the
28 satisfaction of the board that:

29 (i) the licensee is retired from social work practice; and
30 (ii) the licensee is not engaged in the practice of social
31 work in any setting, including settings in which social workers
32 are exempt from licensure pursuant to section 148D.065.

33 A licensee who possesses an emeritus license may reactivate the
34 license pursuant to section 148D.080.

35 Subd. 2. [APPLICATION.] A licensee may apply for inactive
36 status:

1 (1) at any time by submitting an application for a
2 temporary leave from active practice or for an emeritus license;
3 or

4 (2) as an alternative to applying for the renewal of a
5 license by so recording on the application for license renewal
6 and submitting the completed, signed application to the board.

7 An application that is not completed or signed, or that is
8 not accompanied by the correct fee, must be returned to the
9 applicant, along with any fee submitted, and is void. For
10 applications submitted electronically, a "signed application"
11 means providing an attestation as specified by the board.

12 Subd. 3. [FEE.] (a) Regardless of when the application for
13 inactive status is submitted, the temporary leave or emeritus
14 license fee specified in section 148D.180, whichever is
15 applicable, must accompany the application. A licensee who is
16 approved for inactive status before the license expiration date
17 is not entitled to receive a refund for any portion of the
18 license or renewal fee.

19 (b) If an application for temporary leave is received after
20 the license expiration date, the licensee must pay a renewal
21 late fee as specified in section 148D.180 in addition to the
22 temporary leave fee.

23 Subd. 4. [TIME LIMITS FOR TEMPORARY LEAVES.] A licensee
24 may maintain an inactive license on temporary leave for no more
25 than five consecutive years. If a licensee does not apply for
26 reactivation within 60 days following the end of the consecutive
27 five-year period, the license automatically expires.

28 Subd. 5. [TIME LIMITS FOR AN EMERITUS LICENSE.] A licensee
29 with an emeritus license may not apply for reactivation pursuant
30 to section 148D.080 after five years following the granting of
31 the emeritus license. However, after five years following the
32 granting of the emeritus license, an individual may apply for
33 new licensure pursuant to section 148D.055.

34 Subd. 6. [PROHIBITION ON PRACTICE.] (a) Except as provided
35 in paragraph (b), a licensee whose license is inactive must not
36 practice, attempt to practice, offer to practice, or advertise

1 or hold out as authorized to practice social work.

2 (b) The board may grant a variance to the requirements of
3 paragraph (a) if a licensee on inactive status provides
4 emergency social work services. A variance is granted only if
5 the board provides the variance in writing to the licensee. The
6 board may impose conditions or restrictions on the variance.

7 Subd. 7. [REPRESENTATIONS OF PROFESSIONAL STATUS.] In
8 making representations of professional status to the public, a
9 licensee whose license is inactive must state that the license
10 is inactive and that the licensee cannot practice social work.

11 Subd. 8. [DISCIPLINARY OR OTHER ACTION.] The board may
12 resolve any pending complaints against a licensee before
13 approving an application for inactive status. The board may
14 take action pursuant to sections 148D.255 to 148D.270 against a
15 licensee whose license is inactive based on conduct occurring
16 before the license is inactive or conduct occurring while the
17 license is inactive.

18 Sec. 17. [148D.080] [REACTIVATIONS.]

19 Subdivision 1. [MAILING NOTICES TO LICENSEES ON TEMPORARY
20 LEAVE.] The board must mail a notice for reactivation to a
21 licensee on temporary leave at least 45 days before the
22 expiration date of the license pursuant to section 148D.075,
23 subdivision 4. Mailing the notice by United States mail to the
24 licensee's last known mailing address constitutes valid
25 mailing. Failure to receive the reactivation notice does not
26 relieve a licensee of the obligation to comply with the
27 provisions of this section to reactivate a license.

28 Subd. 2. [REACTIVATION FROM A TEMPORARY LEAVE OR EMERITUS
29 STATUS.] To reactivate a license from a temporary leave or
30 emeritus status, a licensee must do the following within the
31 time period specified in section 148D.075, subdivisions 4 and 5:

32 (1) complete an application form specified by the board;

33 (2) document compliance with the continuing education
34 requirements specified in subdivision 4;

35 (3) submit a supervision plan, if required;

36 (4) pay the reactivation of an inactive licensee fee

1 specified in section 148D.180; and

2 (5) pay the wall certificate fee in accordance with section
3 148D.095, subdivision 1, paragraph (b) or (c), if the licensee
4 needs a duplicate license.

5 Subd. 3. [REACTIVATION OF AN EXPIRED LICENSE.] To
6 reactivate an expired license, a licensee must do the following
7 within one year of the expiration date:

8 (1) complete an application form specified by the board;

9 (2) document compliance with the continuing education
10 requirements that were in effect at the time the license
11 expired;

12 (3) document compliance with the supervision requirements,
13 if applicable, that were in effect at the time the license
14 expired; and

15 (4) pay the reactivation of an expired license fee
16 specified in section 148D.180.

17 Subd. 4. [CONTINUING EDUCATION REQUIREMENTS.] (a) A
18 licensee who is on temporary leave or who has an emeritus
19 license must obtain the continuing education hours that would be
20 required if the license was active. At the time of
21 reactivation, the licensee must document compliance with the
22 continuing education requirements specified in sections 148D.130
23 to 148D.170.

24 (b) A licensee applying for reactivation pursuant to
25 subdivision 2 or 3 may apply for a variance to the continuing
26 education requirements pursuant to sections 148D.130 to 148D.170.

27 Subd. 5. [REACTIVATION OF A VOLUNTARILY TERMINATED
28 LICENSE.] To reactivate a voluntarily terminated license, a
29 licensee must do the following within one year of the date the
30 voluntary termination takes effect:

31 (1) complete an application form specified by the board;

32 (2) document compliance with the continued education
33 requirements that were in effect at the time the license was
34 voluntarily terminated;

35 (3) document compliance with the supervision requirements,
36 if applicable, that were in effect at the time the license was

1 voluntarily terminated; and

2 (4) pay the reactivation of an expired or voluntarily
3 terminated license fee specified in section 148D.180.

4 Sec. 18. [148D.085] [VOLUNTARY TERMINATIONS.]

5 Subdivision 1. [REQUESTS FOR VOLUNTARY TERMINATION.] (a) A
6 licensee may request voluntary termination of a license if the
7 licensee demonstrates to the satisfaction of the board that the
8 licensee is not engaged in the practice of social work in any
9 setting except settings in which social workers are exempt from
10 licensure pursuant to section 148D.065.

11 (b) A licensee may apply for voluntary termination:

12 (1) at any time by submitting an application; or

13 (2) as an alternative to applying for the renewal of a
14 license by so recording on the application for license renewal
15 and submitting the completed, signed application to the board.
16 For applications submitted electronically, a "signed
17 application" means providing an attestation as specified by the
18 board. An application that is not completed and signed must be
19 returned to the applicant and is void.

20 (c) The board may resolve any pending complaints against a
21 licensee before approving a request for voluntary termination.

22 Subd. 2. [APPLICATION FOR NEW LICENSURE.] A licensee who
23 has voluntarily terminated a license may not reactivate the
24 license after one year following the date the voluntary
25 termination takes effect. However, a licensee who has
26 voluntarily terminated a license may apply for a new license
27 pursuant to section 148D.055.

28 Subd. 3. [PROHIBITION ON PRACTICE.] A licensee who has
29 voluntarily terminated a license must not practice, attempt to
30 practice, offer to practice, or advertise or hold out as
31 authorized to practice social work, except when the individual
32 is exempt from licensure pursuant to section 148D.065.

33 Subd. 4. [DISCIPLINARY OR OTHER ACTION.] The board may
34 take action pursuant to sections 148D.255 to 148D.270 against a
35 licensee whose license has been terminated based on conduct
36 occurring before the license is terminated or for practicing

1 social work without a license.

2 Sec. 19. [148D.090] [NAME; CHANGE OF NAME OR ADDRESS.]

3 Subdivision 1. [NAME.] A licensee must use the licensee's
4 legal name or a professional name. If the licensee uses a
5 professional name, the licensee must inform the board in writing
6 of both the licensee's professional name and legal name and must
7 comply with the requirements of this section.

8 Subd. 2. [LEGAL NAME CHANGE.] Within 30 days after
9 changing the licensee's legal name, a licensee must:

- 10 (1) request a new license wall certificate;
11 (2) provide legal verification of the name change; and
12 (3) pay the license wall certificate fee specified in
13 section 148D.180.

14 Subd. 3. [PROFESSIONAL NAME CHANGE.] Within 30 days after
15 changing the licensee's professional name, a licensee must:

- 16 (1) request a new license wall certificate;
17 (2) provide a notarized statement attesting to the name
18 change; and
19 (3) pay the license wall certificate fee specified in
20 section 148D.180.

21 Subd. 4. [ADDRESS OR TELEPHONE CHANGE.] When a licensee
22 changes a mailing address, home address, work address, e-mail
23 address, or daytime public telephone number, the licensee must
24 notify the board of the change electronically or in writing no
25 more than 30 days after the date of the change.

26 Sec. 20. [148D.095] [LICENSE CERTIFICATE OR CARD.]

27 Subdivision 1. [LICENSE WALL CERTIFICATE.] (a) The board
28 must issue a new license wall certificate when the board issues
29 a new license. No fee in addition to the applicable license fee
30 specified in section 148D.180 is required.

31 (b) The board must replace a license wall certificate when:

- 32 (1) a licensee submits an affidavit to the board that the
33 original license wall certificate was lost, stolen, or
34 destroyed; and
35 (2) the licensee submits the license wall certificate fee
36 specified in section 148D.180.

1 (c) The board must issue a revised license wall certificate
2 when:

3 (1) a licensee requests a revised license wall certificate
4 pursuant to section 148D.095; and

5 (2) submits the license wall certificate fee specified in
6 section 148D.180.

7 (d) The board must issue an additional license wall
8 certificate when:

9 (1) a licensee submits a written request for a new
10 certificate because the licensee practices in more than one
11 location; and

12 (2) the licensee submits the license wall certificate fee
13 specified in section 148D.180.

14 Subd. 2. [LICENSE CARD.] (a) The board must issue a new
15 license card when the board issues a new license. No fee in
16 addition to the applicable license fee specified in section
17 148D.180 is required.

18 (b) The board must replace a license card when a licensee
19 submits:

20 (1) an affidavit to the board that the original license
21 card was lost, stolen, or destroyed; and

22 (2) the license card fee specified in section 148D.180.

23 (c) The board must issue a revised license card when the
24 licensee submits a written request for a new license wall
25 certificate because of a new professional or legal name pursuant
26 to section 148D.090, subdivision 2 or 3. No fee in addition to
27 the one specified in subdivision 1, paragraph (b), is required.

28 SUPERVISED PRACTICE

29 Sec. 21. [148D.100] [LICENSED SOCIAL WORKERS; SUPERVISED
30 PRACTICE.]

31 Subdivision 1. [SUPERVISION REQUIRED AFTER LICENSURE.]
32 After receiving a license from the board as a licensed social
33 worker, the licensed social worker must obtain at least 75 hours
34 of supervision in accordance with the requirements of this
35 section.

36 Subd. 2. [PRACTICE REQUIREMENTS.] The supervision required

1 by subdivision 1 must be obtained during the first 4,000 hours
2 of postbaccalaureate social work practice authorized by law. At
3 least three hours of supervision must be obtained during every
4 160 hours of practice.

5 Subd. 3. [TYPES OF SUPERVISION.] (a) Thirty-seven and
6 one-half hours of the supervision required by subdivision 1 must
7 consist of one-on-one in-person supervision.

8 (b) Thirty-seven and one-half hours must consist of one or
9 more of the following types of supervision, subject to the
10 limitation in clause (3):

11 (1) one-on-one in-person supervision;

12 (2) in-person group supervision; or

13 (3) electronic supervision such as by telephone or video
14 conferencing, provided that electronic supervision must not
15 exceed 25 hours.

16 (c) To qualify as in-person group supervision, the group
17 must not exceed seven members including the supervisor.

18 Subd. 4. [SUPERVISOR REQUIREMENTS.] The supervision
19 required by subdivision 1 must be provided by a supervisor who:

20 (1) is a licensed social worker who has completed the
21 supervised practice requirements;

22 (2) is a licensed graduate social worker, licensed
23 independent social worker, or licensed independent clinical
24 social worker; or

25 (3) meets the requirements specified in section 148D.120,
26 subdivision 2.

27 Subd. 5. [SUPERVISEE REQUIREMENTS.] The supervisee must:

28 (1) to the satisfaction of the supervisor, practice
29 competently and ethically in accordance with professional social
30 work knowledge, skills, and values;

31 (2) receive supervision in the following content areas:

32 (i) development of professional values and
33 responsibilities;

34 (ii) practice skills;

35 (iii) authorized scope of practice;

36 (iv) ensuring continuing competence; and

1 (v) ethical standards of practice;

2 (3) submit a supervision plan in accordance with section
3 148D.125, subdivision 1; and

4 (4) if the board audits the supervisee's supervised
5 practice, submit verification of supervised practice in
6 accordance with section 148D.125, subdivision 3.

7 Subd. 6. [AFTER COMPLETION OF SUPERVISION REQUIREMENTS.] A
8 licensed social worker who fulfills the supervision requirements
9 specified in subdivisions 1 to 5 is not required to be
10 supervised after completion of the supervision requirements.

11 Subd. 7. [ATTESTATION.] The social worker and the social
12 worker's supervisor must attest that the supervisee has met or
13 has made progress on meeting the applicable supervision
14 requirements in accordance with section 148D.125, subdivision 2.

15 Sec. 22. [148D.105] [LICENSED GRADUATE SOCIAL WORKERS;
16 SUPERVISED PRACTICE.]

17 Subdivision 1. [SUPERVISION REQUIRED AFTER
18 LICENSURE.] After receiving a license from the board as a
19 licensed graduate social worker, a licensed graduate social
20 worker must obtain at least 75 hours of supervision in
21 accordance with the requirements of this section.

22 Subd. 2. [PRACTICE REQUIREMENTS.] The supervision required
23 by subdivision 1 must be obtained during the first 4,000 hours
24 of postgraduate social work practice authorized by law. At
25 least three hours of supervision must be obtained during every
26 160 hours of practice.

27 Subd. 3. [TYPES OF SUPERVISION.] (a) Thirty-seven and
28 one-half hours of the supervision required by subdivision 1 must
29 consist of one-on-one in-person supervision.

30 (b) Thirty-seven and one-half hours must consist of one or
31 more of the following types of supervision, subject to the
32 limitation in clause (3):

33 (1) one-on-one in-person supervision;

34 (2) in-person group supervision; or

35 (3) electronic supervision such as by telephone or video
36 conferencing, provided that electronic supervision must not

1 exceed 25 hours.

2 (c) To qualify as in-person group supervision, the group
3 must not exceed seven members including the supervisor.

4 Subd. 4. [SUPERVISOR REQUIREMENTS.] The supervision
5 required by subdivision 1 must be provided by a supervisor who
6 meets the requirements specified in section 148D.120. The
7 supervision must be provided:

8 (1) if the supervisee is not engaged in clinical practice,
9 by a (i) licensed independent social worker, (ii) licensed
10 graduate social worker who has completed the supervised practice
11 requirements, or (iii) licensed independent clinical social
12 worker;

13 (2) if the supervisee is engaged in clinical practice, by a
14 licensed independent clinical social worker; or

15 (3) by a supervisor who meets the requirements specified in
16 section 148D.120, subdivision 2.

17 Subd. 5. [SUPERVISEE REQUIREMENTS.] The supervisee must:

18 (1) to the satisfaction of the supervisor, practice
19 competently and ethically in accordance with professional social
20 work knowledge, skills, and values;

21 (2) receive supervision in the following content areas:

22 (i) development of professional values and
23 responsibilities;

24 (ii) practice skills;

25 (iii) authorized scope of practice;

26 (iv) ensuring continuing competence; and

27 (v) ethical standards of practice;

28 (3) submit a supervision plan in accordance with section
29 148D.125, subdivision 1; and

30 (4) verify supervised practice in accordance with section
31 148D.125, subdivision 3, if:

32 (i) the board audits the supervisee's supervised practice;
33 or

34 (ii) a licensed graduate social worker applies for a
35 licensed independent social worker or licensed independent
36 clinical social worker license.

1 Subd. 6. [LICENSED GRADUATE SOCIAL WORKERS WHO PRACTICE
2 CLINICAL SOCIAL WORK.] (a) A licensed graduate social worker
3 must not engage in clinical social work practice except under
4 supervision by a licensed independent clinical social worker or
5 an alternate supervisor designated pursuant to section 148D.120,
6 subdivision 2.

7 (b) Except as provided in paragraph (c), a licensed
8 graduate social worker must not engage in clinical social work
9 practice under supervision for more than 8,000 hours. In order
10 to practice clinical social work for more than 8,000 hours, a
11 licensed graduate social worker must obtain a licensed
12 independent clinical social worker license.

13 (c) Notwithstanding the requirements of paragraph (b), the
14 board may grant a licensed graduate social worker permission to
15 engage in clinical social work practice for more than 8,000
16 hours if the licensed graduate social worker petitions the board
17 and demonstrates to the board's satisfaction that for reasons of
18 personal hardship the licensed graduate social worker should be
19 granted an extension to continue practicing clinical social work
20 under supervision for up to an additional 2,000 hours.

21 (d) Upon completion of 4,000 hours of clinical social work
22 practice and 75 hours of supervision in accordance with the
23 requirements of this section, a licensed graduate social worker
24 is eligible to apply for a licensed independent clinical social
25 worker license pursuant to section 148D.115, subdivision 1.

26 Subd. 7. [LICENSED GRADUATE SOCIAL WORKERS WHO DO NOT
27 PRACTICE CLINICAL SOCIAL WORK.] A licensed graduate social
28 worker who fulfills the supervision requirements specified in
29 subdivisions 1 to 5, and who does not practice clinical social
30 work, is not required to be supervised after completion of the
31 supervision requirements.

32 Subd. 8. [ATTESTATION.] A social worker and the social
33 worker's supervisor must attest that the supervisee has met or
34 has made progress on meeting the applicable supervision
35 requirements in accordance with section 148D.125, subdivision 2.

36 Sec. 23. [148D.110] [LICENSED INDEPENDENT SOCIAL WORKERS;

1 SUPERVISED PRACTICE.]

2 Subdivision 1. [SUPERVISION REQUIRED BEFORE
3 LICENSURE.] Before becoming licensed as a licensed independent
4 social worker, a person must have obtained at least 75 hours of
5 supervision during 4,000 hours of postgraduate social work
6 practice authorized by law in accordance with the requirements
7 of section 148D.105, subdivisions 3, 4, and 5. At least three
8 hours of supervision must be obtained during every 160 hours of
9 practice.

10 Subd. 2. [LICENSED INDEPENDENT SOCIAL WORKERS WHO PRACTICE
11 CLINICAL SOCIAL WORK AFTER LICENSURE.] (a) After licensure, a
12 licensed independent social worker must not engage in clinical
13 social work practice except under supervision by a licensed
14 independent clinical social worker or an alternate supervisor
15 designated pursuant to section 148D.120, subdivision 2.

16 (b) Except as provided in paragraph (c), a licensed
17 independent social worker must not engage in clinical social
18 work practice under supervision for more than 8,000 hours. In
19 order to practice clinical social work for more than 8,000
20 hours, a licensed independent social worker must obtain a
21 licensed independent clinical social worker license.

22 (c) Notwithstanding the requirements of paragraph (b), the
23 board may grant a licensed independent social worker permission
24 to engage in clinical social work practice for more than 8,000
25 hours if the licensed independent social worker petitions the
26 board and demonstrates to the board's satisfaction that for
27 reasons of personal hardship the licensed independent social
28 worker should be granted an extension to continue practicing
29 clinical social work under supervision for up to an additional
30 2,000 hours.

31 Subd. 3. [LICENSED INDEPENDENT SOCIAL WORKERS WHO DO NOT
32 PRACTICE CLINICAL SOCIAL WORK AFTER LICENSURE.] After licensure,
33 a licensed independent social worker is not required to be
34 supervised if the licensed independent social worker does not
35 practice clinical social work.

36 Sec. 24. [148D.115] [LICENSED INDEPENDENT CLINICAL SOCIAL

1 WORKERS; SUPERVISED PRACTICE.]

2 Subdivision 1. [SUPERVISION REQUIRED BEFORE
3 LICENSURE.] Before becoming licensed as a licensed independent
4 clinical social worker, a person must have obtained at least 75
5 hours of supervision during 4,000 hours of postgraduate clinical
6 practice authorized by law in accordance with the requirements
7 of section 148D.105, subdivisions 3, 4, and 5. At least three
8 hours of supervision must be obtained during every 160 hours of
9 practice.

10 Subd. 2. [NO SUPERVISION REQUIRED AFTER LICENSURE.] After
11 licensure, a licensed independent clinical social worker is not
12 required to be supervised.

13 Sec. 25. [148D.120] [REQUIREMENTS OF SUPERVISORS.]

14 Subdivision 1. [SUPERVISORS LICENSED AS SOCIAL WORKERS.]

15 (a) Except as provided in paragraph (b), to be eligible to
16 provide supervision under this section, a social worker must
17 attest, on a form provided by the board, that he or she has met
18 the applicable licensure requirements specified in sections
19 148D.100 to 148D.115.

20 (b) If the board determines that supervision is not
21 obtainable from an individual meeting the requirements specified
22 in paragraph (a), the board may approve an alternate supervisor
23 pursuant to subdivision 2.

24 Subd. 2. [ALTERNATE SUPERVISORS.] (a) The board may
25 approve an alternate supervisor if:

26 (1) the board determines that supervision is not obtainable
27 pursuant to paragraph (b);

28 (2) the licensee requests in the supervision plan submitted
29 pursuant to section 148D.125, subdivision 1, that an alternate
30 supervisor conduct the supervision;

31 (3) the licensee describes the proposed supervision and the
32 name and qualifications of the proposed alternate supervisor;
33 and

34 (4) the requirements of paragraph (d) are met.

35 (b) The board may determine that supervision is not
36 obtainable if:

1 (1) the licensee provides documentation as an attachment to
2 the supervision plan submitted pursuant to section 148D.125,
3 subdivision 1, that the licensee has conducted a thorough search
4 for a supervisor meeting the applicable licensure requirements
5 specified in sections 148D.100 to 148D.115;

6 (2) the licensee demonstrates to the board's satisfaction
7 that the search was unsuccessful; and

8 (3) the licensee describes the extent of the search and the
9 names and locations of the persons and organizations contacted.

10 (c) The following are not grounds for a determination that
11 supervision is unobtainable:

12 (1) obtaining a supervisor who meets the requirements of
13 subdivision 1 would present the licensee with a financial
14 hardship;

15 (2) the licensee is unable to obtain a supervisor who meets
16 the requirements of subdivision 1 within the licensee's agency
17 or organization and the agency or organization will not allow
18 outside supervision; or

19 (3) the specialized nature of the licensee's practice
20 requires supervision from a practitioner other than an
21 individual licensed as a social worker.

22 (d) An alternate supervisor must:

23 (1) be an unlicensed social worker who is employed in, and
24 provides the supervision in, a setting exempt from licensure by
25 section 148D.065, and who has qualifications equivalent to the
26 applicable requirements specified in sections 148D.100 to
27 148D.115; or

28 (2) be a licensed marriage and family therapist or a mental
29 health professional as established by section 245.462,
30 subdivision 18, or 245.4871, subdivision 27, or an equivalent
31 mental health professional, as determined by the board, who is
32 licensed or credentialed by a state, territorial, provincial, or
33 foreign licensing agency.

34 In order to qualify to provide clinical supervision of a
35 licensed graduate social worker or licensed independent social
36 worker engaged in clinical practice, the alternate supervisor

1 must be a mental health professional as established by section
2 245.462, subdivision 18, or 245.4871, subdivision 27, or an
3 equivalent mental health professional, as determined by the
4 board, who is licensed or credentialed by a state, territorial,
5 provincial, or foreign licensing agency.

6 Sec. 26. [148D.125] [DOCUMENTATION OF SUPERVISION.]

7 Subdivision 1. [SUPERVISION PLAN.] (a) A social worker
8 must submit, on a form provided by the board, a supervision plan
9 for meeting the supervision requirements specified in sections
10 148D.100 to 148D.120.

11 (b) The supervision plan must be submitted no later than 90
12 days after the licensee begins a social work practice position
13 after becoming licensed.

14 (c) For failure to submit the supervision plan within 90
15 days after beginning a social work practice position, a licensee
16 must pay the supervision plan late fee specified in section
17 148D.180 when the licensee applies for license renewal.

18 (d) A license renewal application submitted pursuant to
19 paragraph (a) must not be approved unless the board has received
20 a supervision plan.

21 (e) The supervision plan must include the following:

22 (1) the name of the supervisee, the name of the agency in
23 which the supervisee is being supervised, and the supervisee's
24 position title;

25 (2) the name and qualifications of the person providing the
26 supervision;

27 (3) the number of hours of one-on-one in-person supervision
28 and the number and type of additional hours of supervision to be
29 completed by the supervisee;

30 (4) the supervisee's position description;

31 (5) a brief description of the supervision the supervisee
32 will receive in the following content areas:

33 (i) clinical practice, if applicable;

34 (ii) development of professional social work knowledge,
35 skills, and values;

36 (iii) practice methods;

- 1 (iv) authorized scope of practice;
- 2 (v) ensuring continuing competence; and
- 3 (vi) ethical standards of practice; and
- 4 (6) if applicable, a detailed description of the
- 5 supervisee's clinical social work practice, addressing:
- 6 (i) the client population, the range of presenting issues,
- 7 and the diagnoses;
- 8 (ii) the clinical modalities that were utilized; and
- 9 (iii) the process utilized for determining clinical
- 10 diagnoses, including the diagnostic instruments used and the
- 11 role of the supervisee in the diagnostic process.
- 12 (f) The board must receive a revised supervision plan
- 13 within 90 days of any of the following changes:
- 14 (1) the supervisee has a new supervisor;
- 15 (2) the supervisee begins a new social work position;
- 16 (3) the scope or content of the supervisee's social work
- 17 practice changes substantially;
- 18 (4) the number of practice or supervision hours changes
- 19 substantially; or
- 20 (5) the type of supervision changes as supervision is
- 21 described in section 148D.100, subdivision 3, or 148D.105,
- 22 subdivision 3, or as required in section 148D.115, subdivision 4.
- 23 (g) For failure to submit a revised supervised plan as
- 24 required in paragraph (f), a supervisee must pay the supervision
- 25 plan late fee specified in section 148D.180, when the supervisee
- 26 applies for license renewal.
- 27 (h) The board must approve the supervisor and the
- 28 supervision plan.

29 Subd. 2. [ATTESTATION.] (a) When a supervisee submits

30 renewal application materials to the board, the supervisee and

31 supervisor must submit an attestation providing the following

32 information on a form provided by the board:

- 33 (1) the name of the supervisee, the name of the agency in
- 34 which the supervisee is being supervised, and the supervisee's
- 35 position title;
- 36 (2) the name and qualifications of the supervisor;

- 1 (3) the number of hours and dates of each type of
2 supervision completed;
- 3 (4) the supervisee's position description;
- 4 (5) a declaration that the supervisee has not engaged in
5 conduct in violation of the standards of practice specified in
6 sections 148D.195 to 148D.240;
- 7 (6) a declaration that the supervisee has practiced
8 competently and ethically in accordance with professional social
9 work knowledge, skills, and values; and
- 10 (7) a list of the content areas in which the supervisee has
11 received supervision, including the following:
- 12 (i) clinical practice, if applicable;
- 13 (ii) development of professional social work knowledge,
14 skills, and values;
- 15 (iii) practice methods;
- 16 (iv) authorized scope of practice;
- 17 (v) ensuring continuing competence; and
- 18 (vi) ethical standards of practice.
- 19 (b) The information provided on the attestation form must
20 demonstrate to the board's satisfaction that the supervisee has
21 met or has made progress on meeting the applicable supervised
22 practice requirements.

23 Subd. 3. [VERIFICATION OF SUPERVISED PRACTICE.] (a) In
24 addition to receiving the attestation required pursuant to
25 subdivision 2, the board must receive verification of supervised
26 practice if:

- 27 (1) the board audits the supervision of a supervisee
28 pursuant to section 148D.070, subdivision 3; or
- 29 (2) an applicant applies for a license as a licensed
30 independent social worker or as a licensed independent clinical
31 social worker.

32 (b) When verification of supervised practice is required
33 pursuant to paragraph (a), the board must receive from the
34 supervisor the following information on a form provided by the
35 board:

- 36 (1) the name of the supervisee, the name of the agency in

1 which the supervisee is being supervised, and the supervisee's
2 position title;

3 (2) the name and qualifications of the supervisor;

4 (3) the number of hours and dates of each type of
5 supervision completed;

6 (4) the supervisee's position description;

7 (5) a declaration that the supervisee has not engaged in
8 conduct in violation of the standards of practice specified in
9 sections 148D.195 to 148D.240;

10 (6) a declaration that the supervisee has practiced
11 ethically and competently in accordance with professional social
12 work knowledge, skills, and values;

13 (7) a list of the content areas in which the supervisee has
14 received supervision, including the following:

15 (i) clinical practice, if applicable;

16 (ii) development of professional social work knowledge,
17 skills, and values;

18 (iii) practice methods;

19 (iv) authorized scope of practice;

20 (v) ensuring continuing competence; and

21 (vi) ethical standards of practice; and

22 (8) if applicable, a detailed description of the
23 supervisee's clinical social work practice, addressing:

24 (i) the client population, the range of presenting issues,
25 and the diagnoses;

26 (ii) the clinical modalities that were utilized; and

27 (iii) the process utilized for determining clinical
28 diagnoses, including the diagnostic instruments used and the
29 role of the supervisee in the diagnostic process.

30 (c) The information provided on the verification form must
31 demonstrate to the board's satisfaction that the supervisee has
32 met the applicable supervised practice requirements.

33 Subd. 4. [ALTERNATIVE VERIFICATION OF SUPERVISED
34 PRACTICE.] Notwithstanding the requirements of subdivision 3,
35 the board may accept alternative verification of supervised
36 practice if a supervisee demonstrates to the satisfaction of the

1 board that the supervisee is unable to locate a former
2 supervisor to provide the required information.

3 CONTINUING EDUCATION

4 Sec. 27. [148D.130] [CLOCK HOURS REQUIRED.]

5 Subdivision 1. [TOTAL CLOCK HOURS REQUIRED.] At the time
6 of license renewal, a licensee must provide evidence
7 satisfactory to the board that the licensee has, during the
8 renewal term, completed at least 30 clock hours of continuing
9 education.

10 Subd. 2. [ETHICS REQUIREMENT.] At least two of the clock
11 hours required under subdivision 1 must be in social work ethics.

12 Subd. 3. [INDEPENDENT STUDY.] Independent study must not
13 consist of more than ten clock hours of continuing education per
14 renewal term. Independent study must be for publication, public
15 presentation, or professional development. Independent study
16 includes, but is not limited to, electronic study.

17 Subd. 4. [COURSEWORK.] One credit of coursework in a
18 semester-based academic institution is the equivalent of 15
19 clock hours.

20 Subd. 5. [PRORATED RENEWAL TERM.] If the licensee's
21 renewal term is prorated to be less or more than 24 months, the
22 required number of continuing education clock hours is prorated
23 proportionately.

24 Sec. 28. [148D.135] [APPROVAL OF CLOCK HOURS.]

25 Subdivision 1. [WAYS OF APPROVING CLOCK HOURS.] The clock
26 hours required under section 148D.130 must be approved in one or
27 more of the following ways:

28 (1) the hours must be offered by a continuing education
29 provider approved by the board;

30 (2) the hours must be offered by a continuing education
31 provider approved by the Association of Social Work Boards or a
32 similar examination body designated by the board;

33 (3) the hours must be earned through a continuing education
34 program approved by the National Association of Social Workers;
35 or

36 (4) the hours must be earned through a continuing education

1 program approved by the board.

2 Subd. 2. [PREAPPROVAL NOT REQUIRED.] Providers and
3 programs are not required to be preapproved but must meet the
4 requirements specified in this section.

5 Sec. 29. [148D.140] [VARIANCES.]

6 The board may grant a variance to the continuing education
7 requirements specified in section 148D.130, when a licensee
8 demonstrates to the satisfaction of the board that the licensee
9 is unable to complete the required number of clock hours during
10 the renewal term. The board may allow a licensee to complete
11 the required number of clock hours within a time frame specified
12 by the board. The board must not allow a licensee to complete
13 less than the required number of clock hours.

14 Sec. 30. [148D.145] [CONTINUING EDUCATION PROVIDERS
15 APPROVED BY THE BOARD.]

16 Subdivision 1. [BOARD APPROVAL.] (a) The board must
17 approve a continuing education provider who:

18 (1) submits a completed application to the board which
19 provides the information required by subdivision 2 and which
20 meets the criteria specified in subdivision 3; and

21 (2) pays the provider fee specified in section 148D.180.

22 (b) An approval is valid for programs offered no later than
23 one year from the date the application is approved by the board.

24 Subd. 2. [INFORMATION REQUIRED.] The information that must
25 be provided to the board includes, but is not limited to, the
26 following:

27 (1) the name of the continuing education provider;

28 (2) the address, telephone number, and e-mail address of a
29 contact person for the provider;

30 (3) a signed statement that indicates the provider
31 understands and agrees to abide by the criteria specified in
32 subdivision 3; and

33 (4) a signed statement that indicates the provider agrees
34 to furnish a certificate of attendance to each participant in a
35 program offered by the provider.

36 Subd. 3. [CRITERIA FOR PROGRAMS OFFERED BY CONTINUING

1 EDUCATION PROVIDERS.] (a) A continuing education provider must
2 employ the following criteria in determining whether to offer a
3 continuing education program:

4 (1) whether the material to be presented will promote the
5 standards of practice described in sections 148D.195 to
6 148D.240;

7 (2) whether the material to be presented will contribute to
8 the practice of social work as defined in section 148D.010;

9 (3) whether the material to be presented is intended for
10 the benefit of practicing social workers; and

11 (4) whether the persons presenting the program are
12 qualified in the subject matter being presented.

13 (b) The material presented must not be primarily procedural
14 or primarily oriented towards business practices or
15 self-development.

16 Subd. 4. [AUDITS.] (a) The board may audit programs
17 offered by a continuing education provider approved by the board
18 to determine compliance with the requirements of this section.

19 (b) A continuing education provider audited by the board
20 must provide the documentation specified in subdivision 5.

21 Subd. 5. [INFORMATION REQUIRED TO BE MAINTAINED BY
22 CONTINUING EDUCATION PROVIDERS.] For three years following the
23 end of each program offered by a continuing education provider,
24 the provider must maintain the following information:

25 (1) the title of the program;

26 (2) a description of the content and objectives of the
27 program;

28 (3) the date of the program;

29 (4) the number of clock hours credited for participation in
30 the program;

31 (5) the program location;

32 (6) the names and qualifications of the primary presenters;

33 (7) a description of the primary audience the program was
34 designed for; and

35 (8) a list of the participants in the program.

36 Sec. 31. [148D.150] [CONTINUING EDUCATION PROVIDERS

1 APPROVED BY THE ASSOCIATION OF SOCIAL WORK BOARDS.]

2 In order to receive credit for a program offered by a
3 continuing education provider approved by the Association of
4 Social Work Boards or a similar examination body designated by
5 the board, the provider must be listed on the Association of
6 Social Work Boards Web site as a provider currently approved by
7 the Association of Social Work Boards or a similar examination
8 body designated by the board.

9 Sec. 32. [148D.155] [CONTINUING EDUCATION PROGRAMS
10 APPROVED BY THE NATIONAL ASSOCIATION OF SOCIAL WORKERS.]

11 In order to receive credit for a program approved by the
12 National Association of Social Workers, the program must be
13 listed on the National Association of Social Workers Web site as
14 a program currently approved by the National Association of
15 Social Workers.

16 Sec. 33. [148D.160] [CONTINUING EDUCATION PROGRAMS
17 APPROVED BY THE BOARD.]

18 Subdivision 1. [REQUIRED PROGRAM CONTENT.] In order to be
19 approved by the board, a continuing education program must:

20 (1) promote the standards of practice described in sections
21 148D.195 to 148D.240;

22 (2) contribute to the practice of social work as defined in
23 section 148D.010; and

24 (3) not be primarily procedural or be primarily oriented
25 towards business practices or self-development.

26 Subd. 2. [TYPES OF CONTINUING EDUCATION PROGRAMS.] In
27 order to be approved by the board, a continuing education
28 program must be one of the following: academic coursework
29 offered by an institution of higher learning; educational
30 workshops, seminars, or conferences offered by an organization
31 or individual; staff training offered by a public or private
32 employer; or independent study.

33 Sec. 34. [148D.165] [CONTINUING EDUCATION REQUIREMENTS OF
34 LICENSEES.]

35 Subdivision 1. [INFORMATION REQUIRED TO BE MAINTAINED BY
36 LICENSEES.] For one year following the expiration date of a

1 license, the licensee must maintain documentation of clock hours
2 earned during the previous renewal term. The documentation must
3 include the following:

4 (1) for educational workshops or seminars offered by an
5 organization or at a conference, a copy of the certificate of
6 attendance issued by the presenter or sponsor giving the
7 following information:

8 (i) the name of the sponsor or presenter of the program;
9 (ii) the title of the workshop or seminar;
10 (iii) the dates the licensee participated in the program;

11 and

12 (iv) the number of clock hours completed;

13 (2) for academic coursework offered by an institution of
14 higher learning, a copy of a transcript giving the following
15 information:

16 (i) the name of the institution offering the course;
17 (ii) the title of the course;
18 (iii) the dates the licensee participated in the course;

19 and

20 (iv) the number of credits completed;

21 (3) for staff training offered by public or private
22 employers, a copy of the certificate of attendance issued by the
23 employer giving the following information:

24 (i) the name of the employer;
25 (ii) the title of the staff training;
26 (iii) the dates the licensee participated in the program;

27 and

28 (iv) the number of clock hours completed; and

29 (4) for independent study, including electronic study, a
30 written summary of the study conducted, including the following
31 information:

32 (i) the topics studied;

33 (ii) a description of the applicability of the study to the
34 licensee's authorized scope of practice;

35 (iii) the titles and authors of books and articles
36 consulted or the name of the organization offering the study;

1 (iv) the dates the licensee conducted the study; and
2 (v) the number of clock hours the licensee conducted the
3 study.

4 Subd. 2. [AUDITS.] The board may audit license renewal and
5 reactivation applications to determine compliance with the
6 requirements of sections 148D.130 to 148D.170. A licensee
7 audited by the board must provide the documentation specified in
8 subdivision 1 regardless of whether the provider or program has
9 been approved by the board, the Association of Social Work
10 Boards, or a similar examination body designated by the board,
11 or the National Association of Social Workers.

12 Sec. 35. [148D.170] [REVOCATION OF CONTINUING EDUCATION
13 APPROVALS.]

14 The board may revoke approval of a provider or of a program
15 offered by a provider, or of an individual program approved by
16 the board, if the board determines subsequent to the approval
17 that the provider or program failed to meet the requirements of
18 sections 148D.130 to 148D.170.

19 FEES

20 Sec. 36. [148D.175] [FEES.]

21 The fees specified in section 148D.180 are nonrefundable
22 and must be deposited in the state government special revenue
23 fund.

24 Sec. 37. [148D.180] [FEE AMOUNTS.]

25 Subdivision 1. [APPLICATION FEES.] Application fees for
26 licensure are as follows:

27 (1) for a licensed social worker, \$45;

28 (2) for a licensed graduate social worker, \$45;

29 (3) for a licensed independent social worker, \$90;

30 (4) for a licensed independent clinical social worker, \$90;

31 (5) for a temporary license, \$50; and

32 (6) for a licensure by endorsement, \$150.

33 The fee for criminal background checks is the fee charged
34 by the Bureau of Criminal Apprehension. The criminal background
35 check fee must be included with the application fee as required
36 pursuant to section 148D.055.

1 Subd. 2. [LICENSE FEES.] License fees are as follows:

2 (1) for a licensed social worker, \$115.20;

3 (2) for a licensed graduate social worker, \$201.60;

4 (3) for a licensed independent social worker, \$302.40;

5 (4) for a licensed independent clinical social worker,

6 \$331.20;

7 (5) for an emeritus license, \$43.20; and

8 (6) for a temporary leave fee, the same as the renewal fee

9 specified in subdivision 3.

10 If the licensee's initial license term is less or more than

11 24 months, the required license fees must be prorated

12 proportionately.

13 Subd. 3. [RENEWAL FEES.] Renewal fees for licensure are as

14 follows:

15 (1) for a licensed social worker, \$115.20;

16 (2) for a licensed graduate social worker, \$201.60;

17 (3) for a licensed independent social worker, \$302.40; and

18 (4) for a licensed independent clinical social worker,

19 \$331.20.

20 Subd. 4. [CONTINUING EDUCATION PROVIDER FEES.] Continuing

21 education provider fees are as follows:

22 (1) for a provider who offers programs totaling one to

23 eight clock hours in a one-year period pursuant to section

24 148D.145, \$50;

25 (2) for a provider who offers programs totaling nine to 16

26 clock hours in a one-year period pursuant to section 148D.145,

27 \$100;

28 (3) for a provider who offers programs totaling 17 to 32

29 clock hours in a one-year period pursuant to section 148D.145,

30 \$200;

31 (4) for a provider who offers programs totaling 33 to 48

32 clock hours in a one-year period pursuant to section 148D.145,

33 \$400; and

34 (5) for a provider who offers programs totaling 49 or more

35 clock hours in a one-year period pursuant to section 148D.145,

36 \$600.

1 Subd. 5. [LATE FEES.] Late fees are as follows:

2 (1) renewal late fee, one-half of the renewal fee specified
3 in subdivision 3; and

4 (2) supervision plan late fee, \$40.

5 Subd. 6. [LICENSE CARDS AND WALL CERTIFICATES.] (a) The
6 fee for a license card as specified in section 148D.095 is \$10.

7 (b) The fee for a license wall certificate as specified in
8 section 148D.095 is \$30.

9 Subd. 7. [REACTIVATION FEES.] Reactivation fees are as
10 follows:

11 (1) reactivation from a temporary leave or emeritus status,
12 the prorated share of the renewal fee specified in subdivision
13 3; and

14 (2) reactivation of an expired license, 1-1/2 times the
15 renewal fees specified in subdivision 3.

16 COMPLIANCE

17 Sec. 38. [148D.185] [PURPOSE OF COMPLIANCE LAWS.]

18 The purpose of sections 148D.185 to 148D.290 is to protect
19 the public by ensuring that all persons licensed as social
20 workers meet minimum standards of practice. The board shall
21 promptly and fairly investigate and resolve all complaints
22 alleging violations of statutes and rules that the board is
23 empowered to enforce and (1) take appropriate disciplinary
24 action, adversarial action, or other action justified by the
25 facts, or (2) enter into corrective action agreements or
26 stipulations to cease practice, when doing so is consistent with
27 the board's obligation to protect the public.

28 Sec. 39. [148D.190] [GROUNDS FOR ACTION.]

29 Subdivision 1. [SCOPE.] The grounds for action in
30 subdivisions 2 to 4 and the standards of practice requirements
31 in sections 148D.195 to 148D.240 apply to all licensees and
32 applicants.

33 Subd. 2. [VIOLATIONS.] The board has grounds to take
34 action pursuant to sections 148D.255 to 148D.270 when a social
35 worker violates:

36 (1) a statute or rule enforced by the board, including this

1 section and sections 148D.195 to 148D.240;

2 (2) a federal or state law or rule related to the practice
3 of social work; or

4 (3) an order, stipulation, or agreement agreed to or issued
5 by the board.

6 Subd. 3. [CONDUCT BEFORE LICENSURE.] A violation of the
7 requirements specified in this section and sections 148D.195 to
8 148D.240 is grounds for the board to take action under sections
9 148D.255 to 148D.270. The board's jurisdiction to exercise the
10 powers provided in this section extends to an applicant or
11 licensee's conduct that occurred before licensure if:

12 (1) the conduct did not meet the minimum accepted and
13 prevailing standards of professional social work practice at the
14 time the conduct occurred; or

15 (2) the conduct adversely affects the applicant or
16 licensee's present ability to practice social work in conformity
17 with the requirements of sections 148D.195 to 148D.240.

18 Subd. 4. [UNAUTHORIZED PRACTICE.] The board has grounds to
19 take action pursuant to sections 148D.255 to 148D.270 when a
20 social worker:

21 (1) practices outside the scope of practice authorized by
22 section 148D.050;

23 (2) engages in the practice of social work without a social
24 work license under section 148D.055 or 148D.060, except when the
25 social worker is exempt from licensure pursuant to section
26 148D.065;

27 (3) provides social work services to a client who receives
28 social work services in this state, and is not licensed pursuant
29 to section 148D.055 or 148D.060, except when the social worker
30 is exempt from licensure pursuant to section 148D.065.

31 STANDARDS OF PRACTICE

32 Sec. 40. [148D.195] [REPRESENTATIONS TO CLIENTS AND
33 PUBLIC.]

34 Subdivision 1. [REQUIRED DISPLAYS AND INFORMATION FOR
35 CLIENTS.] (a) A social worker must conspicuously display at the
36 social worker's places of practice, or make available as a

1 handout for all clients, information that the client has the
2 right to the following:

3 (1) to be informed of the social worker's license status,
4 education, training, and experience;

5 (2) to examine public data on the social worker maintained
6 by the board;

7 (3) to report a complaint about the social worker's
8 practice to the board; and

9 (4) to be informed of the board's mailing address, e-mail
10 address, Web site address, and telephone number.

11 (b) A social worker must conspicuously display the social
12 worker's wall certificate at the social worker's places of
13 practice and office locations. Additional wall certificates may
14 be requested pursuant to section 148D.095.

15 Subd. 2. [REPRESENTATIONS.] (a) No applicant or other
16 individual may be represented to the public by any title
17 incorporating the words "social work" or "social worker" unless
18 the individual holds a license pursuant to sections 148D.055 and
19 148D.060 or practices in a setting exempt from licensure
20 pursuant to section 148D.065.

21 (b) In all professional use of a social worker's name, the
22 social worker must use the license designation "LSW" or
23 "licensed social worker" for a licensed social worker, "LGSW" or
24 "licensed graduate social worker" for a licensed graduate social
25 worker, "LISW" or "licensed independent social worker" for a
26 licensed independent social worker, or "LICSW" or "licensed
27 independent clinical social worker" for a licensed independent
28 clinical social worker.

29 (c) Public statements or advertisements must not be
30 untruthful, misleading, false, fraudulent, deceptive, or
31 potentially exploitative of clients, former clients, interns,
32 students, supervisees, or the public.

33 (d) A social worker must not:

34 (1) use licensure status as a claim, promise, or guarantee
35 of successful service;

36 (2) obtain a license by cheating or employing fraud or

1 deception;

2 (3) make false statements or misrepresentations to the
3 board or in materials submitted to the board; or

4 (4) engage in conduct that has the potential to deceive or
5 defraud a social work client, intern, student, supervisee, or
6 the public.

7 Subd. 3. [INFORMATION ON CREDENTIALS.] (a) A social worker
8 must provide accurate and factual information concerning the
9 social worker's credentials, education, training, and experience
10 when the information is requested by clients, potential clients,
11 or other persons or organizations.

12 (b) A social worker must not misrepresent directly or by
13 implication the social worker's license, degree, professional
14 certifications, affiliations, or other professional
15 qualifications in any oral or written communications to clients,
16 potential clients, or other persons or organizations. A social
17 worker must take reasonable steps to prevent such
18 misrepresentations by other social workers.

19 (c) A social worker must not hold out as a person licensed
20 as a social worker without having a social work license pursuant
21 to sections 148D.055 and 148D.060.

22 (d) A social worker must not misrepresent directly or by
23 implication (1) affiliations with institutions or organizations,
24 or (2) purposes or characteristics of institutions or
25 organizations with which the social worker is or has been
26 affiliated.

27 Sec. 41. [148D.200] [COMPETENCE.]

28 Subdivision 1. [COMPETENCE.] (a) A social worker must
29 provide services and hold out as competent only to the extent
30 the social worker's education, training, license, consultation
31 received, supervision experience, or other relevant professional
32 experience demonstrate competence in the services provided. A
33 social worker must make a referral to a competent professional
34 when the services required are beyond the social worker's
35 competence or authorized scope of practice.

36 (b) When generally recognized standards do not exist with

1 respect to an emerging area of practice, including but not
2 limited to providing social work services through electronic
3 means, a social worker must take the steps necessary, such as
4 consultation or supervision, to ensure the competence of the
5 social worker's work and to protect clients from harm.

6 Subd. 2. [SUPERVISION OR CONSULTATION.] Notwithstanding
7 the completion of supervision requirements as specified in
8 sections 148D.100 to 148D.125, a social worker must obtain
9 supervision or engage in consultation when appropriate or
10 necessary for competent and ethical practice.

11 Subd. 3. [DELEGATION OF SOCIAL WORK RESPONSIBILITIES.] (a)
12 A social worker must not delegate a social work responsibility
13 to another individual when the social worker knows or reasonably
14 should know that the individual is not licensed when required to
15 be licensed pursuant to sections 148D.055 and 148D.060.

16 (b) A social worker must not delegate a social work
17 responsibility to another individual when the social worker
18 knows or reasonably should know that the individual is not
19 competent to assume the responsibility or perform the task.

20 Sec. 42. [148D.205] [IMPAIRMENT.]

21 Subdivision 1. [GROUNDS FOR ACTION.] The board has grounds
22 to take action under sections 148D.255 to 148D.270 when a social
23 worker is unable to practice with reasonable skill and safety by
24 reason of illness, use of alcohol, drugs, chemicals, or any
25 other materials, or as a result of any mental, physical, or
26 psychological condition.

27 Subd. 2. [SELF-REPORTING.] A social worker regulated by
28 the board who is unable to practice with reasonable skill and
29 safety by reason of illness, use of alcohol, drugs, chemicals,
30 or any other materials, or as a result of any mental, physical,
31 or psychological condition, must report to the board or the
32 health professionals services program.

33 Sec. 43. [148D.210] [PROFESSIONAL AND ETHICAL CONDUCT.]

34 The board has grounds to take action under sections
35 148D.255 to 148D.270 when a social worker:

36 (1) engages in unprofessional or unethical conduct,

1 including any departure from or failure to conform to the
2 minimum accepted ethical and other prevailing standards of
3 professional social work practice, without actual injury to a
4 social work client, intern, student, supervisee or the public
5 needing to be established;

6 (2) engages in conduct that has the potential to cause harm
7 to a client, intern, student, supervisee, or the public;

8 (3) demonstrates a willful or careless disregard for the
9 health, welfare, or safety of a client, intern, student, or
10 supervisee; or

11 (4) engages in acts or conduct adversely affecting the
12 applicant or licensee's current ability or fitness to engage in
13 social work practice, whether or not the acts or conduct
14 occurred while engaged in the practice of social work.

15 Sec. 44. [148D.215] [RESPONSIBILITIES TO CLIENTS.]

16 Subdivision 1. [RESPONSIBILITY TO CLIENTS.] A social
17 worker's primary professional responsibility is to the client.
18 A social worker must respect the client's interests, including
19 the interest in self-determination, except when required to do
20 otherwise by law.

21 Subd. 2. [NONDISCRIMINATION.] A social worker must not
22 discriminate against a client, intern, student, or supervisee or
23 in providing services to a client, intern, or supervisee on the
24 basis of age, gender, sexual orientation, race, color, national
25 origin, religion, illness, disability, political affiliation, or
26 social or economic status.

27 Subd. 3. [RESEARCH.] When undertaking research activities,
28 a social worker must use accepted protocols for the protection
29 of human subjects, including (1) establishing appropriate
30 safeguards to protect the subject's vulnerability, and (2)
31 obtaining the subjects' informed consent.

32 Sec. 45. [148D.220] [RELATIONSHIPS WITH CLIENTS, FORMER
33 CLIENTS, AND OTHER INDIVIDUALS.]

34 Subdivision 1. [SOCIAL WORKER RESPONSIBILITY.] (a) A
35 social worker is responsible for acting professionally in
36 relationships with clients or former clients. A client or a

1 former client's initiation of, or attempt to engage in, or
2 request to engage in, a personal, sexual, or business
3 relationship is not a defense to a violation of this section.

4 (b) When a relationship is permitted by this section,
5 social workers who engage in such a relationship assume the full
6 burden of demonstrating that the relationship will not be
7 detrimental to the client or the professional relationship.

8 Subd. 2. [PROFESSIONAL BOUNDARIES.] A social worker must
9 maintain appropriate professional boundaries with a client. A
10 social worker must not engage in practices with clients that
11 create an unacceptable risk of client harm or of impairing a
12 social worker's objectivity or professional judgment. A social
13 worker must not act or fail to act in a way that, as judged by a
14 reasonable and prudent social worker, inappropriately encourages
15 the client to relate to the social worker outside of the
16 boundaries of the professional relationship, or in a way that
17 interferes with the client's ability to benefit from social work
18 services from the social worker.

19 Subd. 3. [MISUSE OF PROFESSIONAL RELATIONSHIP.] A social
20 worker must not use the professional relationship with a client,
21 student, supervisee, or intern to further the social worker's
22 personal, emotional, financial, sexual, religious, political, or
23 business benefit or interests.

24 Subd. 4. [IMPROPER TERMINATION.] A social worker must not
25 terminate a professional relationship for the purpose of
26 beginning a personal, sexual, or business relationship with a
27 client.

28 Subd. 5. [PERSONAL RELATIONSHIP WITH A CLIENT.] (a) Except
29 as provided in paragraph (b), a social worker must not engage in
30 a personal relationship with a client that creates a risk of
31 client harm or of impairing a social worker's objectivity or
32 professional judgment.

33 (b) Notwithstanding paragraph (a), if a social worker is
34 unable to avoid a personal relationship with a client, the
35 social worker must take appropriate precautions, such as
36 consultation or supervision, to address the potential for risk

1 of client harm or of impairing a social worker's objectivity or
2 professional judgment.

3 Subd. 6. [PERSONAL RELATIONSHIP WITH A FORMER CLIENT.] A
4 social worker may engage in a personal relationship with a
5 former client after appropriate termination of the professional
6 relationship, except:

7 (1) as prohibited by subdivision 8; or

8 (2) if a reasonable and prudent social worker would
9 conclude after appropriate assessment that (i) the former client
10 is emotionally dependent on the social worker or continues to
11 relate to the social worker as a client, or (ii) the social
12 worker is emotionally dependent on the client or continues to
13 relate to the former client as a social worker.

14 Subd. 7. [SEXUAL CONDUCT WITH A CLIENT.] A social worker
15 must not engage in or suggest sexual conduct with a client.

16 Subd. 8. [SEXUAL CONDUCT WITH A FORMER CLIENT.] (a) A
17 social worker who has engaged in diagnosing, counseling, or
18 treating a client with mental, emotional, or behavioral
19 disorders must not engage in or suggest sexual conduct with the
20 former client under any circumstances unless:

21 (1) the social worker did not intentionally or
22 unintentionally coerce, exploit, deceive, or manipulate the
23 former client at any time;

24 (2) the social worker did not represent to the former
25 client that sexual conduct with the social worker is consistent
26 with or part of the client's treatment;

27 (3) the social worker's sexual conduct was not detrimental
28 to the former client at any time;

29 (4) the former client is not emotionally dependent on the
30 social worker and does not continue to relate to the social
31 worker as a client; and

32 (5) the social worker is not emotionally dependent on the
33 client and does not continue to relate to the former client as a
34 social worker.

35 (b) If there is an alleged violation of paragraph (a), the
36 social worker assumes the full burden of demonstrating to the

1 board that the social worker did not intentionally or
2 unintentionally coerce, exploit, deceive, or manipulate the
3 client, and the social worker's sexual conduct was not
4 detrimental to the client at any time. Upon request, a social
5 worker must provide information to the board addressing:

6 (1) the amount of time that has passed since termination of
7 services;

8 (2) the duration, intensity, and nature of services;

9 (3) the circumstances of termination of services;

10 (4) the former client's emotional, mental, and behavioral
11 history;

12 (5) the former client's current emotional, mental, and
13 behavioral status;

14 (6) the likelihood of adverse impact on the former client;
15 and

16 (7) the existence of actions, conduct, or statements made
17 by the social worker during the course of services suggesting or
18 inviting the possibility of a sexual relationship with the
19 client following termination of services.

20 (c) A social worker who has provided social work services
21 other than those described in paragraph (a) to a client must not
22 engage in or suggest sexual conduct with the former client if a
23 reasonable and prudent social worker would conclude after
24 appropriate assessment that engaging in such behavior with the
25 former client would create an unacceptable risk of harm to the
26 former client.

27 Subd. 9. [SEXUAL CONDUCT WITH A STUDENT, SUPERVISEE, OR
28 INTERN.] (a) A social worker must not engage in or suggest
29 sexual conduct with a student while the social worker has
30 authority over any part of the student's academic program.

31 (b) A social worker supervising an intern must not engage
32 in or suggest sexual conduct with the intern during the course
33 of the internship.

34 (c) A social worker practicing social work as a supervisor
35 must not engage in or suggest sexual conduct with a supervisee
36 during the period of supervision.

1 Subd. 10. [SEXUAL HARASSMENT.] A social worker must not
2 engage in any physical, oral, written, or electronic behavior
3 that a client, former client, student, supervisee, or intern may
4 reasonably interpret as sexually harassing or sexually demeaning.

5 Subd. 11. [BUSINESS RELATIONSHIP WITH A CLIENT.] A social
6 worker must not purchase goods or services from a client or
7 otherwise engage in a business relationship with a client except
8 when:

9 (1) a social worker purchases goods or services from the
10 client and a reasonable and prudent social worker would
11 determine that it is not practical or reasonable to obtain the
12 goods or services from another provider; and

13 (2) engaging in the business relationship will not be
14 detrimental to the client or the professional relationship.

15 Subd. 12. [BUSINESS RELATIONSHIP WITH A FORMER CLIENT.] A
16 social worker may purchase goods or services from a former
17 client or otherwise engage in a business relationship with a
18 former client after appropriate termination of the professional
19 relationship unless a reasonable and prudent social worker would
20 conclude after appropriate assessment that:

21 (1) the former client is emotionally dependent on the
22 social worker and purchasing goods or services from the former
23 client or otherwise engaging in a business relationship with the
24 former client would be detrimental to the former client; or

25 (2) the social worker is emotionally dependent on the
26 former client and purchasing goods or services from the former
27 client or otherwise engaging in a business relationship with the
28 former client would be detrimental to the former client.

29 Subd. 13. [PREVIOUS SEXUAL, PERSONAL, OR BUSINESS
30 RELATIONSHIP.] (a) A social worker must not engage in a social
31 worker/client relationship with an individual with whom the
32 social worker had a previous sexual relationship.

33 (b) A social worker must not engage in a social
34 worker/client relationship with an individual with whom the
35 social worker had a previous personal or business relationship
36 if a reasonable and prudent social worker would conclude after

1 appropriate assessment that the social worker/client
2 relationship would create an unacceptable risk of client harm or
3 that the social worker's objectivity or professional judgment
4 may be impaired.

5 Subd. 14. [GIVING ALCOHOL OR OTHER DRUGS TO A CLIENT.] (a)
6 Unless authorized by law, a social worker must not offer
7 medication or controlled substances to a client.

8 (b) A social worker must not accept medication or
9 controlled substances from a client except that if authorized by
10 law, a social worker may accept medication or controlled
11 substances from a client for purposes of disposal or to monitor
12 use.

13 (c) A social worker must not offer alcoholic beverages to a
14 client except when such an offer is authorized or prescribed by
15 a physician or is in accordance with a client's care plan.

16 (d) A social worker must not accept alcoholic beverages
17 from a client.

18 Subd. 15. [RELATIONSHIP WITH A CLIENT'S FAMILY OR
19 HOUSEHOLD MEMBER.] Subdivisions 1 to 14 apply to a social
20 worker's relationship with a client's family or household member
21 when a reasonable and prudent social worker would conclude after
22 appropriate assessment that a relationship with a family or
23 household member would create an unacceptable risk of harm to
24 the client.

25 Sec. 46. [148D.225] [TREATMENT AND INTERVENTION SERVICES.]

26 Subdivision 1. [ASSESSMENT OR DIAGNOSIS.] A social worker
27 must base treatment and intervention services on an assessment
28 or diagnosis. A social worker must evaluate, on an ongoing
29 basis, the appropriateness of the assessment or diagnosis.

30 Subd. 2. [ASSESSMENT OR DIAGNOSTIC INSTRUMENTS.] A social
31 worker must not use an assessment or diagnostic instrument
32 without adequate training. A social worker must follow
33 standards and accepted procedures for using an assessment or
34 diagnostic instrument. A social worker must inform a client of
35 the purpose before administering the instrument and must make
36 the results available to the client.

1 Subd. 3. [PLAN FOR SERVICES.] A social worker must develop
2 a plan for services that includes goals based on the assessment
3 or diagnosis. A social worker must evaluate, on an ongoing
4 basis, the appropriateness of the plan and the client's progress
5 toward the goals.

6 Subd. 4. [RECORDS.] (a) A social worker must make and
7 maintain current and accurate records, appropriate to the
8 circumstances, of all services provided to a client. At a
9 minimum, the records must contain documentation of:

- 10 (1) the assessment or diagnosis;
11 (2) the content of the service plan;
12 (3) progress with the plan and any revisions of assessment,
13 diagnosis, or plan;
14 (4) any fees charged and payments made;
15 (5) copies of all client-written authorizations for release
16 of information; and
17 (6) other information necessary to provide appropriate
18 services.

19 (b) These records must be maintained by the social worker
20 for at least seven years after the last date of service to the
21 client. Social workers who are employed by an agency or other
22 entity are not required to:

- 23 (1) maintain personal or separate records; or
24 (2) personally retain records at the conclusion of their
25 employment.

26 Subd. 5. [TERMINATION OF SERVICES.] A social worker must
27 terminate a professional relationship with a client when the
28 social worker reasonably determines that the client is not
29 likely to benefit from continued services or the services are no
30 longer needed, unless the social worker is required by law to
31 provide services. A social worker who anticipates terminating
32 services must give reasonable notice to the client in a manner
33 that is appropriate to the needs of the client. The social
34 worker must provide appropriate referrals as needed or upon
35 request of the client.

36 Sec. 47. [148D.230] [CONFIDENTIALITY AND RECORDS.]

1 Subdivision 1. [INFORMED CONSENT.] (a) A social worker
2 must obtain valid, informed consent, appropriate to the
3 circumstances, before providing services to clients. When
4 obtaining informed consent, the social worker must determine
5 whether the client has the capacity to provide informed
6 consent. If the client does not have the capacity to provide
7 consent, the social worker must obtain consent for the services
8 from the client's legal representative. The social worker must
9 not provide services, unless authorized or required by law, if
10 the client or the client's legal representative does not consent
11 to the services.

12 (b) If a social worker determines that a client does not
13 have the capacity to provide consent, and the client does not
14 have a legal representative, the social worker:

15 (1) must, except as provided in clause (2), secure a legal
16 representative for a client before providing services; or

17 (2) may, notwithstanding clause (1), provide services,
18 except when prohibited by other applicable law, that are
19 necessary to ensure the client's safety or to preserve the
20 client's property or financial resources.

21 (c) A social worker must use clear and understandable
22 language, including using an interpreter proficient in the
23 client's primary language as necessary, to inform clients of the
24 plan of services, risks related to the plan, limits to services,
25 relevant costs, terms of payment, reasonable alternatives, the
26 client's right to refuse or withdraw consent, and the time frame
27 covered by the consent.

28 Subd. 2. [MANDATORY REPORTING AND DISCLOSURE OF CLIENT
29 INFORMATION.] At the beginning of a professional relationship
30 and during the professional relationship as necessary and
31 appropriate, a social worker must inform the client of those
32 circumstances under which the social worker may be required to
33 disclose client information specified in subdivision 3,
34 paragraph (a), without the client's consent.

35 Subd. 3. [CONFIDENTIALITY OF CLIENT INFORMATION.] (a) A
36 social worker must ensure the confidentiality of all client

1 information obtained in the course of the social worker/client
2 relationship and all client information otherwise obtained by
3 the social worker that is relevant to the social worker/client
4 relationship. Except as provided in this section, client
5 information may be disclosed or released only with the client's
6 or the client's legal representative's valid informed consent,
7 appropriate to the circumstances, except when otherwise required
8 by law. A social worker must seek consent to disclose or
9 release client information only when such disclosure or release
10 is necessary to provide social work services.

11 (b) A social worker must continue to maintain
12 confidentiality of the client information specified in paragraph
13 (a) upon termination of the professional relationship including
14 upon the death of the client, except as provided under this
15 section or other applicable law.

16 (c) A social worker must limit access to the client
17 information specified in paragraph (a) in a social worker's
18 agency to appropriate agency staff whose duties require access.

19 Subd. 4. [RELEASE OF CLIENT INFORMATION WITH WRITTEN
20 INFORMED CONSENT.] (a) Except as provided in subdivision 5,
21 client information specified in subdivision 3, paragraph (a),
22 may be released only with the client's or the client's legal
23 representative's written informed consent. The written informed
24 consent must:

25 (1) explain to whom the client's records may be released;
26 (2) explain the purpose for the release; and
27 (3) state an expiration date for the authorized release of
28 the records.

29 (b) A social worker may provide client information
30 specified in subdivision 3, paragraph (a), to a third party for
31 the purpose of payment for services rendered only with the
32 client's written informed consent.

33 (c) Except as provided in subdivision 5, a social worker
34 may disclose client information specified in subdivision 3,
35 paragraph (a), only with the client's or the client's legal
36 representative's written informed consent. When it is not

1 practical to obtain written informed consent before providing
2 necessary services, a social worker may disclose or release
3 client information with the client's or the client's legal
4 representative's oral informed consent.

5 (d) Unless otherwise authorized by law, a social worker
6 must obtain a client's written informed consent before taking a
7 photograph of the client or making an audio or video recording
8 of the client, or allowing a third party to do the same. The
9 written informed consent must explain:

10 (1) the purpose of the photograph or the recording and how
11 the photograph or recording will be used, how it will be stored,
12 and when it will be destroyed; and

13 (2) how the client may have access to the photograph or
14 recording.

15 Subd. 5. [RELEASE OF CLIENT INFORMATION WITHOUT WRITTEN
16 INFORMED CONSENT.] (a) A social worker may disclose client
17 information specified in subdivision 3, paragraph (a), without
18 the written consent of the client or the client's legal
19 representative only under the following circumstances or under
20 the circumstances described in paragraph (b):

21 (1) when mandated or authorized by federal or state law,
22 including the mandatory reporting requirements under the duty to
23 warn, maltreatment of minors, and vulnerable adult laws
24 specified in section 148D.240, subdivisions 6 to 8;

25 (2) when the board issues a subpoena to the social worker;
26 or

27 (3) when a court of competent jurisdiction orders release
28 of the client records or information.

29 (b) When providing services authorized or required by law
30 to a client who does not have the capacity to provide consent
31 and who does not have a legal representative, a social worker
32 must disclose or release client records or information as
33 necessary to provide services to ensure the client's safety or
34 to preserve the client's property or financial resources.

35 Subd. 6. [RELEASE OF CLIENT RECORDS OR INFORMATION.] When
36 releasing client records or information under this section, a

1 social worker must release current, accurate, and complete
2 records or information.

3 Sec. 48. [148D.235] [FEES AND BILLING PRACTICES.]

4 Subdivision 1. [FEES AND PAYMENTS.] (a) A social worker
5 must ensure that a client or a client's legal representative is
6 informed of all fees at the initial session or meeting with the
7 client, and that payment for services is arranged with the
8 client or the client's legal representative at the beginning of
9 the professional relationship. Upon request from a client or a
10 client's legal representative, a social worker must provide in a
11 timely manner a written payment plan or a written explanation of
12 the charges for any services rendered.

13 (b) When providing services authorized or required by law
14 to a client who does not have the capacity to provide consent
15 and who does not have a legal representative, a social worker
16 may submit reasonable bills to an appropriate payer for services
17 provided.

18 Subd. 2. [BILLING FOR SERVICES NOT PROVIDED.] A social
19 worker must not bill for services that have not been provided
20 except that, with prior notice to the client, a social worker
21 may bill for failed appointments or for cancellations without
22 sufficient notice. A social worker may bill only for provided
23 services which are necessary and appropriate.

24 Subd. 3. [NO PAYMENT FOR REFERRALS.] A social worker must
25 not accept or give a commission, rebate, or other form of
26 remuneration solely or primarily to profit from the referral of
27 a client.

28 Subd. 4. [FEES AND BILLING PRACTICES.] A social worker
29 must not engage in improper or fraudulent billing practices,
30 including, but not limited to, violations of the federal
31 Medicare and Medicaid laws or state medical assistance laws.

32 Sec. 49. [148D.240] [REPORTING REQUIREMENTS.]

33 Subdivision 1. [FAILURE TO SELF-REPORT ADVERSE
34 ACTIONS.] The board has grounds to take action under sections
35 148D.255 to 148D.270 when a social worker fails to report to the
36 board within 90 days:

1 (1) having been disciplined, sanctioned, or found to have
2 violated a state, territorial, provincial, or foreign licensing
3 agency's laws or rules;

4 (2) having been convicted of committing a felony, gross
5 misdemeanor, or misdemeanor reasonably related to the practice
6 of social work;

7 (3) having had a finding or verdict of guilt, whether or
8 not the adjudication of guilt is withheld or not entered, of
9 committing a felony, gross misdemeanor, or misdemeanor
10 reasonably related to the practice of social work;

11 (4) having admitted to committing, or entering a no contest
12 plea to committing, a felony, gross misdemeanor, or misdemeanor
13 reasonably related to the practice of social work; or

14 (5) having been denied licensure by a state, territorial,
15 provincial, or foreign licensing agency.

16 Subd. 2. [FAILURE TO SUBMIT APPLICATION INFORMATION.] The
17 board has grounds to take action under sections 148D.255 to
18 148D.270 when an applicant or licensee fails to submit with an
19 application the following information:

20 (1) the dates and dispositions of any malpractice
21 settlements or awards made relating to the social work services
22 provided by the applicant or licensee; or

23 (2) the dates and dispositions of any civil litigations or
24 arbitrations relating to the social work services provided by
25 the applicant or licensee.

26 Subd. 3. [REPORTING OTHER LICENSED HEALTH
27 PROFESSIONALS.] An applicant or licensee must report to the
28 appropriate health-related licensing board conduct by a licensed
29 health professional which would constitute grounds for
30 disciplinary action under the statutes and rules enforced by
31 that board.

32 Subd. 4. [REPORTING UNLICENSED PRACTICE.] An applicant or
33 licensee must report to the board conduct by an unlicensed
34 person which constitutes the practice of social work, as defined
35 in section 148D.010, except when the unlicensed person is exempt
36 from licensure pursuant to section 148D.065.

1 Subd. 5. [FAILURE TO REPORT OTHER APPLICANTS OR LICENSEES
2 AND UNLICENSED PRACTICE.] The board has grounds to take action
3 under sections 148D.255 to 148.270 when an applicant or licensee
4 fails to report to the board conduct:

5 (1) by another licensee or applicant which the applicant or
6 licensee has reason to believe may reasonably constitute grounds
7 for disciplinary action under this section; or

8 (2) by an unlicensed person that constitutes the practice
9 of social work when a license is required to practice social
10 work.

11 Subd. 6. [DUTY TO WARN.] A licensee must comply with the
12 duty to warn established by section 148.975.

13 Subd. 7. [REPORTING MALTREATMENT OF MINORS.] An applicant
14 or licensee must comply with the reporting of maltreatment of
15 minors established by section 626.556.

16 Subd. 8. [REPORTING MALTREATMENT OF VULNERABLE ADULTS.] An
17 applicant or licensee must comply with the reporting of
18 maltreatment of vulnerable adults established by section 626.557.

19 Subd. 9. [SUBPOENAS.] The board may issue subpoenas
20 pursuant to section 148D.245 and chapter 214 for the production
21 of any reports required by this section or any related documents.

22 INVESTIGATIONS

23 Sec. 50. [148D.245] [INVESTIGATIVE POWERS AND PROCEDURES.]

24 Subdivision 1. [SUBPOENAS.] (a) The board may issue
25 subpoenas and compel the attendance of witnesses and the
26 production of all necessary papers, books, records, documents,
27 and other evidentiary material as part of its investigation of
28 an applicant or licensee under this section or chapter 214.

29 (b) If any person fails or refuses to appear or testify
30 regarding any matter about which the person may be lawfully
31 questioned, or fails or refuses to produce any papers, books,
32 records, documents, or other evidentiary materials in the matter
33 to be heard, after having been required by order of the board or
34 by a subpoena of the board to do so, the board may institute a
35 proceeding in any district court to enforce the board's order or
36 subpoena.

1 (c) The board or a designated member of the board acting on
2 behalf of the board may issue subpoenas or administer oaths to
3 witnesses or take affirmations. Depositions may be taken within
4 or out of the state in the manner provided by law for the taking
5 of depositions in civil actions.

6 (d) A subpoena or other process or paper may be served upon
7 any person named therein, by mail or by any officer authorized
8 to serve subpoenas or other process or paper in civil actions,
9 with the same fees and mileage and in the same manner as
10 prescribed by law for service of process issued out of the
11 district court of this state.

12 (e) Fees, mileage, and other costs must be paid as the
13 board directs.

14 Subd. 2. [CLASSIFICATION OF DATA.] (a) Any records
15 obtained as part of an investigation must be treated as
16 investigative data under section 13.41 and be classified as
17 confidential data.

18 (b) Notwithstanding paragraph (a), client records must be
19 treated as private data under chapter 13. Client records must
20 be protected as private data in the records of the board and in
21 administrative or judicial proceedings unless the client
22 authorizes the board in writing to make public the identity of
23 the client or a portion or all of the client's records.

24 Subd. 3. [MENTAL OR PHYSICAL EXAMINATION; CHEMICAL
25 DEPENDENCY EVALUATION.] (a) If the board has (1) probable cause
26 to believe that an applicant or licensee has violated a statute
27 or rule enforced by the board, or an order issued by the board
28 and (2) the board believes the applicant may have a
29 health-related condition relevant to the violation, the board
30 may issue an order directing the applicant or licensee to submit
31 to one or more of the following: a mental examination, a
32 physical examination, or a chemical dependency evaluation.

33 (b) An examination or evaluation order issued by the board
34 must include:

35 (1) factual specifications on which the order is based;

36 (2) the purpose of the examination or evaluation;

1 (3) the name of the person or entity that will conduct the
2 examination or evaluation; and

3 (4) the means by which the examination or evaluation will
4 be paid for.

5 (c) Every applicant or licensee must submit to a mental
6 examination, a physical examination, or a chemical dependency
7 evaluation when ordered to do so in writing by the board.

8 (d) By submitting to a mental examination, a physical
9 examination, or a chemical dependency evaluation, an applicant
10 or licensee waives all objections to the admissibility of the
11 examiner or evaluator's testimony or reports on the grounds that
12 the testimony or reports constitute a privileged communication.

13 Subd. 4. [FAILURE TO SUBMIT TO AN EXAMINATION.] (a) If an
14 applicant or licensee fails to submit to an examination or
15 evaluation ordered by the board pursuant to subdivision 3,
16 unless the failure was due to circumstances beyond the control
17 of the applicant or licensee, the failure is an admission that
18 the applicant or licensee violated a statute or rule enforced by
19 the board as specified in the examination or evaluation order
20 issued by the board. The failure may result in an application
21 being denied or other adversarial, corrective, or disciplinary
22 action being taken by the board without a contested case hearing.

23 (b) If an applicant or licensee requests a contested case
24 hearing after the board denies an application or takes other
25 disciplinary or adversarial action, the only issues which may be
26 determined at the hearing are:

27 (1) whether the board had probable cause to issue the
28 examination or evaluation order; and

29 (2) whether the failure to submit to the examination or
30 evaluation was due to circumstances beyond the control of the
31 applicant or licensee.

32 (c) Neither the record of a proceeding under this
33 subdivision nor an order issued by the board may be admissible,
34 subject to subpoena, or be used against the applicant or
35 licensee in a proceeding in which the board is not a party or
36 decision maker.

1 (d) Information obtained under this subdivision must be
2 treated as private data under chapter 13. An order issued by
3 the board as the result of an applicant's or licensee's failure
4 to submit to an examination or evaluation must be treated as
5 public data under chapter 13.

6 Subd. 5. [ACCESS TO DATA AND RECORDS.] (a) In addition to
7 ordering a physical or mental examination or chemical dependency
8 evaluation, and notwithstanding section 13.384, 144.651, 595.02,
9 or any other statute limiting access to health records, the
10 board or a designated member of the board acting on behalf of
11 the board may subpoena physical, mental, and chemical dependency
12 health records relating to an applicant or licensee without the
13 applicant's or licensee's consent if:

14 (1) the board has probable cause to believe that the
15 applicant or licensee has violated chapter 214, a statute or
16 rule enforced by the board, or an order issued by the board; and

17 (2) the board has reason to believe that the records are
18 relevant and necessary to the investigation.

19 (b) An applicant, licensee, insurance company, government
20 agency, health care facility, or provider as defined in section
21 144.335, subdivision 1, paragraph (b), must comply with any
22 subpoena of the board under this subdivision and is not liable
23 in any action for damages for releasing information subpoenaed
24 by the board under this subdivision unless the information
25 provided is false and the person or entity providing the
26 information knew or had reason to know that the information was
27 false.

28 (c) Information on individuals obtained under this
29 subdivision must be treated as investigative data under section
30 13.41 and be classified as confidential data.

31 (d) If an applicant, licensee, person, or entity does not
32 comply with any subpoena of the board under this subdivision,
33 the board may institute a proceeding in any district court to
34 enforce the board's subpoena.

35 Subd. 6. [EVIDENCE OF PAST SEXUAL CONDUCT.] If, in a
36 proceeding for taking action against an applicant or licensee

1 under this section, the charges involve sexual contact with a
2 client or former client, the board or administrative law judge
3 must not consider evidence of the client's or former client's
4 previous sexual conduct. Reference to the client's or former
5 client's previous sexual conduct must not be made during the
6 proceedings or in the findings, except by motion of the
7 complainant, unless the evidence would be admissible under the
8 applicable provisions of section 609.347, subdivision 3.

9 Subd. 7. [INVESTIGATIONS INVOLVING VULNERABLE ADULTS OR
10 CHILDREN IN NEED OF PROTECTION.] (a) Except as provided in
11 paragraph (b), if the board receives a complaint about a social
12 worker regarding the social worker's involvement in a case of
13 vulnerable adults or children in need of protection, the county
14 or other appropriate public authority may request that the board
15 suspend its investigation, and the board must comply until such
16 time as the court issues its findings on the case.

17 (b) Notwithstanding paragraph (a), the board may continue
18 with an investigation if the board determines that doing so is
19 in the best interests of the vulnerable adult or child and is
20 consistent with the board's obligation to protect the public.
21 If the board chooses to continue an investigation, the board
22 must notify the county or other appropriate public authority in
23 writing and state its reasons for doing so.

24 Subd. 8. [NOTIFICATION OF COMPLAINANT.] (a) In no more
25 than 14 calendar days after receiving a complaint regarding a
26 licensee, the board must notify the complainant that the board
27 has received the complaint.

28 (b) The board must periodically notify the complainant of
29 the status of the complaint.

30 Subd. 9. [NOTIFICATION OF LICENSEE.] (a) Except as
31 provided in paragraph (b), in no more than 60 calendar days
32 after receiving a complaint regarding a licensee, the board must
33 notify the licensee that the board has received the complaint
34 and inform the licensee of:

35 (1) the substance of the complaint;

36 (2) the sections of the law that allegedly have been

1 violated; and

2 (3) whether an investigation is being conducted.

3 (b) Paragraph (a) does not apply if:

4 (1) the board determines that such notice would compromise
5 the board's investigation pursuant to section 214.10; or

6 (2) the board determines that such notice cannot reasonably
7 be accomplished within this time.

8 (c) The board must periodically notify the licensee of the
9 status of the complaint.

10 Subd. 10. [RESOLUTION OF COMPLAINTS.] In no more than one
11 year after receiving a complaint regarding a licensee, the board
12 must resolve or dismiss the complaint unless the board
13 determines that resolving or dismissing the complaint cannot
14 reasonably be accomplished within this time.

15 Sec. 51. [148D.250] [OBLIGATION TO COOPERATE.]

16 Subdivision 1. [OBLIGATION TO COOPERATE.] An applicant or
17 licensee who is the subject of an investigation, or who is
18 questioned by or on behalf of the board in connection with an
19 investigation, must cooperate fully with the investigation.
20 Cooperation includes, but is not limited to:

21 (1) responding fully and promptly to any question relating
22 to the investigation;

23 (2) as reasonably requested by the board, providing copies
24 of client and other records in the applicant's or licensee's
25 possession relating to the investigation;

26 (3) executing release of records as reasonably requested by
27 the board; and

28 (4) appearing at conferences, hearings, or meetings
29 scheduled by the board, as required in sections 148D.255 to
30 148D.270 and chapter 214.

31 Subd. 2. [INVESTIGATION.] A social worker must not
32 knowingly withhold relevant information, give false or
33 misleading information, or do anything to obstruct an
34 investigation of the social worker or another social worker by
35 the board or by another state or federal regulatory or law
36 enforcement authority.

1 Subd. 3. [PAYMENT FOR COPIES.] The board must pay for
2 copies requested by the board.

3 Subd. 4. [ACCESS TO CLIENT RECORDS.] Notwithstanding any
4 law to the contrary, an applicant or licensee must allow the
5 board access to any records of a client provided services by the
6 applicant or licensee under investigation. If the client has
7 not signed a consent permitting access to the client's records,
8 the applicant or licensee must delete any data in the records
9 that identifies the client before providing the records to the
10 board.

11 Subd. 5. [CLASSIFICATION OF DATA.] Any records obtained
12 pursuant to this subdivision must be treated as investigative
13 data pursuant to section 13.41 and be classified as confidential
14 data.

15 TYPES OF ACTIONS

16 Sec. 52. [148D.255] [TYPES OF ACTIONS.]

17 Subdivision 1. [ACTIONS.] The board may take disciplinary
18 action pursuant to section 148D.260, adversarial but
19 nondisciplinary action pursuant to section 148D.265, or
20 voluntary action pursuant to section 148D.270. Any action taken
21 under sections 148D.260 to 148D.270 is public data.

22 Subd. 2. [DISCIPLINARY ACTION.] For purposes of section
23 148D.260, "disciplinary action" means an action taken by the
24 board against an applicant or licensee that addresses a
25 complaint alleging a violation of a statute or rule the board is
26 empowered to enforce.

27 Subd. 3. [ADVERSARIAL BUT NONDISCIPLINARY ACTION.] For
28 purposes of section 148D.265, "adversarial but nondisciplinary
29 action" means a nondisciplinary action taken by the board that
30 addresses a complaint alleging a violation of a statute or rule
31 the board is empowered to enforce.

32 Subd. 4. [VOLUNTARY ACTION.] For purposes of section
33 148D.270, "voluntary action" means a nondisciplinary action
34 agreed to by the board or a designated board member and an
35 applicant or licensee that, through educational or other
36 corrective means, addresses a complaint alleging a violation of

1 a statute or rule that the board is empowered to enforce.

2 Sec. 53. [148D.260] [DISCIPLINARY ACTIONS.]

3 Subdivision 1. [GENERAL DISCIPLINARY ACTIONS.] (a) When
4 the board has grounds for disciplinary actions under this
5 chapter, the board may take one or more of the following
6 disciplinary actions:

7 (1) deny an application;

8 (2) permanently revoke a license to practice social work;

9 (3) indefinitely or temporarily suspend a license to
10 practice social work;

11 (4) impose restrictions on a licensee's scope of practice;

12 (5) impose conditions required for the licensee to maintain
13 licensure, including, but not limited to, additional education,
14 supervision, and requiring the passing of an examination
15 provided for in section 148D.055;

16 (6) reprimand a licensee;

17 (7) impose a civil penalty of up to \$10,000 for each
18 violation in order to discourage future violations or to deprive
19 the licensee of any economic advantage gained by reason of the
20 violation; or

21 (8) impose a fee to reimburse the board for all or part of
22 the cost of the proceedings resulting in disciplinary action,
23 including, but not limited to, the amount paid by the board for
24 services received from or expenses incurred by the Office of
25 Administrative Hearings, the Office of the Attorney General,
26 court reporters, witnesses, board members, board staff, or the
27 amount paid by the board for reproducing records.

28 (b) Disciplinary action taken by the board under this
29 subdivision is in effect pending determination of an appeal
30 unless the court, upon petition and for good cause shown,
31 decides otherwise.

32 Subd. 2. [REPRIMANDS.] (a) In addition to the board's
33 authority to issue a reprimand pursuant to subdivision 1, a
34 designated board member reviewing a complaint as provided for in
35 chapter 214 may issue a reprimand to a licensee. The designated
36 board member must notify the licensee that the reprimand will

1 become final disciplinary action unless the licensee requests a
2 hearing by the board within 14 calendar days.

3 (b) If the licensee requests a hearing within 14 calendar
4 days, the board must schedule a hearing unless the designated
5 board member withdraws the reprimand.

6 (c) The hearing must be scheduled within 14 working days of
7 the time the licensee submits a request for the hearing.

8 (d) The designated board member who issued the reprimand
9 may participate in the hearing but must not deliberate or vote
10 on the decision by the board.

11 (e) The only evidence permitted at the hearing is
12 affidavits or other documents except for testimony by the
13 licensee or other witnesses whose testimony the board chair has
14 authorized for good cause.

15 (f) If testimony is authorized, the testimony is subject to
16 cross-examination.

17 (g) After the hearing, the board must affirm or dismiss the
18 reprimand.

19 Subd. 3. [TEMPORARY SUSPENSIONS.] (a) In addition to any
20 other remedy provided by statute, the board or a designated
21 board member may, without a hearing, temporarily suspend a
22 license to practice social work if the board or the designated
23 board member finds that:

24 (1) the licensee has violated a statute or rule enforced by
25 the board, any other federal or state law or rule related to the
26 practice of social work, or an order, stipulation, or agreement
27 agreed to or issued by the board; and

28 (2) continued practice by the licensee would create a
29 serious risk of harm to others.

30 (b) The suspension is in effect upon service of a written
31 order on the licensee specifying the statute, rule, order,
32 stipulation, or agreement violated. Service of the order is
33 effective if the order is served on the licensee or the
34 licensee's attorney personally or by first class mail to the
35 most recent address provided to the board for the licensee or
36 the licensee's attorney.

1 (c) The temporary suspension remains in effect until after
2 the board issues an order pursuant to paragraph (e), or if there
3 is a contested case hearing, after the board issues a written
4 final order pursuant to paragraph (g).

5 (d) If the licensee requests in writing within five
6 calendar days of service of the order that the board hold a
7 hearing, the board must hold a hearing on the sole issue of
8 whether to continue, modify, or lift the suspension. The board
9 must hold the hearing within ten working days of receipt of the
10 licensee's written request. Evidence presented by the board or
11 licensee must be in affidavit form only, except that the
12 licensee or the licensee's attorney may present oral argument.

13 (e) Within five working days after the hearing, the board
14 must issue its order. If the licensee contests the order, the
15 board must schedule a contested case hearing under chapter 14.
16 The contested case hearing must be scheduled to occur within 45
17 calendar days after issuance of the order.

18 (f) The administrative law judge must issue a report within
19 30 calendar days after the contested case hearing is concluded.

20 (g) The board must issue a final order within 30 calendar
21 days after the board receives the administrative law judge's
22 report.

23 Sec. 54. [148D.265] [ADVERSARIAL BUT NONDISCIPLINARY
24 ACTIONS.]

25 Subdivision 1. [AUTOMATIC SUSPENSIONS.] (a) A license to
26 practice social work is automatically suspended if:

27 (1) a guardian of a licensee is appointed by order of a
28 court pursuant to sections 524.5-101 and 524.5.102; or

29 (2) the licensee is committed by order of a court pursuant
30 to chapter 253B.

31 (b) A license remains suspended until:

32 (1) the licensee is restored to capacity by a court; and

33 (2) upon petition by the licensee and after a hearing or an
34 agreement with the licensee, the board terminates the suspension.

35 (c) If the board terminates the suspension, it may do so
36 with or without conditions or restrictions, including, but not

1 limited to, participation in the health professional services
2 program.

3 Subd. 2. [CEASE AND DESIST ORDERS.] (a) The board or a
4 designated board member may issue a cease and desist order to
5 stop a person from engaging in unauthorized practice or from
6 violating or threatening to violate a statute or rule enforced
7 by the board or an order, stipulation, or agreement agreed to or
8 issued by the board.

9 (b) The cease and desist order must state the reason for
10 its issuance and give notice of the person's right to request a
11 hearing under sections 14.57 to 14.62. If the person fails to
12 request a hearing in writing postmarked within 15 calendar days
13 after service of the cease and desist order, the order is the
14 final order of the board and is not reviewable by a court or
15 agency.

16 (c) If the board receives a written request for a hearing
17 postmarked within 15 calendar days after service of the cease
18 and desist order, the board must schedule a hearing within 30
19 calendar days of receiving the request.

20 (d) The administrative law judge must issue a report within
21 30 calendar days after the contested case hearing is concluded.

22 (e) Within 30 calendar days after the board receives the
23 administrative law judge's report, the board must issue a final
24 order modifying, vacating, or making permanent the cease and
25 desist order. The final order remains in effect until modified
26 or vacated by the board.

27 (f) If a person does not comply with a cease and desist
28 order, the board may institute a proceeding in any district
29 court to obtain injunctive relief or other appropriate relief,
30 including but not limited to, a civil penalty payable to the
31 board of up to \$10,000 for each violation.

32 (g) A cease and desist order issued pursuant to this
33 subdivision does not relieve a person from criminal prosecution
34 by a competent authority or from disciplinary action by the
35 board.

36 Subd. 3. [INJUNCTIVE RELIEF.] (a) In addition to any other

1 remedy provided by law, the board may bring an action in
2 district court for injunctive relief to restrain any
3 unauthorized practice or violation or threatened violation of
4 any statute or rule, stipulation, or agreement agreed to or
5 enforced by the board or an order issued by the board.

6 (b) A temporary restraining order may be granted in the
7 proceeding if continued activity by a person would create an
8 imminent risk of harm to others.

9 (c) Injunctive relief granted pursuant to this subdivision
10 does not relieve a person from criminal prosecution by a
11 competent authority or from disciplinary action by the board.

12 (d) In bringing an action for injunctive relief, the board
13 need not show irreparable harm.

14 Sec. 55. [148D.270] [VOLUNTARY ACTIONS.]

15 Subdivision 1. [AGREEMENTS FOR CORRECTIVE ACTION.] (a) The
16 board or a designated board member may enter into an agreement
17 for corrective action with an applicant or licensee when the
18 board or a designated board member determines that a complaint
19 alleging a violation of a statute or rule enforced by the board
20 or an order issued by the board may best be resolved through an
21 agreement for corrective action when disciplinary action is not
22 required to protect the public.

23 (b) An agreement for corrective action must:

24 (1) be in writing;

25 (2) specify the facts upon which the agreement is based;

26 (3) clearly indicate the corrective action agreed upon; and

27 (4) provide that the complaint that resulted in the

28 agreement must be dismissed by the board or the designated board
29 member upon successful completion of the corrective action.

30 (c) The board or designated board member may determine
31 successful completion when the applicant or licensee submits a
32 request for dismissal that documents the applicant's or
33 licensee's successful completion of the corrective action. The
34 burden of proof is on the applicant or licensee to prove
35 successful completion.

36 (d) An agreement for corrective action is not disciplinary

1 action but must be treated as public data under chapter 13.

2 (e) The board may impose a fee to reimburse the board for
3 all or part of the costs of the proceedings resulting in a
4 corrective action, including, but not limited to, the amount
5 paid by the board for services received from or expenses
6 incurred by the Office of the Attorney General, board members,
7 board staff, or the amount paid by the board for reproducing
8 records.

9 (f) The board or designated board member must not enter
10 into an agreement for corrective action when the complaint
11 alleged sexual conduct with a client unless there is
12 insufficient evidence to justify disciplinary action but there
13 is a basis for corrective action.

14 Subd. 2. [STIPULATIONS TO CEASE PRACTICING SOCIAL
15 WORK.] (a) The board or a designated board member may enter into
16 a stipulation to cease practicing social work with a licensee if
17 the board or designated board member determines that the
18 licensee is unable to practice social work competently or safely
19 or that the social worker's continued practice creates an
20 unacceptable risk of safety to clients, potential clients, or
21 the public.

22 (b) A stipulation to cease practicing social work must:

23 (1) be in writing;

24 (2) specify the facts upon which the stipulation is based;

25 (3) clearly indicate that the licensee must not practice
26 social work and must not hold out to the public that the social
27 worker is licensed; and

28 (4) specify the term of the stipulation or when and under
29 what circumstances the licensee may petition the board for
30 termination of the stipulation.

31 (c) A stipulation to cease practicing social work is not
32 disciplinary action but must be treated as public data under
33 chapter 13.

34 (d) Nothing in this subdivision prevents the board or
35 designated board member from taking any other disciplinary or
36 adversarial action authorized by sections 148D.255 to 148D.265

1 in lieu of or in addition to entering into a stipulation to
2 cease practicing social work.

3 REQUIREMENTS OF NONLICENSEES

4 Sec. 56. [148D.275] [UNAUTHORIZED PRACTICE.]

5 No individual may:

6 (1) engage in the practice of social work without a social
7 work license under sections 148D.055 and 148D.060, except when
8 the individual is exempt from licensure pursuant to section
9 148D.065;

10 (2) provide social work services to a client who resides in
11 this state when the individual providing the services is not
12 licensed as a social worker pursuant to sections 148D.055 to
13 148D.060, except when the individual is exempt from licensure
14 pursuant to section 148D.065.

15 Sec. 57. [148D.280] [USE OF TITLES.]

16 No individual may be presented to the public by any title
17 incorporating the words "social work" or "social worker" or in
18 the titles in section 148D.195, unless that individual holds a
19 license pursuant to sections 148D.055 and 148D.060, or practices
20 in a setting exempt from licensure pursuant to section 148D.065.

21 Sec. 58. [148D.285] [REPORTING REQUIREMENTS.]

22 Subdivision 1. [INSTITUTIONS.] A state agency, political
23 subdivision, agency of a local unit of government, private
24 agency, hospital, clinic, prepaid medical plan, or other health
25 care institution or organization must report to the board:

26 (1) any adversarial action, disciplinary action, or other
27 sanction for conduct that might constitute grounds for action
28 under section 148D.190;

29 (2) the resignation of any applicant or licensee prior to
30 the conclusion of any proceeding for adversarial action,
31 disciplinary action, or other sanction for conduct that might
32 constitute grounds for action under section 148D.190; or

33 (3) the resignation of any applicant or licensee prior to
34 the commencement of a proceeding for adversarial action,
35 disciplinary action, or other sanction for conduct that might
36 constitute grounds for action under section 148D.190, but after

1 the applicant or licensee had knowledge that a proceeding was
2 contemplated or in preparation.

3 Subd. 2. [PROFESSIONAL SOCIETIES AND ASSOCIATIONS.] A
4 state or local professional society or association whose members
5 consist primarily of licensed social workers must report to the
6 board any adversarial action, disciplinary action, or other
7 sanction taken against a member.

8 Subd. 3. [IMMUNITY.] An individual, professional society
9 or association, state agency, political subdivision, agency of a
10 local unit of government, private agency, hospital, clinic,
11 prepaid medical plan, other health care institution or
12 organization or other entity is immune from civil liability or
13 criminal prosecution for submitting in good faith a report under
14 subdivision 1 or 2 or for otherwise reporting, providing
15 information, or testifying about violations or alleged
16 violations of this chapter.

17 Sec. 59. [148D.290] [PENALTIES.]

18 An individual or other entity that violates section
19 148D.275, 148D.280, or 148D.285 is guilty of a misdemeanor.

20 Sec. 60. [APPROPRIATIONS.]

21 \$. is appropriated from state government special
22 revenue funds to the Board of Social Work for fiscal year 2006
23 and \$. is appropriated for fiscal year 2007.

24 Sec. 61. [REPEALER.]

25 Subdivision 1. [REPEAL OF STATUTES.] Minnesota Statutes
26 2004, sections 148B.18; 148B.185; 148B.19; 148B.20; 148B.21;
27 148B.215; 148B.22; 148B.224; 148B.225; 148B.226; 148B.24;
28 148B.25; 148B.26; 148B.27; 148B.28; 148B.281; 148B.282;
29 148B.283; 148B.284; 148B.285; 148B.286; 148B.287; 148B.288; and
30 148B.289, are repealed.

31 Subd. 2. [REPEAL OF RULES.] Minnesota Rules, parts
32 8740.0100; 8740.0110; 8740.0120; 8740.0122; 8740.0130;
33 8740.0155; 8740.0185; 8740.0187; 8740.0200; 8740.0240;
34 8740.0260; 8740.0285; 8740.0300; 8740.0310; 8740.0315;
35 8740.0320; 8740.0325; 8740.0330; 8740.0335; 8740.0340; and
36 8740.0345, are repealed.

1 Sec. 62. [EFFECTIVE DATE.]

2 Sections 1 to 59 and 61 are effective January 1, 2006.

3 Section 60 is effective July 1, 2005.

4 ARTICLE 2

5 CONFORMING AMENDMENTS

6 Section 1. Minnesota Statutes 2004, section 13.383,
7 subdivision 10, is amended to read:

8 Subd. 10. [SOCIAL WORKERS.] (a) [DISCIPLINARY DATA
9 GENERALLY.] Data held by the Board of Social Work in connection
10 with disciplinary matters are classified under
11 ~~sections 148B.2817-subdivisions-2-and-57-and-148B.285~~ 148D.255
12 to 148D.270.

13 (b) [REPORTS OF VIOLATIONS.] Certain reports of violations
14 submitted to the Board of Social Work are classified
15 under ~~section-148B.284~~ sections 148D.240 to 148D.250.

16 (c) [CLIENT RECORDS.] Client records of a patient cared
17 for by a social worker who is under review by the Board of
18 Social Work are classified under ~~sections-148B.282-and-148B.2867~~
19 ~~subdivision-3~~ section 148D.230.

20 Sec. 2. Minnesota Statutes 2004, section 13.411,
21 subdivision 5, is amended to read:

22 Subd. 5. [SOCIAL WORKERS.] Residence addresses and
23 telephone numbers of social worker licensees are classified
24 under ~~section-148B.2857-subdivision-5~~ chapter 148D.

25 Sec. 3. Minnesota Statutes 2004, section 144.335,
26 subdivision 1, is amended to read:

27 Subdivision 1. [DEFINITIONS.] For the purposes of this
28 section, the following terms have the meanings given them:

29 (a) "Patient" means a natural person who has received
30 health care services from a provider for treatment or
31 examination of a medical, psychiatric, or mental condition, the
32 surviving spouse and parents of a deceased patient, or a person
33 the patient appoints in writing as a representative, including a
34 health care agent acting pursuant to chapter 145C, unless the
35 authority of the agent has been limited by the principal in the
36 principal's health care directive. Except for minors who have

1 received health care services pursuant to sections 144.341 to
2 144.347, in the case of a minor, patient includes a parent or
3 guardian, or a person acting as a parent or guardian in the
4 absence of a parent or guardian.

5 (b) "Provider" means (1) any person who furnishes health
6 care services and is regulated to furnish the services pursuant
7 to chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148C, 148D,
8 150A, 151, 153, or 153A, or Minnesota Rules, chapter 4666; (2) a
9 home care provider licensed under section 144A.46; (3) a health
10 care facility licensed pursuant to this chapter or chapter 144A;
11 (4) a physician assistant registered under chapter 147A; and (5)
12 an unlicensed mental health practitioner regulated pursuant to
13 sections 148B.60 to 148B.71.

14 (c) "Individually identifiable form" means a form in which
15 the patient is or can be identified as the subject of the health
16 records.

17 Sec. 4. Minnesota Statutes 2004, section 144A.46,
18 subdivision 2, is amended to read:

19 Subd. 2. [EXEMPTIONS.] The following individuals or
20 organizations are exempt from the requirement to obtain a home
21 care provider license:

22 (1) a person who is licensed as a registered nurse under
23 sections 148.171 to 148.285 and who independently provides
24 nursing services in the home without any contractual or
25 employment relationship to a home care provider or other
26 organization;

27 (2) a personal care assistant who provides services to only
28 one individual under the medical assistance program as
29 authorized under sections 256B.0625, subdivision 19a, and
30 256B.04, subdivision 16;

31 (3) a person or organization that exclusively offers,
32 provides, or arranges for personal care assistant services to
33 only one individual under the medical assistance program as
34 authorized under sections 256B.0625, subdivision 19a, and
35 256B.04, subdivision 16;

36 (4) a person who is licensed under sections 148.65 to

1 148.78 and who independently provides physical therapy services
2 in the home without any contractual or employment relationship
3 to a home care provider or other organization;

4 (5) a provider that is licensed by the commissioner of
5 human services to provide semi-independent living services under
6 Minnesota Rules, parts 9525.0500 to 9525.0660 when providing
7 home care services to a person with a developmental disability;

8 (6) a provider that is licensed by the commissioner of
9 human services to provide home and community-based services
10 under Minnesota Rules, parts 9525.2000 to 9525.2140 when
11 providing home care services to a person with a developmental
12 disability;

13 (7) a person or organization that provides only home
14 management services, if the person or organization is registered
15 under section 144A.461; or

16 (8) a person who is licensed as a social worker under
17 ~~sections 148B.18 to 148B.289~~ chapter 148D and who provides
18 social work services in the home independently and not through
19 any contractual or employment relationship with a home care
20 provider or other organization.

21 An exemption under this subdivision does not excuse the
22 individual from complying with applicable provisions of the home
23 care bill of rights.

24 Sec. 5. Minnesota Statutes 2004, section 147.09, is
25 amended to read:

26 147.09 [EXEMPTIONS.]

27 Section 147.081 does not apply to, control, prevent or
28 restrict the practice, service, or activities of:

29 (1) A person who is a commissioned medical officer of, a
30 member of, or employed by, the armed forces of the United
31 States, the United States Public Health Service, the Veterans
32 Administration, any federal institution or any federal agency
33 while engaged in the performance of official duties within this
34 state, if the person is licensed elsewhere.

35 (2) A licensed physician from a state or country who is in
36 actual consultation here.

1 (3) A licensed or registered physician who treats the
2 physician's home state patients or other participating patients
3 while the physicians and those patients are participating
4 together in outdoor recreation in this state as defined by
5 section 86A.03, subdivision 3. A physician shall first register
6 with the board on a form developed by the board for that
7 purpose. The board shall not be required to promulgate the
8 contents of that form by rule. No fee shall be charged for this
9 registration.

10 (4) A student practicing under the direct supervision of a
11 preceptor while the student is enrolled in and regularly
12 attending a recognized medical school.

13 (5) A student who is in continuing training and performing
14 the duties of an intern or resident or engaged in postgraduate
15 work considered by the board to be the equivalent of an
16 internship or residency in any hospital or institution approved
17 for training by the board, provided the student has a residency
18 permit issued by the board under section 147.0391.

19 (6) A person employed in a scientific, sanitary, or
20 teaching capacity by the state university, the Department of
21 Education, a public or private school, college, or other bona
22 fide educational institution, a nonprofit organization, which
23 has tax-exempt status in accordance with the Internal Revenue
24 Code, section 501(c)(3), and is organized and operated primarily
25 for the purpose of conducting scientific research directed
26 towards discovering the causes of and cures for human diseases,
27 or the state Department of Health, whose duties are entirely of
28 a research, public health, or educational character, while
29 engaged in such duties; provided that if the research includes
30 the study of humans, such research shall be conducted under the
31 supervision of one or more physicians licensed under this
32 chapter.

33 (7) Physician's assistants registered in this state.

34 (8) A doctor of osteopathy duly licensed by the state Board
35 of Osteopathy under Minnesota Statutes 1961, sections 148.11 to
36 148.16, prior to May 1, 1963, who has not been granted a license

1 to practice medicine in accordance with this chapter provided
2 that the doctor confines activities within the scope of the
3 license.

4 (9) Any person licensed by a health related licensing
5 board, as defined in section 214.01, subdivision 2, or
6 registered by the commissioner of health pursuant to section
7 214.13, including psychological practitioners with respect to
8 the use of hypnosis; provided that the person confines
9 activities within the scope of the license.

10 (10) A person who practices ritual circumcision pursuant to
11 the requirements or tenets of any established religion.

12 (11) A Christian Scientist or other person who endeavors to
13 prevent or cure disease or suffering exclusively by mental or
14 spiritual means or by prayer.

15 (12) A physician licensed to practice medicine in another
16 state who is in this state for the sole purpose of providing
17 medical services at a competitive athletic event. The physician
18 may practice medicine only on participants in the athletic
19 event. A physician shall first register with the board on a
20 form developed by the board for that purpose. The board shall
21 not be required to adopt the contents of the form by rule. The
22 physician shall provide evidence satisfactory to the board of a
23 current unrestricted license in another state. The board shall
24 charge a fee of \$50 for the registration.

25 (13) A psychologist licensed under section 148.907 or a
26 social worker licensed under ~~section 148B-21~~ chapter 148D who
27 uses or supervises the use of a penile or vaginal plethysmograph
28 in assessing and treating individuals suspected of engaging in
29 aberrant sexual behavior and sex offenders.

30 (14) Any person issued a training course certificate or
31 credentialed by the Emergency Medical Services Regulatory Board
32 established in chapter 144E, provided the person confines
33 activities within the scope of training at the certified or
34 credentialed level.

35 (15) An unlicensed complementary and alternative health
36 care practitioner practicing according to chapter 146A.

1 Sec. 6. Minnesota Statutes 2004, section 214.01,
2 subdivision 2, is amended to read:

3 Subd. 2. [HEALTH-RELATED LICENSING BOARD.] "Health-related
4 licensing board" means the Board of Examiners of Nursing Home
5 Administrators established pursuant to section 144A.19, the
6 Office of Unlicensed Complementary and Alternative Health Care
7 Practice established pursuant to section 146A.02, the Board of
8 Medical Practice created pursuant to section 147.01, the Board
9 of Nursing created pursuant to section 148.181, the Board of
10 Chiropractic Examiners established pursuant to section 148.02,
11 the Board of Optometry established pursuant to section 148.52,
12 the Board of Physical Therapy established pursuant to section
13 148.67, the Board of Psychology established pursuant to section
14 148.90, the Board of Social Work pursuant to section ~~148B.19~~
15 148D.025, the Board of Marriage and Family Therapy pursuant to
16 section 148B.30, the Office of Mental Health Practice
17 established pursuant to section 148B.61, the Board of Behavioral
18 Health and Therapy established by section 148B.51, the Alcohol
19 and Drug Counselors Licensing Advisory Council established
20 pursuant to section 148C.02, the Board of Dietetics and
21 Nutrition Practice established under section 148.622, the Board
22 of Dentistry established pursuant to section 150A.02, the Board
23 of Pharmacy established pursuant to section 151.02, the Board of
24 Podiatric Medicine established pursuant to section 153.02, and
25 the Board of Veterinary Medicine, established pursuant to
26 section 156.01.

27 Sec. 7. Minnesota Statutes 2004, section 245.462,
28 subdivision 18, is amended to read:

29 Subd. 18. [MENTAL HEALTH PROFESSIONAL.] "Mental health
30 professional" means a person providing clinical services in the
31 treatment of mental illness who is qualified in at least one of
32 the following ways:

33 (1) in psychiatric nursing: a registered nurse who is
34 licensed under sections 148.171 to 148.285; and:

35 (i) who is certified as a clinical specialist or as a nurse
36 practitioner in adult or family psychiatric and mental health

1 nursing by a national nurse certification organization; or

2 (ii) who has a master's degree in nursing or one of the
3 behavioral sciences or related fields from an accredited college
4 or university or its equivalent, with at least 4,000 hours of
5 post-master's supervised experience in the delivery of clinical
6 services in the treatment of mental illness;

7 (2) in clinical social work: a person licensed as an
8 independent clinical social worker under ~~section-148B-217~~
9 ~~subdivision-6~~ chapter 148D, or a person with a master's degree
10 in social work from an accredited college or university, with at
11 least 4,000 hours of post-master's supervised experience in the
12 delivery of clinical services in the treatment of mental
13 illness;

14 (3) in psychology: an individual licensed by the Board of
15 Psychology under sections 148.88 to 148.98 who has stated to the
16 Board of Psychology competencies in the diagnosis and treatment
17 of mental illness;

18 (4) in psychiatry: a physician licensed under chapter 147
19 and certified by the American Board of Psychiatry and Neurology
20 or eligible for board certification in psychiatry;

21 (5) in marriage and family therapy: the mental health
22 professional must be a marriage and family therapist licensed
23 under sections 148B.29 to 148B.39 with at least two years of
24 post-master's supervised experience in the delivery of clinical
25 services in the treatment of mental illness; or

26 (6) in allied fields: a person with a master's degree from
27 an accredited college or university in one of the behavioral
28 sciences or related fields, with at least 4,000 hours of
29 post-master's supervised experience in the delivery of clinical
30 services in the treatment of mental illness.

31 Sec. 8. Minnesota Statutes 2004, section 245.4871,
32 subdivision 27, is amended to read:

33 Subd. 27. [MENTAL HEALTH PROFESSIONAL.] "Mental health
34 professional" means a person providing clinical services in the
35 diagnosis and treatment of children's emotional disorders. A
36 mental health professional must have training and experience in

1 working with children consistent with the age group to which the
2 mental health professional is assigned. A mental health
3 professional must be qualified in at least one of the following
4 ways:

5 (1) in psychiatric nursing, the mental health professional
6 must be a registered nurse who is licensed under sections
7 148.171 to 148.285 and who is certified as a clinical specialist
8 in child and adolescent psychiatric or mental health nursing by
9 a national nurse certification organization or who has a
10 master's degree in nursing or one of the behavioral sciences or
11 related fields from an accredited college or university or its
12 equivalent, with at least 4,000 hours of post-master's
13 supervised experience in the delivery of clinical services in
14 the treatment of mental illness;

15 (2) in clinical social work, the mental health professional
16 must be a person licensed as an independent clinical social
17 worker under ~~section-148B.217-subdivision-6~~ chapter 148D, or a
18 person with a master's degree in social work from an accredited
19 college or university, with at least 4,000 hours of
20 post-master's supervised experience in the delivery of clinical
21 services in the treatment of mental disorders;

22 (3) in psychology, the mental health professional must be
23 an individual licensed by the board of psychology under sections
24 148.88 to 148.98 who has stated to the board of psychology
25 competencies in the diagnosis and treatment of mental disorders;

26 (4) in psychiatry, the mental health professional must be a
27 physician licensed under chapter 147 and certified by the
28 American board of psychiatry and neurology or eligible for board
29 certification in psychiatry;

30 (5) in marriage and family therapy, the mental health
31 professional must be a marriage and family therapist licensed
32 under sections 148B.29 to 148B.39 with at least two years of
33 post-master's supervised experience in the delivery of clinical
34 services in the treatment of mental disorders or emotional
35 disturbances; or

36 (6) in allied fields, the mental health professional must

1 be a person with a master's degree from an accredited college or
2 university in one of the behavioral sciences or related fields,
3 with at least 4,000 hours of post-master's supervised experience
4 in the delivery of clinical services in the treatment of
5 emotional disturbances.

6 Sec. 9. Minnesota Statutes 2004, section 256B.0625,
7 subdivision 38, is amended to read:

8 Subd. 38. [PAYMENTS FOR MENTAL HEALTH SERVICES.] Payments
9 for mental health services covered under the medical assistance
10 program that are provided by masters-prepared mental health
11 professionals shall be 80 percent of the rate paid to
12 doctoral-prepared professionals. Payments for mental health
13 services covered under the medical assistance program that are
14 provided by masters-prepared mental health professionals
15 employed by community mental health centers shall be 100 percent
16 of the rate paid to doctoral-prepared professionals. For
17 purposes of reimbursement of mental health professionals under
18 the medical assistance program, all social workers who:

19 (1) have received a master's degree in social work from a
20 program accredited by the Council on Social Work Education;

21 (2) are licensed at the level of graduate social worker or
22 independent social worker; and

23 (3) are practicing clinical social work under appropriate
24 supervision, as defined by ~~section 148B.18~~ chapter 148D; meet
25 all requirements under Minnesota Rules, part 9505.0323, subpart
26 24, and shall be paid accordingly.

27 Sec. 10. Minnesota Statutes 2004, section 256J.08,
28 subdivision 73a, is amended to read:

29 Subd. 73a. [QUALIFIED PROFESSIONAL.] (a) For physical
30 illness, injury, or incapacity, a "qualified professional" means
31 a licensed physician, a physician's assistant, a nurse
32 practitioner, or a licensed chiropractor.

33 (b) For mental retardation and intelligence testing, a
34 "qualified professional" means an individual qualified by
35 training and experience to administer the tests necessary to
36 make determinations, such as tests of intellectual functioning,

1 assessments of adaptive behavior, adaptive skills, and
2 developmental functioning. These professionals include licensed
3 psychologists, certified school psychologists, or certified
4 psychometrists working under the supervision of a licensed
5 psychologist.

6 (c) For learning disabilities, a "qualified professional"
7 means a licensed psychologist or school psychologist with
8 experience determining learning disabilities.

9 (d) For mental health, a "qualified professional" means a
10 licensed physician or a qualified mental health professional. A
11 "qualified mental health professional" means:

12 (1) for children, in psychiatric nursing, a registered
13 nurse who is licensed under sections 148.171 to 148.285, and who
14 is certified as a clinical specialist in child and adolescent
15 psychiatric or mental health nursing by a national nurse
16 certification organization or who has a master's degree in
17 nursing or one of the behavioral sciences or related fields from
18 an accredited college or university or its equivalent, with at
19 least 4,000 hours of post-master's supervised experience in the
20 delivery of clinical services in the treatment of mental
21 illness;

22 (2) for adults, in psychiatric nursing, a registered nurse
23 who is licensed under sections 148.171 to 148.285, and who is
24 certified as a clinical specialist in adult psychiatric and
25 mental health nursing by a national nurse certification
26 organization or who has a master's degree in nursing or one of
27 the behavioral sciences or related fields from an accredited
28 college or university or its equivalent, with at least 4,000
29 hours of post-master's supervised experience in the delivery of
30 clinical services in the treatment of mental illness;

31 (3) in clinical social work, a person licensed as an
32 independent clinical social worker under ~~section-148B-217~~
33 ~~subdivision-6~~ chapter 148D, or a person with a master's degree
34 in social work from an accredited college or university, with at
35 least 4,000 hours of post-master's supervised experience in the
36 delivery of clinical services in the treatment of mental

1 illness;

2 (4) in psychology, an individual licensed by the Board of
3 Psychology under sections 148.88 to 148.98, who has stated to
4 the Board of Psychology competencies in the diagnosis and
5 treatment of mental illness;

6 (5) in psychiatry, a physician licensed under chapter 147
7 and certified by the American Board of Psychiatry and Neurology
8 or eligible for board certification in psychiatry; and

9 (6) in marriage and family therapy, the mental health
10 professional must be a marriage and family therapist licensed
11 under sections 148B.29 to 148B.39, with at least two years of
12 post-master's supervised experience in the delivery of clinical
13 services in the treatment of mental illness.

14 Sec. 11. Minnesota Statutes 2004, section 319B.02,
15 subdivision 19, is amended to read:

16 Subd. 19. [PROFESSIONAL SERVICES.] "Professional services"
17 means services of the type required or permitted to be furnished
18 by a professional under a license, registration, or certificate
19 issued by the state of Minnesota to practice medicine and
20 surgery under sections 147.01 to 147.22, as a physician
21 assistant pursuant to sections 147A.01 to 147A.27, chiropractic
22 under sections 148.01 to 148.105, registered nursing under
23 sections 148.171 to 148.285, optometry under sections 148.52 to
24 148.62, psychology under sections 148.88 to 148.98, social work
25 under ~~sections 148B.18 to 148B.289~~ chapter 148D, dentistry and
26 dental hygiene under sections 150A.01 to 150A.12, pharmacy under
27 sections 151.01 to 151.40, podiatric medicine under sections
28 153.01 to 153.25, veterinary medicine under sections 156.001 to
29 156.14, architecture, engineering, surveying, landscape
30 architecture, geoscience, and certified interior design under
31 sections 326.02 to 326.15, accountancy under chapter 326A, or
32 law under sections 481.01 to 481.17, or under a license or
33 certificate issued by another state under similar laws.
34 Professional services includes services of the type required to
35 be furnished by a professional pursuant to a license or other
36 authority to practice law under the laws of a foreign nation.

1 Sec. 12. Minnesota Statutes 2004, section 319B.40, is
2 amended to read:

3 319B.40 [PROFESSIONAL HEALTH SERVICES.]

4 (a) Individuals who furnish professional services pursuant
5 to a license, registration, or certificate issued by the state
6 of Minnesota to practice medicine pursuant to sections 147.01 to
7 147.22, as a physician assistant pursuant to sections 147A.01 to
8 147A.27, chiropractic pursuant to sections 148.01 to 148.106,
9 registered nursing pursuant to sections 148.171 to 148.285,
10 optometry pursuant to sections 148.52 to 148.62, psychology
11 pursuant to sections 148.88 to 148.98, social work pursuant to
12 ~~sections 148B.18 to 148B.289~~ chapter 148D, dentistry pursuant to
13 sections 150A.01 to 150A.12, pharmacy pursuant to sections
14 151.01 to 151.40, or podiatric medicine pursuant to sections
15 153.01 to 153.26 are specifically authorized to practice any of
16 these categories of services in combination if the individuals
17 are organized under this chapter.

18 (b) This authorization does not authorize an individual to
19 practice any profession, or furnish a professional service, for
20 which the individual is not licensed, registered, or certified,
21 but otherwise applies regardless of any contrary provision of a
22 licensing statute or rules adopted pursuant to that statute,
23 related to practicing and organizing in combination with other
24 health services professionals.

25 Sec. 13. [EFFECTIVE DATE.]

26 This article is effective January 1, 2006.

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148B.18 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 148B.18 to 148B.289, the following terms have the meanings given them.

Subd. 2. **Accredited program of social work.** "Accredited program of social work" means a school of social work or other educational program that has been accredited by the Council on Social Work Education.

Subd. 2a. **Applicant.** "Applicant" means a person who has submitted an application, with the appropriate fee, for licensure, temporary licensure, or reinstatement of an expired license.

Subd. 3. **Board.** "Board" means the Board of Social Work created in section 148B.19.

Subd. 3a. **Client.** "Client" means an individual, couple, family, group, organization, or community that receives, received, or should have received services from an applicant or a licensee.

Subd. 4. **County agency social worker.** "County agency social worker" means an individual who is employed by a county social service agency in Minnesota in social work practice.

Subd. 4a. **Licensee.** "Licensee" means a person licensed by the board.

Subd. 5. **State agency social worker.** "State agency social worker" means an individual who is employed by a state social service agency in Minnesota in social work practice.

Subd. 8. **Private practice.** "Private practice" means social work practice conducted by a licensee practicing within the permissible scope of a license, as defined in subdivision 11, and under appropriate supervision, as defined in subdivisions 11 and 12, who is either self-employed, or a member of a partnership or of a group practice, rather than being employed by an agency, clinic, or other similar entity.

Subd. 9. **Psychotherapy.** "Psychotherapy" in clinical social work practice means the application of social work theory, methodology, and values in the treatment of a person or persons who have cognitive, emotional, behavioral, or social dysfunctions through psychosocial, psychological, or interpersonal methods. The treatment is a planned and structured program which is based on information from a differential diagnostic assessment, and is directed toward the accomplishment of goals provided in a plan of care. The person-in-situation/environment configuration is considered and integrated into the diagnosis and treatment. Psychotherapy may be conducted by licensed independent clinical social workers and by licensed graduate or licensed independent social workers who practice under the supervision of either a licensed independent clinical social worker or, if approved by the board, by another qualified mental health professional.

Subd. 10. **Qualified mental health professional.** "Qualified mental health professional" means a psychiatrist, board-certified or eligible for board certification, and licensed under chapter 147; a psychologist licensed under sections 148.88 to 148.98; an independent clinical social worker who has the qualifications in section 148B.21, subdivision 6; a psychiatric registered nurse with a master's degree from an accredited school of nursing, licensed under section 148.211, with at least two years of post-master's supervised experience in direct clinical practice; a marriage and family therapist who

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is licensed under sections 148B.29 to 148B.39; or an equivalent mental health professional, as determined by the board, who is licensed or certified by a board or agency in another state or territory.

Subd. 11. **Social work practice.** (a) "Social work practice" is the application of social work theory, knowledge, methods, and ethics to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities, with particular attention to the person-in-environment configuration.

(b) For all levels of licensure, social work practice includes assessment, treatment planning and evaluation, case management, information and referral, counseling, advocacy, teaching, research, supervision, consultation, community organization, and the development, implementation, and administration of policies, programs, and activities.

(c) For persons licensed at the licensed independent clinical social worker level, and for persons licensed at either the licensed graduate social worker or the licensed independent social worker level who practice social work under the supervision of a licensed independent clinical social worker, social work practice includes the diagnosis and treatment of mental and emotional disorders in individuals, families, and groups. The treatment of mental and emotional disorders includes the provision of individual, marital, and group psychotherapy.

Subd. 12. **Supervision.** "Supervision" means the direction of social work practice in face-to-face sessions. Further standards for supervision shall be determined by the Board of Social Work. Supervision shall be provided:

(1) by a social worker licensed at least at the level of the worker being supervised and qualified under section 148B.21 to practice without supervision, except that a licensed graduate social worker may supervise a licensed social worker; or

(2) by another qualified professional or qualified mental health professional when the Board of Social Work determines that supervision by a social worker as required in clause (1) is unobtainable, or in other situations considered appropriate by the Board of Social Work.

Subd. 13. **Temporary licensee.** "Temporary licensee" means a person licensed by the board under section 148B.21, subdivision 7.

148B.185 APPLICABILITY.

Sections 148B.18 to 148B.289 apply to all applicants and licensees, to all persons practicing social work with clients in this state, and to persons engaged in the unauthorized practice of social work.

148B.19 BOARD OF SOCIAL WORK.

Subdivision 1. **Creation.** The Board of Social Work is created. The board consists of 15 members appointed by the governor. The members are:

(1) ten social workers licensed under sections 148B.18 to 148B.289; and

(2) five public members as defined in section 214.02.

Subd. 2. **Qualifications of board members.** Five of the social worker members of the board shall be licensed at the baccalaureate level of licensure and five shall be licensed at the master's level of licensure.

Eight of the social worker members shall be engaged in the

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practice of social work in Minnesota in the following settings:

- (1) one member shall be engaged in the practice of social work in a state agency;
- (2) one member shall be engaged in the practice of social work in a county agency;
- (3) two members shall be engaged in the practice of social work in a private agency;
- (4) one member shall be engaged in the practice of social work in a private clinical social work setting;
- (5) one member shall be an educator engaged in regular teaching duties at an accredited program of social work;
- (6) one member shall be engaged in the practice of social work in an elementary, middle, or secondary school; and
- (7) one member shall be employed in a hospital or nursing home licensed under chapter 144 or 144A.

In addition, at least five members shall be persons with expertise in communities of color and at least six members shall reside outside of the seven-county metropolitan area.

Subd. 4. Officers and executive director. The board shall annually elect from its membership a chair, vice-chair, and secretary-treasurer, and shall adopt rules to govern its proceedings. The board shall appoint and employ an executive director who is not a member of the board. The employment of the executive director shall be subject to the terms described in section 214.04, subdivision 2a.

Subd. 5. Terms and salaries. Chapter 214 applies to the Board of Social Work unless superseded by sections 148B.18 to 148B.289.

148B.20 DUTIES OF BOARD.

Subdivision 1. General. The Board of Social Work shall:

- (a) Adopt and enforce rules for licensure of social workers and for regulation of their professional conduct. The rules must be designed to protect the public.
- (b) Adopt rules establishing standards and methods of determining whether applicants and licensees are qualified under sections 148B.21 to 148B.24. The rules must make provision for examinations and must establish standards for professional conduct, including adoption of a code of professional ethics and requirements for continuing education.
- (c) Hold examinations at least twice a year to assess applicants' knowledge and skills. The examinations may be written or oral and may be administered by the board or by a body designated by the board. Examinations must test the knowledge and skills of each of the four groups of social workers qualified under section 148B.21 to practice social work. Examinations must minimize cultural bias and must be balanced in theory.
- (d) Issue licenses to individuals qualified under sections 148B.18 to 148B.24.
- (e) Issue copies of the rules for licensure to all applicants.
- (f) Establish and implement procedures, including a standard disciplinary process, to ensure that individuals licensed as social workers will comply with the board's rules.
- (g) Establish, maintain, and publish annually a register of current licensees.
- (h) Educate the public about the existence and content of the rules for social work licensing to enable consumers to file

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complaints against licensees who may have violated the rules.

(i) Evaluate its rules in order to refine the standards for licensing social workers and to improve the methods used to enforce the board's standards.

Subd. 3. Duties of board. The board shall establish fees, including late fees, for licenses and renewals so that the total fees collected by the board will as closely as possible equal anticipated expenditures during the fiscal biennium, as provided in section 16A.1285. Fees must be credited to accounts in the special revenue fund.

148B.21 REQUIREMENTS FOR LICENSURE.

Subdivision 1. Categories of licensees. The board shall issue licenses for the following four groups of individuals qualified under this section to practice social work:

- (1) social workers;
- (2) graduate social workers;
- (3) independent social workers; and
- (4) independent clinical social workers.

Subd. 2. Fee. Each applicant shall pay a nonrefundable fee set by the board. Fees paid to the board shall be deposited in the state government special revenue fund.

Subd. 3. Social worker. (a) Except as provided in paragraph (b), to be licensed as a social worker, an applicant must provide evidence satisfactory to the board that the applicant:

- (1) has received a baccalaureate degree from an accredited program of social work;
- (2) has passed the examination provided for in section 148B.20, subdivision 1;
- (3) will engage in social work practice only under supervision as defined in section 148B.18, subdivision 12, for at least two years in full-time employment or 4,000 hours of part-time employment;
- (4) will conduct all professional activities as a social worker in accordance with standards for professional conduct established by the statutes and rules of the board; and
- (5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by the board.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (2), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as a social worker if the applicant:

- (1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (3), (4), and (5); and
- (2) provides to the board letters of recommendation and experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.

This paragraph expires August 1, 2005.

Subd. 4. Graduate social worker. (a) Except as provided in paragraph (b), to be licensed as a graduate social worker, an applicant must provide evidence satisfactory to the board that the applicant:

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(1) has received a master's degree from an accredited program of social work or doctoral degree in social work;

(2) has passed the examination provided for in section 148B.20, subdivision 1;

(3) will engage in social work practice only under supervision as defined in section 148B.18, subdivision 12;

(4) will conduct all professional activities as a graduate social worker in accordance with standards for professional conduct established by the statutes and rules of the board; and

(5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by the board.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (2), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as a graduate social worker if the applicant:

(1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (3), (4), and (5); and

(2) provides to the board letters of recommendation and experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.

This paragraph expires August 1, 2005.

Subd. 5. Independent social worker. (a) Except as provided in paragraph (b), to be licensed as an independent social worker, an applicant must provide evidence satisfactory to the board that the applicant:

(1) has received a master's degree from an accredited program of social work or doctoral degree in social work;

(2) has passed the examination provided for in section 148B.20, subdivision 1;

(3) has practiced social work for at least two years in full-time employment or 4,000 hours of part-time employment under supervision as defined in section 148B.18, subdivision 12, after receiving the master's or doctoral degree in social work;

(4) will conduct all professional activities as an independent social worker in accordance with standards for professional conduct established by the statutes and rules of the board; and

(5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by the board.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (2), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as an independent social worker if the applicant:

(1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (3), (4), and (5); and

(2) provides to the board letters of recommendation and

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experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.
This paragraph expires August 1, 2005.

Subd. 6. **Independent clinical social worker.** (a) Except as provided in paragraph (b), to be licensed as an independent clinical social worker, an applicant must provide evidence satisfactory to the board that the applicant:

(1) has received a master's degree from an accredited program of social work, or doctoral degree in social work, that included an advanced concentration of clinically oriented course work as defined by the board and a supervised clinical field placement at the graduate level, or post-master's clinical training that is found by the board to be equivalent to that course work and field placement;

(2) has practiced clinical social work for at least two years in full-time employment or 4,000 hours of part-time employment under supervision as defined in section 148B.18, subdivision 12, after receiving the master's or doctoral degree in social work;

(3) has passed the examination provided for in section 148B.20, subdivision 1;

(4) will conduct all professional activities as an independent clinical social worker in accordance with standards for professional conduct established by the statutes and rules of the board; and

(5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by the board.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (3), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as an independent clinical social worker if the applicant:

(1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (2), (4), and (5); and

(2) provides to the board letters of recommendation and experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.

This paragraph expires August 1, 2005.

Subd. 6a. **Background checks.** The board shall request a criminal history background check from the superintendent of the Bureau of Criminal Apprehension on all applicants for initial licensure. An application for a license under this section must be accompanied by an executed criminal history consent form and the fee for conducting the criminal history background check. The board shall deposit all fees paid by applicants for criminal history background checks under this subdivision into the miscellaneous special revenue fund. The fees collected under this subdivision are appropriated to the board for the purpose of reimbursing the Bureau of Criminal Apprehension for the cost of the background checks upon their completion.

Subd. 7. **Temporary license.** (a) The board may issue

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a temporary license to practice social work to an applicant who is either:

(1) not licensed in any jurisdiction but has:

(i) applied for a license under section 148B.24;

(ii) applied for a temporary license on a form provided by the board;

(iii) submitted a form provided by the board authorizing the board to complete a criminal background check with the Minnesota Bureau of Criminal Apprehension;

(iv) passed the applicable licensure examination provided for in section 148B.20, subdivision 1, paragraph (c); and

(v) attested on a form provided by the board that the applicant has completed the requirements for a baccalaureate or master's degree from a social work program accredited by the Council on Social Work Education or the requirements for a doctoral degree in social work; or

(2) licensed in another jurisdiction, may or may not have applied for a license under section 148B.20, and has:

(i) applied for a temporary license on a form provided by the board;

(ii) submitted a form provided by the board authorizing the board to complete a criminal background check with the Minnesota Bureau of Criminal Apprehension;

(iii) submitted evidence satisfactory to the board that the applicant is currently licensed or credentialed to practice social work in another jurisdiction; and

(iv) attested on a form provided by the board that the applicant has completed the requirements for a baccalaureate or master's degree from a social work program accredited by the Council on Social Work Education or the requirements for a doctoral degree in social work.

(b) An applicant for a temporary license must not practice social work in Minnesota until the applicant has been granted a temporary license. An applicant who is practicing social work at the time of application is ineligible for a temporary license.

(c) An applicant for a temporary license must pay the nonrefundable application fee described in section 148B.226 plus the required fee for the cost of the criminal background check. Only one fee for the cost of the criminal background check must be submitted when the applicant is applying for both a temporary license and a license under section 148B.20.

(d) An applicant who is not licensed in another jurisdiction and who obtains a temporary license may practice social work only under the supervision of a licensed social worker who is eligible to provide supervision under section 148B.18, subdivision 12. The applicant's supervisor must provide evidence to the board, before the applicant is approved by the board for licensure, that the applicant has practiced social work under supervision. This supervision applies toward the supervision requirement required after licensure.

(e) A temporary licensee who has provided evidence to the board that the licensee has completed the requirements for a baccalaureate degree in social work from a social work program accredited by the Council on Social Work Education may temporarily engage in the social work practice described in section 148B.18, subdivision 11, paragraph (b), but may not engage in the social work practice described in section 148B.18, subdivision 11, paragraph (c).

(f) A temporary licensee who has provided evidence to the

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board that the licensee has completed the requirements for a master's degree in social work from a social work program accredited by the Council on Social Work Education, or the requirements for a doctoral degree in social work, may temporarily engage in the social work practice described in section 148B.18, subdivision 11, paragraphs (b) and (c).

(g) A temporary licensee shall conduct all professional activities as a social worker in accordance with the requirements established by the statutes and rules of the board.

(h) A temporary licensee must use the title "Social Worker - Temporary Licensee" in all professional use of the temporary licensee's name.

(i) The board may immediately revoke the temporary license of any temporary licensee who violates any requirements of this subdivision. A temporary licensee whose temporary license is revoked shall immediately return the temporary license to the board.

(j) A temporary license is valid for six months, or until the board issues or denies a license, or until the board revokes the temporary license, whichever comes first, and is nonrenewable. An individual holding a temporary license may not practice social work for more than six months without a license under section 148B.24.

Subd. 8. **Change of licensure level.** An applicant who applies under this section for licensure as a licensed independent social worker or a licensed independent clinical social worker, and who is licensed at the time of application as a licensed graduate social worker, or a licensed independent social worker, is not required to meet the educational requirement of this section. The applicant must meet all other requirements for licensure at the new level of licensure.

Subd. 9. **Supervision requirement.** If supervised social work practice is required for licensure under this section, and if the applicant has not engaged in the practice of social work during the five years preceding the applicant's application for licensure, then the board may grant a conditional license to the applicant that would require that the applicant obtain additional social work supervision or additional continuing education hours, or both, within a specified time period after licensure. The board shall establish rules to implement this section.

148B.215 CONTESTED CASE HEARING.

An applicant or a licensee who is the subject of an adverse action by the board may request a contested case hearing under chapter 14. An applicant or a licensee who desires to request a contested case hearing must submit a written request to the board within 90 days of the date on which the board mailed the notification of the adverse action.

148B.22 LICENSE RENEWAL REQUIREMENTS.

Subdivision 1. **Renewal.** Licensees shall renew licenses at the time and in the manner established by the rules of the board.

Subd. 1a. **Reinstatement of expired licenses.** (a) The board must reinstate an expired license under either of the following conditions:

(1) hardship cases in which the applicant has:

(i) demonstrated to the board's satisfaction that the applicant was unable to comply with the board's license renewal requirements due to a mental or physical condition;

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(ii) submitted an application for reinstatement on a form provided by the board;
(iii) paid the applicable hardship reinstatement fee described in section 148B.226, subdivision 2, paragraph (j);
(iv) demonstrated to the board's satisfaction that the applicant was in compliance with the board's continuing education requirements at the time the license expired; and
(v) if applicable, demonstrated to the board's satisfaction that the licensee is in compliance with the supervised practice requirements established by the board in rule and statute; or
(2) nonhardship cases in which the applicant has:
(i) submitted an application for reinstatement on a form provided by the board within one year of the date the license expired;

(ii) paid the applicable nonhardship reinstatement fee described in section 148B.226, subdivision 2, paragraph (k);
(iii) demonstrated to the board's satisfaction that the applicant was in compliance with the board's continuing education requirements at the time the license expired; and
(iv) if applicable, demonstrated to the board's satisfaction that the licensee is in compliance with the supervised practice requirements established by the board in rule and statute.

(b) When an applicant's expired license has been reinstated under paragraph (a), clause (1) or (2), the reinstated license is effective the day following the day the license expired.

(c) A licensee whose license expired on or after August 1, 2001, may apply for reinstatement of an expired license pursuant to paragraph (a), clause (2). The application must be submitted no later than July 31, 2004.

Subd. 2. **Continuing education.** At the time of renewal, each licensee shall provide evidence satisfactory to the board that the licensee has completed during each two-year period at least the equivalent of 30 clock hours of continuing professional postdegree education in programs approved by the board and continues to be qualified to practice under sections 148B.18 to 148B.289.

Subd. 3. **Background checks.** The board shall request a criminal history background check from the superintendent of the Bureau of Criminal Apprehension on all licensees under its jurisdiction who did not complete a criminal history background check as part of an application for initial licensure. This background check is a onetime requirement. An application for a license under this section must be accompanied by an executed criminal history consent form and the fee for conducting the criminal history background check. The board shall deposit all fees paid by licensees for criminal history background checks under this subdivision into the miscellaneous special revenue fund. The fees collected under this subdivision are appropriated to the board for the purpose of reimbursing the Bureau of Criminal Apprehension for the cost of the background checks upon their completion.

148B.224 ALTERNATIVE LICENSE STATUS.

Subdivision 1. **Defined; qualifications.** A license may be placed on inactive status if a licensee is not practicing social work in Minnesota and the licensee does not wish to meet license renewal requirements every two years. A licensee qualifies for inactive status if the licensee demonstrates to the board that the licensee is not practicing social work, as

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defined by section 148B.18, in any setting in Minnesota.

Subd. 2. **Application.** (a) A licensee may apply for inactive status: (1) at any time by submitting a written application for inactive status; or (2) as an alternative to applying for the renewal of a license by so recording on the application for license renewal form and submitting the completed, signed form. The application for inactive status must be accompanied by the nonrefundable inactive status fee specified in section 148B.226, payable to the Board of Social Work. An application that is not completed or signed, or which is not accompanied by the correct inactive status fee, shall be returned to the licensee and is void. If the application for inactive status is received after the expiration date, the licensee shall pay a late fee as specified in section 148B.226, payable to the Board of Social Work, in addition to the inactive status fee, before the application for inactive status will be considered by the board.

(b) The licensee shall attest on a form provided by the board that the applicant will not use the title social worker and will not engage in social work practice in any setting in Minnesota after the date of the board's approval of the application for inactive status.

Subd. 3. **Approval.** The board shall approve an application for inactive status if the qualifications and application requirements have been met.

Subd. 4. **Practice prohibited.** Licensees on inactive status shall not practice, attempt to practice, offer to practice, or advertise or hold themselves out as authorized to practice social work in any setting in Minnesota and shall use only the title "Social Worker - Inactive Status."

Subd. 5. **Time limit on inactive status.** A licensee may maintain a license on inactive status for up to ten consecutive years. Within 30 days after the end of this ten-year period, the licensee must apply for reactivation of the license pursuant to subdivision 7 or the license expires. The board shall mail an application for reactivation to a licensee at least 45 days before the expiration date of the license. Placing the application for license reactivation in first class United States mail, addressed to the licensee at the licensee's last known mailing address with postage prepaid, constitutes valid mailing. Failure to receive the reactivation application does not release a license holder from the requirements of this section.

Subd. 6. **Continuing education requirement.** A licensee whose license is on inactive status must continue to obtain the continuing education hours required by rule that would be required if the licensee's license were on active status.

Subd. 7. **Reactivating a license.** (a) To reactivate a license, a licensee must complete an application for reactivation of a license, in a form specified by the board; document compliance with the continuing education hours required by subdivision 6 and any continuing education hours not reported by the last expiration date of the license; submit a supervision plan under rules of the board, if required; pay a prorated license renewal fee for the balance of the biennial renewal cycle; and pay the duplicate license certificate fee specified in section 148B.226, if the licensee needs a license in order to meet the requirements of Minnesota Rules, part 8740.0340,

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subpart 4.

(b) If a licensee who reactivates a license has been on inactive status for five or more consecutive years and has not practiced social work during this period, the licensee must receive at least 38 hours of supervision for the first year of full-time practice or 2,000 hours of part-time practice, in accordance with the supervised practice requirements in rules of the board, for application to the licensee's current level. A licensee must submit a supervision plan before beginning practice, in accordance with rules of the board. A licensee must have the supervisor submit verification of the supervised practice in a form specified by the board within 30 days of completing this supervised practice requirement. This supervision requirement must be waived if the licensee can document at least two years of social work practice, outside of Minnesota, within the previous five-year period.

(c) For licensed social workers, the completed hours of supervised practice required under this subdivision apply toward any remaining hours required by Minnesota Rules, part 8740.0130, subpart 3.

(d) Licensed graduate social workers and licensed independent social workers shall complete this supervised practice requirement before applying for another social work license. Supervised practice hours obtained to meet this requirement may be applied toward the supervised practice requirement for another social work license.

Subd. 8. License or renewal fee. A licensee who is approved for inactive status before the end of the renewal cycle may not receive a refund for any portion of the license fee or renewal fee.

Subd. 9. Disciplinary or corrective action. The board shall retain jurisdiction over a license on inactive status and may take disciplinary or corrective action against the license based on conduct occurring before inactive status was granted or during the inactive status period.

148B.225 EMERITUS STATUS.

Subdivision 1. Defined; qualifications. A licensee may apply for an emeritus license if the licensee is retired from social work practice and does not intend to practice social work in any setting in Minnesota. A licensee shall qualify for an emeritus license if the licensee demonstrates to the board that the licensee is not practicing social work, as defined in section 148B.18, and verifies that the licensee is retired from social work practice.

Subd. 2. Application. (a) A licensee may apply for an emeritus license: (1) at any time by submitting a written application for an emeritus license; or (2) as an alternative to applying for the renewal of a license by so recording on the application for license renewal form and submitting a completed, signed form. The application for an emeritus license must be accompanied by the onetime, nonrefundable emeritus license fee specified in section 148B.226, payable to the Board of Social Work. An application which is not completed or signed, or which is not accompanied by the correct emeritus license fee, must be returned to the licensee and is void.

(b) An applicant for an emeritus license shall attest on a form provided by the board that the licensee will not use the title "social worker" and will not engage in social work practice in any setting in Minnesota after the date of the

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board's approval of the application for an emeritus license.

Subd. 3. **Approval.** The board shall approve an application for an emeritus license if the qualifications and application requirements have been met. Upon approval of an application for an emeritus license, the board shall issue an emeritus license certificate.

Subd. 4. **Practice prohibited.** A licensee with an emeritus license shall not practice, attempt to practice, offer to practice, or advertise or hold out as authorized to practice social work in any setting in Minnesota, and shall use only the title "social worker emeritus."

Subd. 5. **Reactivating a license.** A licensee with an emeritus license may reactivate a license by meeting the requirements of section 148B.224, subdivision 7.

Subd. 6. **License or renewal fee.** A licensee who applies for and is approved for an emeritus license before the end of the renewal cycle may not receive a refund for any portion of the license fee or renewal fee.

Subd. 7. **Disciplinary action.** (a) The board may resolve any pending complaints against a licensee before approving an application for an emeritus license.

(b) The board shall retain jurisdiction and may take disciplinary action against a licensee holding an emeritus license based on conduct occurring before issuance of the emeritus license.

148B.226 FEES.

Subdivision 1. **How payable.** The fees in subdivision 2 must be paid by personal check, bank draft, cashier's check, or money order payable to the Board of Social Work. All fees are nonrefundable.

Subd. 2. **Fee amounts.** (a) Application fees for licensure are as follows:

(1) for a licensed social worker or a licensed graduate social worker, \$45;

(2) for a licensed independent social worker or a licensed independent clinical social worker, \$90;

(3) for a reciprocity application for licensure at all levels, \$150; and

(4) for a temporary license application, \$50.

(b) A criminal background check fee must be paid in the amount determined by the Bureau of Criminal Apprehension.

(c) License fees payable in addition to application fees for licensure are as follows:

(1) licensed social worker, \$115.20;

(2) licensed graduate social worker, \$201.60;

(3) licensed independent social worker, \$302.40; and

(4) licensed independent clinical social worker, \$331.20.

(d) License renewal fees are as follows:

(1) licensed social worker, \$115.20;

(2) licensed graduate social worker, \$201.60;

(3) licensed independent social worker, \$302.40; and

(4) licensed independent clinical social worker, \$331.20.

(e) An emeritus license fee is \$43.20.

(f) A duplicate license wall certificate is \$30.

(g) Inactive status fees are as follows:

(1) licensed social worker, \$115.20;

(2) licensed graduate social worker, \$201.60;

(3) licensed independent social worker, \$302.40; and

(4) licensed independent clinical social worker, \$331.20.

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(h) A duplicate license card is \$10.

(i) A late fee is one-half of the applicable license renewal fee or inactive status fee.

(j) Hardship reinstatement fees are as follows:

(1) licensed social worker, \$172.80;

(2) licensed graduate social worker, \$302.40;

(3) licensed independent social worker, \$453.60; and

(4) licensed independent clinical social worker, \$496.80.

(k) Nonhardship reinstatement fees are as follows:

(1) licensed social worker, \$230.40;

(2) licensed graduate social worker, \$403.20;

(3) licensed independent social worker, \$604.80; and

(4) licensed independent clinical social worker, \$662.40.

148B.24 RECIPROCITY.

The board shall issue an appropriate license to an individual who holds a current license or other credential from another jurisdiction if the board finds that the requirements for that credential are substantially similar to the requirements in section 148B.21.

148B.25 NONTRANSFERABILITY OF LICENSES.

A social work license is not transferable.

148B.26 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

Subdivision 1. **Grounds.** The following conduct is grounds for the board to deny the application for or the renewal of a temporary license, to take disciplinary or other action against a license as provided for in section 148B.281, or to take corrective action against a licensee as provided for in chapter 214:

(1) engaging in any conduct which violates any statute or rule enforced by the board, or any other law that is related to the practice of social work;

(2) violating any order issued by the board;

(3) practicing outside the scope of practice authorized by this chapter for each level of licensure;

(4) failing to demonstrate the qualifications or satisfy the requirements for licensure, with the burden of proof on the applicant to demonstrate the qualifications or the satisfaction of the requirements;

(5) obtaining a temporary license or license renewal by fraud, bribery, or cheating, or attempting to subvert the examination process;

(6) making a false statement or misrepresentation to the board;

(7) having been the subject of revocation, suspension, or surrender of a social work or related license or of other adverse action related to a social work or related license in another jurisdiction or country;

(8) failing to report the revocation, suspension, or surrender of a social work or related license or other adverse action related to a social work or related license in another jurisdiction or country, failing to report that a complaint or other charges regarding the person's license have been brought in this or another jurisdiction or country, or having been refused a license by any other jurisdiction or country;

(9) engaging in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established;

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(10) engaging in unethical conduct or conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a client, or engaging in a practice which is professionally incompetent with proof of actual injury not having to be established;

(11) being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent or mentally ill, chemically dependent, mentally ill and dangerous to the public, or a psychopathic personality;

(12) being unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals or any other materials, or as a result of any mental or physical condition;

(13) engaging in improper or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(14) obtaining money, property, or services from a client through the use of undue influence, harassment, duress, deception, or fraud or through the improper use of a professional position;

(15) engaging in sexual contact, as defined in section 148A.01, with a client or conduct that is or may reasonably be interpreted by the client as sexual, engaging in verbal behavior that is or may reasonably be interpreted as sexually seductive or sexually demeaning to a client, or engaging in conduct that violates section 617.23;

(16) being convicted, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or a no contest plea, of a crime against a minor;

(17) being convicted, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or a no contest plea of a felony, gross misdemeanor, or misdemeanor reasonably related to the practice of social work, as evidenced by a certified copy of the conviction;

(18) engaging in an unfair discriminatory practice prohibited by chapter 363A of an employee of the applicant, licensee, or facility in which the applicant or licensee practices;

(19) engaging in false, fraudulent, deceptive, or misleading advertising; or

(20) revealing a privileged communication from or relating to a client except when otherwise required or permitted by law.

Subd. 2. Restoring a license. For reasons it finds sufficient, the board may grant a license previously refused, restore a license that has been revoked, or reduce a period of suspension or restriction of a license.

Subd. 3. Review. Suspension, revocation, or restriction of a license shall be reviewed by the board at the request of the licensee against whom the disciplinary action was taken.

Subd. 4. Conduct before licensure. The board's jurisdiction to exercise its powers as provided for in subdivision 1 extends to an applicant's or licensee's conduct that occurred prior to licensure, if the conduct fell below minimum standards for the practice of social work at the time

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the conduct occurred or the conduct continues to affect the applicant's or licensee's present ability to practice social work in conformity with this chapter and the board's rules.

148B.27 PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES; PENALTY.

Subdivision 1. **Practice.** No individual shall engage in social work practice unless that individual holds a valid temporary license or a license as a licensed social worker, licensed graduate social worker, licensed independent social worker, or licensed independent clinical social worker.

Subd. 2. **Use of titles.** No individual shall be presented to the public by any title incorporating the words "social work" or "social worker" unless that individual holds a valid temporary license or a license issued under sections 148B.18 to 148B.289. City, county, and state agency social workers who are not licensed under sections 148B.18 to 148B.289 may use only the title city agency social worker or county agency social worker or state agency social worker.

Subd. 2a. **Jurisdiction.** Nothing in sections 148B.60 to 148B.71 shall prohibit the board from taking disciplinary or other action that the board is authorized to take against either a licensee who is found to be practicing outside the scope of the license or a person who is found to be engaging in the unauthorized practice of social work.

Subd. 2b. **Use of hospital social worker title.** Individuals employed as social workers on June 30, 1996, by a hospital licensed under chapter 144 who do not qualify for licensure under section 148B.21, may use the title "hospital social worker" for as long as they continue to be employed by a hospital licensed under chapter 144.

Subd. 3. **Penalty.** A person who violates sections 148B.21 to 148B.289 is guilty of a misdemeanor.

148B.28 EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. **Other professionals.** Nothing in sections 148B.18 to 148B.289 shall be construed to prevent members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes but is not limited to licensed physicians; registered nurses; licensed practical nurses; psychological practitioners; probation officers; members of the clergy; attorneys; marriage and family therapists; chemical dependency counselors; professional counselors; school counselors; and registered occupational therapists or certified occupational therapist assistants. These persons must not, however, hold themselves out to the public by any title or description stating or implying that they are engaged in the practice of social work, or that they are licensed to engage in the practice of social work. Persons engaged in the practice of social work are not exempt from the board's jurisdiction solely by the use of one of the above titles.

Subd. 2. **Students.** An internship, externship, or any other social work experience that is required for the completion of an accredited program of social work does not constitute the practice of social work under this chapter.

Subd. 3. **Geographic waiver.** A geographic waiver may be granted by the board on a case-by-case basis to agencies with special regional hiring problems. The waiver will permit agencies to hire individuals, who do not meet the qualifications of section 148B.21, to practice social work.

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Subd. 4. **City, county, and state agency social workers.** The licensing of city, county, and state agency social workers shall be voluntary. City, county, and state agencies employing social workers shall not be required to employ licensed social workers.

Subd. 5. **Federally recognized tribes and private nonprofit agencies with a minority focus.** The licensure of social workers who are employed by federally recognized tribes, or by private nonprofit agencies whose primary service focus addresses ethnic minority populations, and are themselves members of ethnic minority populations within said agencies, shall be voluntary.

148B.281 COMPLAINTS; INVESTIGATION AND HEARING.

Subdivision 1. **Discovery; subpoenas.** In all matters relating to its lawful regulatory activities, the board may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to appear to testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so may, upon application to the district court in any district, be ordered to comply with the subpoena or order. Any board member may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 2. **Classification of data.** The board shall maintain any records, other than client records, obtained as part of an investigation, as investigative data under section 13.41. Client records are classified as private under chapter 13, and must be protected as such in the records of the board and in administrative or judicial proceedings unless the client authorizes the board in writing to make public the identity of the client or a portion or all of the client's records.

Subd. 3. **Examination.** If the board has probable cause to believe that an applicant or licensee has engaged in conduct prohibited by chapter 214 or a statute or rule enforced by the board, it may issue an order directing the applicant or licensee to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this section, every applicant or licensee is considered to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication.

Subd. 4. **Failure to submit to an examination.** Failure to submit to an examination or evaluation when ordered, unless the failure was due to circumstances beyond the control of the applicant or licensee, constitutes an admission that the applicant or licensee violated chapter 214 or a statute or rule

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enforced by the board, based on the factual specifications in the examination or evaluation order, and may result in an application being denied or a default and final disciplinary order being entered without the taking of testimony or other evidence. If a contested case hearing is requested, the only issues to be determined at the hearing are whether the designated board member had probable cause to issue the examination or evaluation order and whether the failure to submit was due to circumstances beyond the control of the applicant or licensee. Neither the record of a proceeding under this subdivision nor the orders entered by the board are admissible, subject to subpoena, or to be used against the applicant or licensee in a proceeding in which the board is not a party or decision maker. Information obtained under this subdivision is classified as private under chapter 13 and the orders issued by the board as the result of an applicant's or a licensee's failure to submit to an examination or evaluation are classified as public.

Subd. 5. Access to data and records. In addition to ordering a physical or mental examination or chemical dependency evaluation and notwithstanding section 13.384, 144.651, 595.02, or any other law limiting access to medical or other health records, the board may obtain data and health records relating to an applicant or licensee without the applicant's or licensee's consent if the board has probable cause to believe that an applicant or licensee has engaged in conduct prohibited by chapter 214 or a statute or rule enforced by the board. An applicant, licensee, insurance company, health care facility, provider as defined in section 144.335, subdivision 1, paragraph (b), or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request made under this subdivision, unless the information is false and the person or entity giving the information knew or had reason to know that the information was false. Information on individuals obtained under this section is investigative data under section 13.41.

Subd. 6. Forms of disciplinary action. When grounds for disciplinary action exist under chapter 214 or a statute or rule enforced by the board, it may take one or more of the following disciplinary actions:

- (1) deny the right to practice;
- (2) revoke the right to practice;
- (3) suspend the right to practice;
- (4) impose limitations on the practice of the licensee;
- (5) impose conditions on the practice of the licensee;
- (6) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the licensee of any economic advantage gained by reason of the violation charged, or to discourage repeated violations;

- (7) impose a fee to reimburse the board for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the board for services from the Office of Administrative Hearings, attorney fees, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and expense incurred by board members and staff;

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- (8) censure or reprimand the licensee;
- (9) require the passing of the examination provided for in section 148B.20, subdivision 1; or
- (10) take any other action justified by the facts of the case.

Subd. 7. **Censure or reprimand.** (a) In addition to the board's authority to issue a censure or a reprimand to a licensee, a designated board member reviewing a complaint as provided for in chapter 214 may issue a censure or a reprimand to a licensee. The censure or reprimand shall notify the licensee that the censure or reprimand will become final disciplinary action unless the licensee requests a hearing within 14 days.

(b) If the licensee requests a timely hearing, the committee shall either schedule a hearing or withdraw the censure or reprimand. The hearing shall be de novo before the board, provided that the designated board member who issued the censure or reprimand shall not deliberate or vote. Evidence shall be received only in form of affidavits or other documents except for testimony by the licensee or other witnesses whose testimony the board chair has authorized for good cause. If testimony is authorized, it shall be subject to cross-examination. After the hearing, the board shall affirm or dismiss the censure or reprimand, or direct the committee to initiate a contested case proceeding pursuant to chapter 14.

Subd. 8. **Temporary suspension.** In addition to any other remedy provided by law, the board may, acting through its designated board member and without a hearing, temporarily suspend the right of a licensee to practice if the board member finds that the licensee has violated a statute or rule that the board is empowered to enforce and that continued practice by the licensee would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the licensee specifying the statute or rule violated. The order remains in effect until the board issues a final order in the matter after a hearing or upon agreement between the board and the licensee. Service of the order is effective if the order is served on the licensee or counsel of record personally or by first class mail to the most recent address provided to the board for the licensee or the counsel of record. Within ten days of service of the order, the board shall hold a hearing before its own members on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the board or licensee may be in affidavit form only. The licensee or the counsel of record may appear for oral argument. Within five working days after the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The board shall issue a final order within 30 days after receipt of that report.

Subd. 9. **Automatic suspension; restoration.** The right to practice is automatically suspended if (1) a guardian of a licensee is appointed by order of a court under sections 524.5-101 to 524.5-502, or (2) the licensee is committed by order of a court pursuant to chapter 253B. The right to practice remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated

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by the board after a hearing or upon agreement between the board and the licensee. In its discretion, the board may restore and reissue permission to provide services, but as a condition of the permission may impose a disciplinary or corrective measure that it might originally have imposed.

Subd. 10. **Additional remedies.** The board may in its own name issue a cease and desist order to stop a person from engaging in an unauthorized practice or violating or threatening to violate a statute, rule, or order which the board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the board and is not reviewable by a court or agency.

A hearing must be initiated by the board not later than 30 days from the date of the board's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, the board shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the board.

When a request for a stay accompanies a timely hearing request, the board may, in its discretion, grant the stay. If the board does not grant a requested stay, it shall refer the request to the Office of Administrative Hearings within three working days of receipt of the request. Within ten days after receiving the request from the board, an administrative law judge shall issue a recommendation to grant or deny the stay. The board shall grant or deny the stay within five days of receiving the administrative law judge's recommendation.

In the event of noncompliance with a cease and desist order, the board may institute a proceeding in Ramsey County District Court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the board not exceeding \$10,000 for each separate violation.

Subd. 11. **Injunctive relief.** In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the board may in its own name bring an action in Ramsey County District Court for injunctive relief to restrain any unauthorized practice or violation or threatened violation of any statute, rule, or order which the board is empowered to regulate, enforce, or issue. A temporary restraining order must be granted in the proceeding if continued activity by a licensee would create a serious risk of harm to others. The board need not show irreparable harm.

Subd. 12. **Additional powers.** The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a licensee from criminal prosecution by a competent authority or from disciplinary action by the board. Nothing in this section limits the board's authority to seek injunctive relief under section 214.11.

Subd. 13. **Pending appeal.** A suspension, revocation, condition, limitation, qualification, or restriction of an individual's license or right to practice is in effect pending determination of an appeal unless the court, upon petition and for good cause shown, orders otherwise.

Subd. 14. **Duty to warn.** Section 148.975 applies to

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social work licensees and clients.

148B.282 PROFESSIONAL COOPERATION; APPLICANT OR LICENSEE.

An applicant or a licensee who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation, providing copies of client and other records in the applicant's or licensee's possession relating to the matter under investigation and executing releases for records, as reasonably requested by the board, and appearing at conferences or hearings scheduled by the board. The board shall pay for copies requested. The board shall be allowed access to any records of a client provided services by the applicant or licensee under review. If the client has not signed a consent permitting access to the client's records, the applicant or licensee shall delete any data in the record that identifies the client before providing them to the board. The board shall maintain any records obtained pursuant to this section as investigative data pursuant to chapter 13.

148B.283 REPORTING OBLIGATIONS.

Subdivision 1. **Permission to report.** A person who has knowledge of any conduct by an applicant or a licensee which may constitute grounds for disciplinary action under this chapter or the rules of the board or of any unlicensed practice under this chapter may report the violation to the board.

Subd. 2. **Institutions.** A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an applicant's or a licensee's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the board under this chapter. The institution or organization shall also report the resignation of any applicants or licensees prior to the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or prior to the commencement of formal charges but after the applicant or licensee had knowledge that formal charges were contemplated or in preparation.

Subd. 3. **Professional societies or associations.** A state or local professional society or association for licensees shall forward to the board any complaint received concerning the ethics or conduct of the practice which the board regulates. The society or association shall forward a complaint to the board upon receipt of the complaint. The society or association shall also report to the board any disciplinary action taken against a member.

Subd. 4. **Licensed professionals.** (a) A licensed health professional shall report to the board information on the following conduct by an applicant or a licensee:

(1) sexual contact or sexual conduct with a client or a former client;

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(2) failure to make reports required by section 626.556 or 626.557;

(3) impairment in the ability to practice by reason of illness, use of alcohol, drugs, or other chemicals, or as a result of any mental or physical condition;

(4) improper or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(5) fraud in the licensure application process or any other false statements made to the board;

(6) conviction of a felony reasonably related to the practice of social work, including conviction of the psychotherapist sex crimes in chapter 609; and

(7) a violation of a board order.

(b) A licensed health professional shall also report to the board information on any other conduct by an applicant or a licensee that constitutes grounds for disciplinary action under this chapter or the rules of the board when the licensed health professional reasonably believes, after appropriate assessment, that the client's functioning has been or likely will be affected negatively by the conduct, regardless of whether the conduct has ceased.

(c) Notwithstanding paragraphs (a) and (b), a licensed health professional shall report to the board knowledge of any actions which institutions must report under subdivision 2.

Subd. 5. Reporting other licensed professionals. An applicant or a licensee shall report to the appropriate board conduct by a licensed health professional which would constitute grounds for disciplinary action under the chapter governing the practice of the other licensed health professional and which is required by law to be reported to the same board.

Subd. 6. Insurers and other entities making liability payments. (a) Four times each year as prescribed by the board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to licensees, or the Medical Joint Underwriting Association under chapter 62F, shall submit to the board a report concerning the licensees against whom malpractice settlements or awards have been made to the plaintiff. The report must contain at least the following information:

(1) the total number of malpractice settlements or awards made;

(2) the date the malpractice settlements or awards were made;

(3) the allegations contained in the claim or complaint leading to the settlements or awards made;

(4) the dollar amount of each malpractice settlement or award;

(5) the regular address of the practice of the licensee against whom an award was made or with whom a settlement was made; and

(6) the name of the licensee against whom an award was made or with whom a settlement was made.

(b) A medical clinic, hospital, political subdivision, or other entity which makes professional liability insurance payments on behalf of applicants or licensees shall submit to the board a report concerning malpractice settlements or awards paid on behalf of applicants or licensees, and any settlements

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or awards paid by a clinic, hospital, political subdivision, or other entity on its own behalf because of care rendered by applicants or licensees. This requirement excludes forgiveness of bills. The report shall be made to the board within 30 days of payment of all or part of any settlement or award.

(c) The insurance company or other entity making professional liability insurance payments shall, in addition to the information in paragraph (b), report to the board any information it possesses that tends to substantiate a charge, including the factual data underlying a settlement, that an applicant or a licensee may have engaged in conduct violating this chapter.

Subd. 7. Courts. The court administrator of district court or any other court of competent jurisdiction shall report to the board any judgment or other determination of the court that adjudges or includes a finding that an applicant or a licensee is a person who is mentally ill, mentally incompetent, guilty of a felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of an abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the applicant or licensee pursuant to sections 524.5-101 to 524.5-502 or commits an applicant or a licensee pursuant to chapter 253B.

Subd. 8. Self-reporting. An applicant or a licensee shall report to the board any personal action that would require that a report be filed by any person, health care facility, business, or organization pursuant to subdivisions 2 to 7.

Subd. 9. Deadlines; forms. Reports required by subdivisions 2 to 8 must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Subd. 10. Subpoenas. The board may issue subpoenas for the production of any reports required by subdivisions 2 to 8 or any related documents.

148B.284 IMMUNITY.

Subdivision 1. Reporting. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report under section 148B.283 or for otherwise reporting, providing information, or testifying about violations or alleged violations of this chapter. The reports are classified under section 13.41.

Subd. 2. Investigation. Board members and employees; persons engaged on behalf of the board in the investigation of violations and in the preparation, presentation, and management of and testimony pertaining to charges of violations; and persons engaged in monitoring compliance with statutes, rules, board orders, or corrective action agreements are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.

148B.285 DISCLOSURE.

Subdivision 1. Contested case proceedings. (a) Upon application of a party in a board hearing or a contested case hearing before the board, the board shall produce and permit the inspection and copying, by or on behalf of the moving party, of

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any designated documents or papers relevant to the proceedings, in accordance with rule 34, Minnesota Rules of Civil Procedure.

(b) The board hearing or contested case hearing shall be open to the public, except that the board or administrative law judge shall close the hearing for testimony by clients, and testimony and argument about clients.

(c) Notwithstanding section 13.41, information which may identify a client, client records, and licensee health records are private data during the contested case hearing, as part of the hearing record, and as part of any appellate or other court record.

(d) Clients may waive the protections afforded by this subdivision.

Subd. 2. **Information on disciplinary actions.** If the board imposes disciplinary measures or takes disciplinary action of any kind, the name and business address of the licensee, the nature of the misconduct, and the action taken by the board, including all settlement agreements and other board orders, are public data.

Subd. 3. **Exchange of information.** The board shall exchange information with other boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (c).

Subd. 4. **Information to the complainant.** The board shall furnish to a person who made a complaint a statement of the result of an investigation of the complaint and a description of the activities and actions of the board relating to the complaint.

Subd. 5. **Classification of certain residence addresses and telephone numbers.** Notwithstanding section 13.41, subdivision 2 or 4, the residence address and telephone number of an applicant or licensee are private data on individuals as defined in section 13.02, subdivision 12, if the applicant or licensee so requests and provides an alternative address and telephone number.

Subd. 6. **Publication of disciplinary actions.** At least annually, each board shall publish and release to the public a description of all disciplinary measures or actions taken by the board. The publication must include, for each disciplinary measure or action taken, the name and business address of the licensee, the nature of the misconduct, and the measure or action taken by the board.

148B.286 PROFESSIONAL ACCOUNTABILITY.

Subdivision 1. **Investigation.** The board shall maintain and keep current a file containing the reports and complaints filed against applicants or licensees within the board's jurisdiction. Each complaint filed with the board pursuant to chapter 214 must be investigated according to chapter 214. If the files maintained by the board show that a malpractice settlement or award to the plaintiff has been made against an applicant or a licensee as reported by insurers under section 148B.283, the executive director of the board shall notify the board and the board may authorize a review of the provider's practice.

Subd. 2. **Attorney general investigates.** When the board initiates a review of an applicant's or a licensee's practice it shall notify the attorney general who shall investigate the matter in the same manner as provided in chapter 214. If an investigation is to be made, the attorney general

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shall notify the applicant or licensee, and, if the incident being investigated occurred there, the administrator and chief of staff at the health care facilities or clinics in which the professional serves, if applicable.

Subd. 3. Access to records. The board shall be allowed access to any records of a client provided services by the applicant or licensee under review. If the client has not signed a consent permitting access, the applicant, licensee, or custodian of the records shall first delete the client's name or other client identifiers before providing the records to the board.

148B.287 MALPRACTICE HISTORY.

Subdivision 1. Submission. Licensees or applicants for licensure who have previously practiced in another state shall submit with their application the following information:

- (1) number, date, and disposition of any malpractice settlement or award made relating to the quality of services provided by the licensee or applicant; and
- (2) number, date, and disposition of any civil litigations or arbitrations relating to the quality of services provided by the licensee or applicant in which the party complaining against the licensee or applicant prevailed or otherwise received a favorable decision or order.

Subd. 2. Board action. The board shall give due consideration to the information submitted under this section. A licensee or applicant for licensure who willfully submits incorrect information is subject to disciplinary action under this chapter.

148B.288 EVIDENCE OF PAST SEXUAL CONDUCT.

In a proceeding for the suspension or revocation of the right to practice or other disciplinary or adverse action involving sexual contact with a client or former client, the board or administrative law judge shall not consider evidence of the client's previous sexual conduct nor shall any reference to this conduct be made during the proceedings or in the findings, except by motion of the complainant, unless the evidence would be admissible under the applicable provisions of section 609.347, subdivision 3.

148B.289 TAX CLEARANCE CERTIFICATE.

Subdivision 1. Certificate required. The board may not issue or renew a license if the commissioner of revenue notifies the board and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. The board may issue or renew a license or filing only if the commissioner of revenue issues a tax clearance certificate and the commissioner of revenue or the licensee or applicant forwards a copy of the clearance to the board. The commissioner of revenue may issue a clearance certificate only if the licensee or applicant does not owe the state any uncontested delinquent taxes. For purposes of this section, "taxes" means all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes. "Delinquent taxes" do not include a tax liability if (1) an administrative or court action that contests the amount or validity of the liability has been filed or served, (2) the appeal period to contest the tax liability has not expired, or (3) the licensee or applicant has entered into a payment agreement to pay the liability and is current with the payments.

Subd. 2. Hearing. In lieu of the notice and hearing

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requirements of section 148B.281, when a licensee or applicant is required to obtain a clearance certificate under this subdivision, a contested case hearing must be held if the licensee or applicant requests a hearing in writing to the commissioner of revenue within 30 days of the date of the notice required in subdivision 1. The hearing must be held within 45 days of the date the commissioner of revenue refers the case to the Office of Administrative Hearings. Notwithstanding any other law, the licensee or applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the licensee or applicant. The notice may be served personally or by mail.

Subd. 3. Information required. The board shall require all licensees or applicants to provide their Social Security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the board must provide to the commissioner of revenue a list of all licensees and applicants, including the name and address, Social Security number, and business identification number. The commissioner of revenue may request a list of the licensees and applicants no more than once each calendar year.

- 1 Senator moves to amend S.F. No. 1289 as follows:
- 2 Page 26, line 15, before the third comma, insert "and
- 3 Christian Science practitioners"

1 Senator moves to amend S.F. No. 1289 as follows:

2 Page 85, delete section 60

3 Page 85, line 24, delete "61" and insert "60"

4 Page 86, line 1, delete "62" and insert "61"

5 Page 86, delete lines 2 and 3 and insert:

6 "This article is effective January 1, 2006."

S.F. 1289 Summary

General Information

Goals of the Proposal

- To reduce the Board's operating costs.
- To reduce the regulatory burden by simplifying and streamlining the Board's requirements to make them easier to understand and to be in compliance with.
- To strengthen public protection.
- To promote cultural diversity by having the Board's requirements take into account the needs of our changing population.
- To enhance customer service by giving licensees more options and more information.

Non-Controversial Proposal

In developing the proposal, the Board worked with social work associations and placed the draft on the Board's website for public review and comment. We are not aware of any opposition to the proposal.

Exemptions

The proposal does not change the current law providing exemptions from licensure requirements for certain individuals, including students, city, county, and state agency social workers, and social workers in federally recognized tribes and private nonprofit agencies with a minority focus.

Effective Dates

The proposal is for all provisions except appropriations to take effect January 1, 2006. The appropriations provision would take effect July 1, 2005.

Summary of Provisions

Most of the provisions in the bill recodify existing statutes and rules and therefore do not make major substantive changes. Substantive changes are summarized below.

Provisions to Reduce Costs

1. *Supervision requirements:* Currently, there is a requirement that licensees who are licensed as a Licensed Graduate Social Worker (LGSW) must be supervised indefinitely. Under the proposal, limits are placed on how long supervision must occur, and does not allow an LGSW to engage in clinical practice after 8,000 hours without a clinical license. This measure will result in substantial reductions in the Board's operating costs.

Provisions to Reduce the Regulatory Burden

2. *Variances:* The proposal allows the Board the ability to grant a variance from Board requirements under limited conditions when a requirement would impose an extreme hardship on the licensee and when the result is consistent with public protection. A variance could not be granted for core licensing standards.
3. *Inactive Licenses and Reactivations:* Current provisions for inactive status and emeritus license are consolidated under "inactive licenses" and the method to reactivate an inactive license has been consolidated and streamlined into one process.

4. *Access to Data and Records:* The proposal would limit the Board's access to physical, mental, and chemical dependency records relating to an applicant or licensee without the applicant's or licensee's consent by requiring that such records may be subpoenaed by the Board only "if the board has (1) probable cause to believe that an applicant or licensee has violated chapter 214 or a statute or rule enforced by the board, and (2) the board has reason to believe that the records are relevant and necessary to the investigation."
5. *Sexual Conduct with a Former Client:* Current law prohibits sexual relationships between a social worker and a former counseling or therapy client under any circumstances. The proposed change replaces the absolute prohibition with criteria for determining whether such a relationship is appropriate. The change makes clear that the social worker bears the burden of proving the relationship is not harmful to the client and sets forth factors to be used in assessing the relationship.
6. *Investigations Involving Vulnerable Adults or Children in Need of Protection:* Representatives of county social service directors recommended that the legislation include a provision suspending investigations of complaints about social workers involved in child protection and vulnerable adult cases until the court issues its findings. The purpose is to avoid the possibility of two investigations being conducted simultaneously, and the potential interference caused with two separate investigations. However, under the proposal, the Board could continue with an investigation if the Board determines that doing so is in the best interests of the vulnerable adult or child and is consistent with the Board's obligation to protect the public.

Provisions to Strengthen Public Protection

7. *Examination Limits:* The proposal would limit the number of times an applicant may take the licensing exam to three, unless the Board approves an exception.

Provisions to Promote Cultural Diversity

8. *Foreign Born/English as Second Language Provision:* The Board is proposing to extend the current provision providing an alternate method of licensure for applicants who are foreign-born and for whom English is a second language.
9. *Temporary Licenses:* The proposal would allow a temporary license for teachers whose permanent residence is outside the United States and who will teach social work in an academic institution in Minnesota for a period not to exceed 12 months.

Provisions to Enhance Customer Service

10. *Professional Name:* The proposal allows licensees to practice under a professional name that may be different from their legal name, if both the legal and professional names are reported in writing to the Board.
11. *Notifications of Complainants and Licensees:* The proposal includes provisions recommended by the associations to codify timelines regarding how long it takes to resolve complaints.
12. *Repeal of Rules:* The proposal repeals all of the Board's rules and puts all Board requirements in statute, thereby eliminating the time-consuming and costly rulemaking process. The consolidation of statutes and rules would make the requirements easier to understand by eliminating the need to go back and forth between statutes and rules.

Contacts for Additional Information

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Kate Zacher-Pate, LSW, Assistant Director, kate.zacher-pate@state.mn.us, 612.617.2100

| S.F. 1289 | | |
|---|---|--|
| Substantive Changes from Existing Statutes & Rules | | |
| Section | Subject | Substantive Changes |
| 1 | Citation | None |
| 2 | Purpose | None |
| 3 | Definitions | Adds or clarifies definitions of clinical practice; "person-in-environment perspective"; practice of social work; professional social work knowledge, skills, and values; professional name; social worker |
| 4 | Scope | Clarifying language |
| 5 | Chapter 214 | Clarifying language |
| 6 | Board of Social Work | None |
| 7 | Duties of the Board | None |
| 8 | Variances | Substantive change: see summary #2 |
| 9 | Immunity | None |
| 10 | Contested case hearing | None |
| 11 | Licensing; scope of practice | None |
| 12 | License requirements | Substantive change on examination limits: see summary #7 |
| | | Substantive change on foreign born/English as second language: see summary #8 |
| 13 | Temporary licenses | Substantive change: see summary #9 |
| 14 | Exemptions | None |
| 15 | License renewals | None |
| 16 | Inactive licenses | Substantive change: see summary #3 |
| 17 | Reactivation | Substantive change: see summary #3 |
| 18 | Voluntary terminations | None |
| 19 | Name; change of name or address | Substantive change: see summary #10 |
| 20 | License certificate or card | None |
| 21 | Licensed social workers; supervised practice | None |
| 22 | Licensed graduate social worker; supervised practice | Substantive change: see summary #1 |
| 23 | Licensed independent social workers; supervised practice | Substantive change to provide consistency with summary #1 |
| 24 | Licensed independent clinical social workers; supervised practice | None |
| 25 | Requirements of supervisors | Clarifying language |
| 26 | Documentation of supervision | Provides for attestations and audits in place of comprehensive documentation requirements at time of renewal |
| 27 | Clock hours required | New requirement for two CE hours in social work ethics |
| 28 | Approval of clock hours | Substantive change to provide consistency with section 30 |
| 29 | CE Variances | None |

| S.F. 1289 | | |
|---|---|---|
| Substantive Changes from Existing Statutes & Rules | | |
| Section | Subject | Substantive Changes |
| 30 | Continuing education providers approved by the board | Allows pre-approval of providers of CE programs |
| 31 | Continuing education providers approved by the Association of Social Work Boards | Substantive change to provide consistency with section 30 |
| 32 | Continuing education providers approved by the National Association of Social Workers | Substantive change to provide consistency with section 30 |
| 33 | Continuing education programs approved by the board | No change |
| 34 | Continuing education requirements of licensees | No change |
| 35 | Revocation of continuing education provider approvals | Substantive change to provide consistency with section 30 |
| 36 | Fees | None |
| 37 | Fee amounts | None |
| 38 | Purpose of compliance laws | Clarifying language |
| 39 | Grounds for action | Clarifying language |
| 40 | Representations to clients and public | None |
| 41 | Competence | Clarifying language |
| 42 | Impairment | None |
| 43 | Professional and ethical conduct | None |
| 44 | Responsibilities to clients | None |
| 45 | Relationships with clients, former clients, and other individuals | Substantive change: see summary #5 |
| 46 | Treatment and intervention services | None |
| 47 | Confidentiality and records | None |
| 48 | Fees and billing practices | None |
| 49 | Reporting requirements | Requires a social worker to report unlicensed practice to the board |
| 50 | Investigations | Substantive change: see summary #4, #6, & #11 |
| 51 | Obligation to cooperate | None |
| 52 | Types of action | None |

| S.F. 1289 | | |
|---|---|---|
| Substantive Changes from Existing Statutes & Rules | | |
| Section | Subject | Substantive Changes |
| 53 | Disciplinary actions | None |
| 54 | Adversarial but nondisciplinary actions | None |
| 55 | Voluntary actions | None |
| 56 | Unauthorized practice | None |
| 57 | Use of titles | None |
| 58 | Reporting requirements | None |
| 59 | Penalties | None |
| 60 | Appropriations | None |
| 61 | Repealer | Substantive change: see summary #12 |
| 62 | Effective date | All provisions take effect January 1, 2006 except appropriations take effect July 1, 2005 |

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Senate

State of Minnesota

S.F. No. 1718 - Audiologists – Dispensing Hearing Aids (Delete-Everything Amendment)

Author: Senator Sheila M. Kiscaden

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) *KTC*

Date: March 31, 2005

S.F. No. 1718 permits audiologists licensed under Minnesota Statutes, chapter 148, to dispense hearing instruments without having to be certified as a hearing instrument dispenser under chapter 153A.

Section 1 (148.512, subdivision 6) clarifies that an audiologist may be licensed under a general, clinical fellowship, doctoral externship, or temporary license.

Section 2 (148.512, subdivision 10a) defines “hearing aid.”

Section 3 (148.512, subdivision 10b) defines “hearing aid dispensing.”

Section 4 (148.515, subdivision 6) requires an audiologist applying for licensure on or after August 1, 2005, to achieve a passing score on the examination described in section 153A.14, paragraph (a), clause (2), unless the audiologist is licensed by reciprocity who was licensed before April 1, 2005, in another jurisdiction. Exempts audiologists from the written examination requirement in section 153A.14, subdivision 2h, paragraph (a), clause (1).

Section 5 (148.5194, subdivision 7) adds a surcharge to the audiologist licensure fee.

Section 6 148.5195, subdivision 3) adds to the list of grounds upon which the commissioner may take disciplinary action the following:

- prescribing to a consumer the use of a hearing instrument unless the prescription is in writing, is based on an audiogram that is provided to the consumer and contains specified information;
- failing to give a copy of the audiogram to the consumer when the consumer requests a copy;
- failing to provide the consumer with the consumer rights brochure;
- failing to comply with the restrictions on sales of hearing aids; and
- failing to return a consumer's hearing aid used as a trade in or for a discount in the price of a new hearing aid when requested by the consumer upon cancellation of the purchase agreement.

Section 7 (148.5197) establishes hearing instrument dispensing provisions.

Subdivision 1 states that all oral statements made by the audiologist regarding warranties, refunds, and service must be written and must be part of the contract of sale, must specify the item or items covered, and the person or entity that is obligated to provide the warranty, refund, or service.

Subdivision 2 requires the audiologist's license number must appear on all contracts, bills of sale, and receipts.

Subdivision 3 requires an audiologist to give the consumer the consumer rights brochure at the time of a recommendation or prescription. States what the brochure must contain and states that a sales contract must note that the brochure was received by the buyer along with the buyer's signature or initials.

Subdivision 4 states who is liable for satisfying the terms of a contract either written or oral. The commissioner may enforce the terms of the sales contract against the principal, employer, supervisor, or dispenser who conducted the sale and may impose any remedy provided under this chapter.

Section 8 (148.5198) establishes restrictions on the sale of hearing aids.

Subdivision 1 establishes the 45-calendar-day guarantee and buyers right to cancel.

Subdivision 2 requires the audiologist or company who agrees to repair a hearing aid to provide a bill that describes the repair and service rendered.

Subdivision 3 requires any guarantee of a hearing aid to be in writing and delivered to the owner of the hearing aid.

Subdivision 4 states that any person who violates this section is guilty of a misdemeanor.

Subdivision 5 states that in addition to being guilty of a misdemeanor, the person is subject to the penalties and remedies in section 325F.69, subdivision 1 (fraud, misrepresentation, and deceptive practices).

Subdivision 6 requires an audiologist or company to provide the owner of a hearing aid with a written estimate of the price of repairs, upon request, and that the audiologist must not charge more than the total price stated on the estimate.

Sections 9 to 14 make conforming changes to chapter 153A (hearing instrument dispensing).

Section 9 (153A.13, subdivision 5) permits a licensed audiologist to dispense a hearing instrument without being certified by the commissioner.

Section 10 (153A.14, subdivision 2i) removes a reference to audiologists.

Section 11 (153A.14, subdivision 4) makes a conforming technical change.

Section 12 (153A.14, subdivision 4c) removes a reference to audiologists.

Section 13 (153A.15, subdivision 1) makes a conforming change to the information that must be provided by a hearing instrument dispenser clarifying that a prescription for a hearing instrument may be purchased from a licensed audiologist as well as a certified dispenser.

Section 14 (153A.20, subdivision 1) makes a conforming change to the hearing dispenser advisory council in that the audiologists on the council do not have to be certified hearing dispensers.

Section 15 instructs the Revisor to make conforming changes.

Section 16 repeals section 153A.14, subdivision 2a (exemption from written examination requirement for audiologists).

KC:ph

Senators Kiscaden, Wergin, Bakk, Higgins and Nienow introduced--
S.F. No. 1718: Referred to the Committee on Health and Family Security.

1 A bill for an act

2 relating to health; providing that audiologists need
3 not obtain hearing instrument dispenser certification;
4 providing penalties; amending Minnesota Statutes 2004,
5 sections 148.512, subdivision 6; 148.5194, by adding a
6 subdivision; 148.5195, subdivision 3; 153A.13,
7 subdivision 5; 153A.14, subdivisions 2a, 2i, 4, 4c;
8 153A.15, subdivision 1; 153A.20, subdivision 1;
9 proposing coding for new law in Minnesota Statutes,
10 chapter 148.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

12 Section 1. Minnesota Statutes 2004, section 148.512,
13 subdivision 6, is amended to read:

14 Subd. 6. [AUDIOLOGIST.] "Audiologist" means a natural
15 person who engages in the practice of audiology, meets the
16 qualifications required by sections 148.511 to ~~148.5196~~
17 148.5198, and is licensed by the commissioner under a general,
18 clinical fellowship, doctoral externship, or temporary license.

19 Audiologist also means a natural person using any descriptive
20 word with the title audiologist.

21 Sec. 2. Minnesota Statutes 2004, section 148.5194, is
22 amended by adding a subdivision to read:

23 Subd. 7. [SURCHARGE.] A surcharge of \$..... is added to
24 the audiologist licensure fee for the period of

25 Sec. 3. Minnesota Statutes 2004, section 148.5195,
26 subdivision 3, is amended to read:

27 Subd. 3. [GROUNDS FOR DISCIPLINARY ACTION BY
28 COMMISSIONER.] The commissioner may take any of the disciplinary

- 1 actions listed in subdivision 4 on proof that the individual has:
- 2 (1) intentionally submitted false or misleading information
- 3 to the commissioner or the advisory council;
- 4 (2) failed, within 30 days, to provide information in
- 5 response to a written request, via certified mail, by the
- 6 commissioner or advisory council;
- 7 (3) performed services of a speech-language pathologist or
- 8 audiologist in an incompetent or negligent manner;
- 9 (4) violated sections 148.511 to ~~148.5196~~ 148.5198;
- 10 (5) failed to perform services with reasonable judgment,
- 11 skill, or safety due to the use of alcohol or drugs, or other
- 12 physical or mental impairment;
- 13 (6) violated any state or federal law, rule, or regulation,
- 14 and the violation is a felony or misdemeanor, an essential
- 15 element of which is dishonesty, or which relates directly or
- 16 indirectly to the practice of speech-language pathology or
- 17 audiology. Conviction for violating any state or federal law
- 18 which relates to speech-language pathology or audiology is
- 19 necessarily considered to constitute a violation, except as
- 20 provided in chapter 364;
- 21 (7) aided or abetted another person in violating any
- 22 provision of sections 148.511 to ~~148.5196~~ 148.5198;
- 23 (8) been or is being disciplined by another jurisdiction,
- 24 if any of the grounds for the discipline is the same or
- 25 substantially equivalent to those under sections 148.511 to
- 26 148.5196;
- 27 (9) not cooperated with the commissioner or advisory
- 28 council in an investigation conducted according to subdivision
- 29 1;
- 30 (10) advertised in a manner that is false or misleading;
- 31 (11) engaged in conduct likely to deceive, defraud, or harm
- 32 the public; or demonstrated a willful or careless disregard for
- 33 the health, welfare, or safety of a client;
- 34 (12) failed to disclose to the consumer any fee splitting
- 35 or any promise to pay a portion of a fee to any other
- 36 professional other than a fee for services rendered by the other

1 professional to the client;

2 (13) engaged in abusive or fraudulent billing practices,
3 including violations of federal Medicare and Medicaid laws, Food
4 and Drug Administration regulations, or state medical assistance
5 laws;

6 (14) obtained money, property, or services from a consumer
7 through the use of undue influence, high pressure sales tactics,
8 harassment, duress, deception, or fraud;

9 (15) performed services for a client who had no possibility
10 of benefiting from the services;

11 (16) failed to refer a client for medical evaluation or to
12 other health care professionals when appropriate or when a
13 client indicated symptoms associated with diseases that could be
14 medically or surgically treated;

15 ~~(17) if the individual is a dispenser of hearing~~
16 ~~instruments as defined by section 153A.137, subdivision 5, had~~
17 ~~the certification required by chapter 153A, denied, suspended,~~
18 ~~or revoked according to chapter 153A;~~

19 ~~(18)~~ used the term doctor of audiology, doctor of
20 speech-language pathology, AuD, or SLPD without having obtained
21 the degree from an institution accredited by the North Central
22 Association of Colleges and Secondary Schools, the Council on
23 Academic Accreditation in Audiology and Speech-Language
24 Pathology, the United States Department of Education, or an
25 equivalent; ~~or~~

26 ~~(19)~~ (18) failed to comply with the requirements of section
27 148.5192 regarding supervision of speech-language pathology
28 assistants;

29 (19) prescribed or otherwise recommended to a consumer or
30 potential consumer the use of a hearing instrument, unless the
31 prescription from a physician or recommendation from an
32 audiologist is in writing, is based on an audiogram that is
33 delivered to the consumer or potential consumer when the
34 prescription or recommendation is made, and bears the following
35 information in all capital letters of 12-point or larger
36 boldface type: "THIS PRESCRIPTION OR RECOMMENDATION MAY BE

1 FILLED BY, AND HEARING INSTRUMENTS MAY BE PURCHASED FROM, THE
2 LICENSED AUDIOLOGIST OR CERTIFIED DISPENSER OF YOUR CHOICE";

3 (20) failed to give a copy of the audiogram, upon which the
4 prescription or recommendation is based, to the consumer when
5 the consumer requests a copy;

6 (21) failed to provide the consumer rights brochure
7 required by section 148.5197, subdivision 3;

8 (22) failed to comply with restrictions on sales of hearing
9 aids in sections 148.5197, subdivision 3, and 148.5198; or

10 (23) failed to return a consumer's hearing aid used as a
11 trade-in or for a discount in the price of a new hearing aid
12 when requested by the consumer upon cancellation of the purchase
13 agreement.

14 Sec. 4. [148.5197] [HEARING INSTRUMENT DISPENSING.]

15 Subdivision 1. [CONTENT OF CONTRACTS.] Oral statements
16 made by an audiologist regarding the provision of warranties,
17 refunds, and service on the hearing instrument or instruments
18 dispensed must be written on, and become part of, the contract
19 of sale, specify the item or items covered, and indicate the
20 person or business entity obligated to provide the warranty,
21 refund, or service.

22 Subd. 2. [REQUIRED USE OF LICENSE NUMBER.] The
23 audiologist's license number must appear on all contracts, bills
24 of sale, and receipts used in the sale of hearing instruments.

25 Subd. 3. [CONSUMER RIGHTS INFORMATION.] An audiologist
26 shall, at the time of the recommendation or prescription, give a
27 consumer rights brochure, prepared by the commissioner and
28 containing information about legal requirements pertaining to
29 sales of hearing instruments, to each potential buyer of a
30 hearing instrument. The brochure must contain information about
31 the consumer information center described in section 153A.18. A
32 sales contract for a hearing instrument must note the receipt of
33 the brochure by the buyer, along with the buyer's signature or
34 initials.

35 Subd. 4. [LIABILITY FOR CONTRACTS.] Owners of entities in
36 the business of dispensing hearing instruments, employers of

1 audiologists or persons who dispense hearing instruments,
2 supervisors of trainees or audiology students, and hearing
3 instrument dispensers conducting the sales transaction at issue
4 are liable for satisfying all terms of contracts, written or
5 oral, made by their agents, employees, assignees, affiliates, or
6 trainees, including terms relating to products, repairs,
7 warranties, service, and refunds. The commissioner may enforce
8 the terms of hearing instrument sales contracts against the
9 principal, employer, supervisor, or dispenser who conducted the
10 sale and may impose any remedy provided for in this chapter.

11 Sec. 5. [148.5198] [RESTRICTION ON SALE OF HEARING AIDS.]

12 Subdivision 1. [45-CALENDAR-DAY GUARANTEE AND BUYER RIGHT
13 TO CANCEL.] (a) An audiologist dispensing a hearing aid in this
14 state must comply with paragraphs (b) and (c).

15 (b) The audiologist must provide the buyer with a
16 45-calendar-day written money-back guarantee. The guarantee
17 must permit the buyer to cancel the purchase for any reason
18 within 45 calendar days after receiving the hearing aid by
19 giving or mailing written notice of cancellation to the
20 audiologist. If the consumer mails the notice of cancellation,
21 the 45-calendar-day period is counted using the postmark date,
22 to the date of receipt by the audiologist. If the hearing aid
23 must be repaired, remade, or adjusted during the 45-calendar-day
24 money-back guarantee period, the running of the 45-calendar-day
25 period is suspended one day for each 24-hour period that the
26 hearing aid is not in the buyer's possession. A repaired,
27 remade, or adjusted hearing aid must be claimed by the buyer
28 within three business days after notification of availability,
29 after which time the running of the 45-calendar-day period
30 resumes. The guarantee must entitle the buyer, upon
31 cancellation, to receive a refund of payment within 30 days of
32 return of the hearing aid to the audiologist. The audiologist
33 may retain as a cancellation fee no more than \$250 of the
34 buyer's total purchase price of the hearing aid.

35 (c) The audiologist shall provide the buyer with a contract
36 written in plain English, that contains uniform language and

1 provisions that meet the requirements under the Plain Language
2 Contract Act, sections 325G.29 to 325G.36. The contract must
3 include, but is not limited to, the following: in immediate
4 proximity to the space reserved for the signature of the buyer,
5 or on the first page if there is no space reserved for the
6 signature of the buyer, a clear and conspicuous disclosure of
7 the following specific statement in all capital letters of no
8 less than 12-point boldface type: "MINNESOTA STATE LAW GIVES
9 THE BUYER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT
10 ANY TIME PRIOR TO MIDNIGHT OF THE 45TH CALENDAR DAY AFTER
11 RECEIPT OF THE HEARING AID(S). THIS CANCELLATION MUST BE IN
12 WRITING AND MUST BE GIVEN OR MAILED TO THE AUDIOLOGIST. IF THE
13 BUYER DECIDES TO RETURN THE HEARING AID(S) WITHIN THIS
14 45-CALENDAR-DAY PERIOD, THE BUYER WILL RECEIVE A REFUND OF THE
15 TOTAL PURCHASE PRICE OF THE AID(S) FROM WHICH THE AUDIOLOGIST
16 MAY RETAIN AS A CANCELLATION FEE NO MORE THAN \$250."

17 Subd. 2. [ITEMIZED REPAIR BILL.] Any audiologist or
18 company who agrees to repair a hearing aid must provide the
19 owner of the hearing aid, or the owner's representative, with a
20 bill that describes the repair and services rendered. The bill
21 must also include the repairing audiologist's or company's name,
22 address, and telephone number.

23 This subdivision does not apply to an audiologist or
24 company that repairs a hearing aid pursuant to an express
25 warranty covering the entire hearing aid and the warranty covers
26 the entire cost, both parts and labor, of the repair.

27 Subd. 3. [REPAIR WARRANTY.] Any guarantee of hearing aid
28 repairs must be in writing and delivered to the owner of the
29 hearing aid, or the owner's representative, stating the
30 repairing audiologist's or company's name, address, telephone
31 number, length of guarantee, model, and serial number of the
32 hearing aid and all other terms and conditions of the guarantee.

33 Subd. 4. [MISDEMEANOR.] A person found to have violated
34 this section is guilty of a misdemeanor.

35 Subd. 5. [ADDITIONAL.] In addition to the penalty provided
36 in subdivision 4, a person found to have violated this section

1 is subject to the penalties and remedies provided in section
2 325F.69, subdivision 1.

3 Subd. 6. [ESTIMATES.] Upon the request of the owner of a
4 hearing aid or the owner's representative for a written estimate
5 and prior to the commencement of repairs, a repairing
6 audiologist or company shall provide the customer with a written
7 estimate of the price of repairs. If a repairing audiologist or
8 company provides a written estimate of the price of repairs, it
9 must not charge more than the total price stated in the estimate
10 for the repairs. If the repairing audiologist or company after
11 commencing repairs determines that additional work is necessary
12 to accomplish repairs that are the subject of a written estimate
13 and if the repairing audiologist or company did not unreasonably
14 fail to disclose the possible need for the additional work when
15 the estimate was made, the repairing audiologist or company may
16 charge more than the estimate for the repairs if the repairing
17 audiologist or company immediately provides the owner or owner's
18 representative a revised written estimate pursuant to this
19 section and receives authorization to continue with the
20 repairs. If continuation of the repairs is not authorized, the
21 repairing audiologist or company shall return the hearing aid as
22 close as possible to its former condition and shall release the
23 hearing aid to the owner or owner's representative upon payment
24 of charges for repairs actually performed and not in excess of
25 the original estimate.

26 Sec. 6. Minnesota Statutes 2004, section 153A.13,
27 subdivision 5, is amended to read:

28 Subd. 5. [DISPENSER OF HEARING INSTRUMENTS.] "Dispenser of
29 hearing instruments" means a natural person who engages in
30 hearing instrument dispensing whether or not certified by the
31 commissioner of health or licensed by an existing health-related
32 board, except that a person described as follows is not a
33 dispenser of hearing instruments:

34 (1) a student participating in supervised field work that
35 is necessary to meet requirements of an accredited educational
36 program if the student is designated by a title which clearly

1 indicates the student's status as a student trainee; or

2 (2) a person who helps a dispenser of hearing instruments
3 in an administrative or clerical manner and does not engage in
4 hearing instrument dispensing.

5 A person who offers to dispense a hearing instrument, or a
6 person who advertises, holds out to the public, or otherwise
7 represents that the person is authorized to dispense hearing
8 instruments must be certified by the commissioner except when
9 the person is an audiologist as defined in section 148.512.

10 Sec. 7. Minnesota Statutes 2004, section 153A.14,
11 subdivision 2a, is amended to read:

12 Subd. 2a. [~~EXEMPTION FROM WRITTEN EXAMINATION~~
13 ~~REQUIREMENT REQUIREMENTS.~~] Persons ~~completing the audiology~~
14 ~~registration requirements of section 148.515 after January 17~~
15 ~~1996~~ licensed as audiologists under section 148.512 are exempt
16 from the ~~written examination requirements of subdivision 2h~~
17 ~~paragraph (a), clause (1).~~ --Minnesota licensure, a current
18 ~~certification of clinical competence issued by the American~~
19 ~~Speech-Language-Hearing Association, board certification in~~
20 ~~audiology by the American Board of Audiology, or an equivalent,~~
21 ~~as an audiologist is not required but may be submitted as~~
22 ~~evidence qualifying for exemption from the written examination~~
23 ~~if the requirements are completed after January 17, 1996.~~
24 ~~Persons qualifying for written examination exemption must~~
25 ~~fulfill the other credentialing requirements under subdivisions~~
26 ~~1 and 2 before a certificate may be issued by the~~
27 commissioner this chapter.

28 Sec. 8. Minnesota Statutes 2004, section 153A.14,
29 subdivision 2i, is amended to read:

30 Subd. 2i. [CONTINUING EDUCATION REQUIREMENT.] On forms
31 provided by the commissioner, each certified dispenser must
32 submit with the application for renewal of certification
33 evidence of completion of ten course hours of continuing
34 education earned within the 12-month period of July 1 to June 30
35 immediately preceding renewal. Continuing education courses
36 must be directly related to hearing instrument dispensing and

1 approved by the International Hearing Society ~~or-qualify-for~~
2 ~~continuing-education-approved-for-Minnesota-licensed~~
3 audiologists. Evidence of completion of the ten course hours of
4 continuing education must be submitted with renewal applications
5 by October 1 of each year. This requirement does not apply to
6 dispensers certified for less than one year. The first report
7 of evidence of completion of the continuing education credits
8 shall be due October 1, 1997.

9 Sec. 9. Minnesota Statutes 2004, section 153A.14,
10 subdivision 4, is amended to read:

11 Subd. 4. [DISPENSING OF HEARING INSTRUMENTS WITHOUT
12 CERTIFICATE.] Except as provided in subdivisions 2a, 4a, and 4c,
13 it is unlawful for any person not holding a valid certificate to
14 dispense a hearing instrument as defined in section 153A.13,
15 subdivision 3. A person who dispenses a hearing instrument
16 without the certificate required by this section is guilty of a
17 gross misdemeanor.

18 Sec. 10. Minnesota Statutes 2004, section 153A.14,
19 subdivision 4c, is amended to read:

20 Subd. 4c. [RECIPROCITY.] (a) A person applying for
21 certification as a hearing instrument dispenser under
22 subdivision 1 who has dispensed hearing instruments in another
23 jurisdiction may dispense hearing instruments as a trainee under
24 indirect supervision if the person:

25 (1) satisfies the provisions of subdivision 4a, paragraph
26 (a);

27 (2) submits a signed and dated affidavit stating that the
28 applicant is not the subject of a disciplinary action or past
29 disciplinary action in this or another jurisdiction and is not
30 disqualified on the basis of section 153A.15, subdivision 1; and

31 (3) provides a copy of a current credential as a hearing
32 instrument dispenser, ~~an audiologist, or both,~~ held in the
33 District of Columbia or a state or territory of the United
34 States.

35 (b) A person becoming a trainee under this subdivision who
36 fails to take and pass the practical examination described in

1 subdivision 2h, paragraph (a), clause (2), when next offered
2 must cease dispensing hearing instruments unless under direct
3 supervision.

4 Sec. 11. Minnesota Statutes 2004, section 153A.15,
5 subdivision 1, is amended to read:

6 Subdivision 1. [PROHIBITED ACTS.] The commissioner may
7 take enforcement action as provided under subdivision 2 against
8 a dispenser of hearing instruments for the following acts and
9 conduct:

10 (1) prescribing or otherwise recommending to a consumer or
11 potential consumer the use of a hearing instrument, unless the
12 prescription from a physician or recommendation from a hearing
13 instrument dispenser or audiologist is in writing, is based on
14 an audiogram that is delivered to the consumer or potential
15 consumer when the prescription or recommendation is made, and
16 bears the following information in all capital letters of
17 12-point or larger boldface type: "THIS PRESCRIPTION OR
18 RECOMMENDATION MAY BE FILLED BY, AND HEARING INSTRUMENTS MAY BE
19 PURCHASED FROM, THE CERTIFIED DISPENSER OR LICENSED AUDIOLOGIST
20 OF YOUR CHOICE";

21 (2) failing to give a copy of the audiogram, upon which the
22 prescription or recommendation is based, to the consumer when
23 there has been a charge for the audiogram and the consumer
24 requests a copy;

25 (3) dispensing a hearing instrument to a minor person 18
26 years or younger unless evaluated by an audiologist for hearing
27 evaluation and hearing aid evaluation;

28 (4) failing to provide the consumer rights brochure
29 required by section 153A.14, subdivision 9;

30 (5) being disciplined through a revocation, suspension,
31 restriction, or limitation by another state for conduct subject
32 to action under this chapter;

33 (6) presenting advertising that is false or misleading;

34 (7) providing the commissioner with false or misleading
35 statements of credentials, training, or experience;

36 (8) engaging in conduct likely to deceive, defraud, or harm

1 the public; or demonstrating a willful or careless disregard for
2 the health, welfare, or safety of a consumer;

3 (9) splitting fees or promising to pay a portion of a fee
4 to any other professional other than a fee for services rendered
5 by the other professional to the client;

6 (10) engaging in abusive or fraudulent billing practices,
7 including violations of federal Medicare and Medicaid laws, Food
8 and Drug Administration regulations, or state medical assistance
9 laws;

10 (11) obtaining money, property, or services from a consumer
11 through the use of undue influence, high pressure sales tactics,
12 harassment, duress, deception, or fraud;

13 (12) failing to comply with restrictions on sales of
14 hearing aids in sections 153A.14, subdivision 9, and 153A.19;

15 (13) performing the services of a certified hearing
16 instrument dispenser in an incompetent or negligent manner;

17 (14) failing to comply with the requirements of this
18 chapter as an employer, supervisor, or trainee;

19 (15) failing to provide information in a timely manner in
20 response to a request by the commissioner, commissioner's
21 designee, or the advisory council;

22 (16) being convicted within the past five years of
23 violating any laws of the United States, or any state or
24 territory of the United States, and the violation is a felony,
25 gross misdemeanor, or misdemeanor, an essential element of which
26 relates to hearing instrument dispensing, except as provided in
27 chapter 364;

28 (17) failing to cooperate with the commissioner, the
29 commissioner's designee, or the advisory council in any
30 investigation;

31 (18) failing to perform hearing instrument dispensing with
32 reasonable judgment, skill, or safety due to the use of alcohol
33 or drugs, or other physical or mental impairment;

34 (19) failing to fully disclose actions taken against the
35 applicant or the applicant's legal authorization to dispense
36 hearing instruments in this or another state;

1 (20) violating a state or federal court order or judgment,
2 including a conciliation court judgment, relating to the
3 activities of the applicant in hearing instrument dispensing;

4 (21) having been or being disciplined by the commissioner
5 of the Department of Health, or other authority, in this or
6 another jurisdiction, if any of the grounds for the discipline
7 are the same or substantially equivalent to those in sections
8 153A.13 to 153A.19;

9 (22) misrepresenting the purpose of hearing tests, or in
10 any way communicating that the hearing test or hearing test
11 protocol required by section 153A.14, subdivision 4b, is a
12 medical evaluation, a diagnostic hearing evaluation conducted by
13 an audiologist, or is other than a test to select a hearing
14 instrument, except that the hearing instrument dispenser can
15 determine the need for or recommend the consumer obtain a
16 medical evaluation consistent with requirements of the United
17 States Food and Drug Administration;

18 (23) violating any of the provisions of sections 153A.13 to
19 153A.19; and

20 (24) aiding or abetting another person in violating any of
21 the provisions of sections 153A.13 to 153A.19.

22 Sec. 12. Minnesota Statutes 2004, section 153A.20,
23 subdivision 1, is amended to read:

24 Subdivision 1. [MEMBERSHIP.] The commissioner shall
25 appoint nine persons to a Hearing Instrument Dispenser Advisory
26 Council.

27 (a) The nine persons must include:

28 (1) three public members, as defined in section 214.02. At
29 least one of the public members shall be a hearing instrument
30 user and one of the public members shall be either a hearing
31 instrument user or an advocate of one; and

32 (2) three hearing instrument dispensers certified under
33 sections 153A.14 to 153A.20, each of whom is currently, and has
34 been for the five years immediately preceding their appointment,
35 engaged in hearing instrument dispensing in Minnesota and who
36 represent the occupation of hearing instrument dispensing and

1 who are not audiologists; and

2 (3) three audiologists ~~who-are-certified-hearing-instrument~~
3 ~~dispensers-or-are~~ licensed as audiologists under chapter 148.

4 (b) The factors the commissioner may consider when
5 appointing advisory council members include, but are not limited
6 to, professional affiliation, geographical location, and type of
7 practice.

8 (c) No two members of the advisory council shall be
9 employees of, or have binding contracts requiring sales
10 exclusively for, the same hearing instrument manufacturer or the
11 same employer.

12 Sec. 13. [REVISOR'S INSTRUCTION.]

13 The revisor of statutes shall change references from
14 "sections 148.511 to 148.5196" to "sections 148.511 to 148.5198"
15 wherever they appear in Minnesota Statutes and Minnesota Rules.

16 Sec. 14. [EFFECTIVE DATE.]

17 Sections 1 to 13 are effective August 1, 2005.

1 Senator moves to amend S.F. No. 1718 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 148.512,
4 subdivision 6, is amended to read:

5 Subd. 6. [AUDIOLOGIST.] "Audiologist" means a natural
6 person who engages in the practice of audiology, meets the
7 qualifications required by sections 148.511 to ~~148.5196~~
8 148.5198, and is licensed by the commissioner under a general,
9 clinical fellowship, doctoral externship, or temporary license.
10 Audiologist also means a natural person using any descriptive
11 word with the title audiologist.

12 Sec. 2. Minnesota Statutes 2004, section 148.512, is
13 amended by adding a subdivision to read:

14 Subd. 10a. [HEARING AID.] "Hearing aid" means an
15 instrument, or any of its parts, worn in the ear canal and
16 designed to or represented as being able to aid or enhance human
17 hearing. "Hearing aid" includes the aid's parts, attachments,
18 or accessories, including, but not limited to, ear molds and
19 behind the ear (BTE) devices with or without an ear mold.
20 Batteries and cords are not parts, attachments, or accessories
21 of a hearing aid. Surgically implanted hearing aids, and
22 assistive listening devices not worn within the ear canal, are
23 not hearing aids.

24 Sec. 3. Minnesota Statutes 2004, section 148.512, is
25 amended by adding a subdivision to read:

26 Subd. 10b. [HEARING AID DISPENSING.] "Hearing aid
27 dispensing" means making ear mold impressions, prescribing, or
28 recommending a hearing aid, assisting the consumer in aid
29 selection, selling hearing aids at retail, or testing human
30 hearing in connection with these activities regardless of
31 whether the person conducting these activities has a monetary
32 interest in the sale of hearing aids to the consumer.

33 Sec. 4. Minnesota Statutes 2004, section 148.515, is
34 amended by adding a subdivision to read:

35 Subd. 6. [AUDIOLOGIST EXAMINATION REQUIREMENTS.] (a) An
36 audiologist who applies for licensure on or after August 1,

1 2005, must achieve a passing score on the examination described
 2 in section 153A.14, subdivision 2h, paragraph (a), clause (2),
 3 within the time period described in section 153A.14, subdivision
 4 2h, paragraph (b).

5 (b) Paragraph (a) does not apply to an audiologist licensed
 6 by reciprocity who was licensed before August 1, 2005, in
 7 another jurisdiction.

8 (c) Audiologists are exempt from the written examination
 9 requirement in section 153A.14, subdivision 2h, paragraph (a),
 10 clause (1).

11 Sec. 5. Minnesota Statutes 2004, section 148.5194, is
 12 amended by adding a subdivision to read:

13 Subd. 7. [SURCHARGE.] A surcharge of \$..... is added to
 14 the audiologist licensure fee for the period of

15 Sec. 6. Minnesota Statutes 2004, section 148.5195,
 16 subdivision 3, is amended to read:

17 Subd. 3. [GROUNDS FOR DISCIPLINARY ACTION BY
 18 COMMISSIONER.] The commissioner may take any of the disciplinary
 19 actions listed in subdivision 4 on proof that the individual has:

20 (1) intentionally submitted false or misleading information
 21 to the commissioner or the advisory council;

22 (2) failed, within 30 days, to provide information in
 23 response to a written request, via certified mail, by the
 24 commissioner or advisory council;

25 (3) performed services of a speech-language pathologist or
 26 audiologist in an incompetent or negligent manner;

27 (4) violated sections 148.511 to ~~148.5196~~ 148.5198;

28 (5) failed to perform services with reasonable judgment,
 29 skill, or safety due to the use of alcohol or drugs, or other
 30 physical or mental impairment;

31 (6) violated any state or federal law, rule, or regulation,
 32 and the violation is a felony or misdemeanor, an essential
 33 element of which is dishonesty, or which relates directly or
 34 indirectly to the practice of speech-language pathology or
 35 audiology. Conviction for violating any state or federal law
 36 which relates to speech-language pathology or audiology is

1 necessarily considered to constitute a violation, except as
2 provided in chapter 364;

3 (7) aided or abetted another person in violating any
4 provision of sections 148.511 to ~~148.5196~~ 148.5198;

5 (8) been or is being disciplined by another jurisdiction,
6 if any of the grounds for the discipline is the same or
7 substantially equivalent to those under sections 148.511 to
8 148.5196;

9 (9) not cooperated with the commissioner or advisory
10 council in an investigation conducted according to subdivision
11 1;

12 (10) advertised in a manner that is false or misleading;

13 (11) engaged in conduct likely to deceive, defraud, or harm
14 the public; or demonstrated a willful or careless disregard for
15 the health, welfare, or safety of a client;

16 (12) failed to disclose to the consumer any fee splitting
17 or any promise to pay a portion of a fee to any other
18 professional other than a fee for services rendered by the other
19 professional to the client;

20 (13) engaged in abusive or fraudulent billing practices,
21 including violations of federal Medicare and Medicaid laws, Food
22 and Drug Administration regulations, or state medical assistance
23 laws;

24 (14) obtained money, property, or services from a consumer
25 through the use of undue influence, high pressure sales tactics,
26 harassment, duress, deception, or fraud;

27 (15) performed services for a client who had no possibility
28 of benefiting from the services;

29 (16) failed to refer a client for medical evaluation or to
30 other health care professionals when appropriate or when a
31 client indicated symptoms associated with diseases that could be
32 medically or surgically treated;

33 ~~(17) if-the-individual-is-a-dispenser-of-hearing~~
34 ~~instruments-as-defined-by-section-153A-13,-subdivision-5,-had~~
35 ~~the-certification-required-by-chapter-153A,-denied,-suspended,-~~
36 ~~or-revoked-according-to-chapter-153A,~~

1 ~~(18)~~ used the term doctor of audiology, doctor of
2 speech-language pathology, AuD, or SLPD without having obtained
3 the degree from an institution accredited by the North Central
4 Association of Colleges and Secondary Schools, the Council on
5 Academic Accreditation in Audiology and Speech-Language
6 Pathology, the United States Department of Education, or an
7 equivalent; ~~or~~

8 ~~(19)~~ (18) failed to comply with the requirements of section
9 148.5192 regarding supervision of speech-language pathology
10 assistants;

11 (19) prescribed or otherwise recommended to a consumer or
12 potential consumer the use of a hearing aid, unless the
13 prescription from a physician or recommendation from an
14 audiologist is in writing, is based on an audiogram that is
15 delivered to the consumer or potential consumer when the
16 prescription or recommendation is made, and bears the following
17 information in all capital letters of 12-point or larger
18 boldface type: "THIS PRESCRIPTION OR RECOMMENDATION MAY BE
19 FILLED BY, AND HEARING AIDS MAY BE PURCHASED FROM, THE LICENSED
20 AUDIOLOGIST OR CERTIFIED DISPENSER OF YOUR CHOICE";

21 (20) failed to give a copy of the audiogram, upon which the
22 prescription or recommendation is based, to the consumer when
23 the consumer requests a copy;

24 (21) failed to provide the consumer rights brochure
25 required by section 148.5197, subdivision 3;

26 (22) failed to comply with restrictions on sales of hearing
27 aids in sections 148.5197, subdivision 3, and 148.5198;

28 (23) failed to return a consumer's hearing aid used as a
29 trade-in or for a discount in the price of a new hearing aid
30 when requested by the consumer upon cancellation of the purchase
31 agreement;

32 (24) failed to follow Food and Drug Administration or
33 Federal Trade Commission regulations relating to dispensing
34 hearing aids; or

35 (25) failed to dispense a hearing aid in a competent manner
36 or without appropriate training.

1 Sec. 7. [148.5197] [HEARING AID DISPENSING.]

2 Subdivision 1. [CONTENT OF CONTRACTS.] Oral statements
3 made by an audiologist regarding the provision of warranties,
4 refunds, and service on the hearing aid or aids dispensed must
5 be written on, and become part of, the contract of sale, specify
6 the item or items covered, and indicate the person or business
7 entity obligated to provide the warranty, refund, or service.

8 Subd. 2. [REQUIRED USE OF LICENSE NUMBER.] The
9 audiologist's license number must appear on all contracts, bills
10 of sale, and receipts used in the sale of hearing aids.

11 Subd. 3. [CONSUMER RIGHTS INFORMATION.] An audiologist
12 shall, at the time of the recommendation or prescription, give a
13 consumer rights brochure, prepared by the commissioner and
14 containing information about legal requirements pertaining to
15 sales of hearing aids, to each potential buyer of a hearing
16 aid. The brochure must contain information about the consumer
17 information center described in section 153A.18. A sales
18 contract for a hearing aid must note the receipt of the brochure
19 by the buyer, along with the buyer's signature or initials.

20 Subd. 4. [LIABILITY FOR CONTRACTS.] Owners of entities in
21 the business of dispensing hearing aids, employers of
22 audiologists or persons who dispense hearing aids, supervisors
23 of trainees or audiology students, and hearing aid dispensers
24 conducting the sales transaction at issue are liable for
25 satisfying all terms of contracts, written or oral, made by
26 their agents, employees, assignees, affiliates, or trainees,
27 including terms relating to products, repairs, warranties,
28 service, and refunds. The commissioner may enforce the terms of
29 hearing aid sales contracts against the principal, employer,
30 supervisor, or dispenser who conducted the sale and may impose
31 any remedy provided for in this chapter.

32 Sec. 8. [148.5198] [RESTRICTION ON SALE OF HEARING AIDS.]

33 Subdivision 1. [45-CALENDAR-DAY GUARANTEE AND BUYER RIGHT
34 TO CANCEL.] (a) An audiologist dispensing a hearing aid in this
5 state must comply with paragraphs (b) and (c).

36 (b) The audiologist must provide the buyer with a

1 45-calendar-day written money-back guarantee. The guarantee
2 must permit the buyer to cancel the purchase for any reason
3 within 45 calendar days after receiving the hearing aid by
4 giving or mailing written notice of cancellation to the
5 audiologist. If the consumer mails the notice of cancellation,
6 the 45-calendar-day period is counted using the postmark date,
7 to the date of receipt by the audiologist. If the hearing aid
8 must be repaired, remade, or adjusted during the 45-calendar-day
9 money-back guarantee period, the running of the 45-calendar-day
10 period is suspended one day for each 24-hour period that the
11 hearing aid is not in the buyer's possession. A repaired,
12 remade, or adjusted hearing aid must be claimed by the buyer
13 within three business days after notification of availability,
14 after which time the running of the 45-calendar-day period
15 resumes. The guarantee must entitle the buyer, upon
16 cancellation, to receive a refund of payment within 30 days of
17 return of the hearing aid to the audiologist. The audiologist
18 may retain as a cancellation fee no more than \$250 of the
19 buyer's total purchase price of the hearing aid.

20 (c) The audiologist shall provide the buyer with a contract
21 written in plain English, that contains uniform language and
22 provisions that meet the requirements under the Plain Language
23 Contract Act, sections 325G.29 to 325G.36. The contract must
24 include, but is not limited to, the following: in immediate
25 proximity to the space reserved for the signature of the buyer,
26 or on the first page if there is no space reserved for the
27 signature of the buyer, a clear and conspicuous disclosure of
28 the following specific statement in all capital letters of no
29 less than 12-point boldface type: "MINNESOTA STATE LAW GIVES
30 THE BUYER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT
31 ANY TIME PRIOR TO MIDNIGHT OF THE 45TH CALENDAR DAY AFTER
32 RECEIPT OF THE HEARING AID(S). THIS CANCELLATION MUST BE IN
33 WRITING AND MUST BE GIVEN OR MAILED TO THE AUDIOLOGIST. IF THE
34 BUYER DECIDES TO RETURN THE HEARING AID(S) WITHIN THIS
35 45-CALENDAR-DAY PERIOD, THE BUYER WILL RECEIVE A REFUND OF THE
36 TOTAL PURCHASE PRICE OF THE AID(S) FROM WHICH THE AUDIOLOGIST

1 MAY RETAIN AS A CANCELLATION FEE NO MORE THAN \$250."

2 Subd. 2. [ITEMIZED REPAIR BILL.] Any audiologist or
3 company who agrees to repair a hearing aid must provide the
4 owner of the hearing aid, or the owner's representative, with a
5 bill that describes the repair and services rendered. The bill
6 must also include the repairing audiologist's or company's name,
7 address, and telephone number.

8 This subdivision does not apply to an audiologist or
9 company that repairs a hearing aid pursuant to an express
10 warranty covering the entire hearing aid and the warranty covers
11 the entire cost, both parts and labor, of the repair.

12 Subd. 3. [REPAIR WARRANTY.] Any guarantee of hearing aid
13 repairs must be in writing and delivered to the owner of the
14 hearing aid, or the owner's representative, stating the
15 repairing audiologist's or company's name, address, telephone
16 number, length of guarantee, model, and serial number of the
17 hearing aid and all other terms and conditions of the guarantee.

18 Subd. 4. [MISDEMEANOR.] A person found to have violated
19 this section is guilty of a misdemeanor.

20 Subd. 5. [ADDITIONAL.] In addition to the penalty provided
21 in subdivision 4, a person found to have violated this section
22 is subject to the penalties and remedies provided in section
23 325F.69, subdivision 1.

24 Subd. 6. [ESTIMATES.] Upon the request of the owner of a
25 hearing aid or the owner's representative for a written estimate
26 and prior to the commencement of repairs, a repairing
27 audiologist or company shall provide the customer with a written
28 estimate of the price of repairs. If a repairing audiologist or
29 company provides a written estimate of the price of repairs, it
30 must not charge more than the total price stated in the estimate
31 for the repairs. If the repairing audiologist or company after
32 commencing repairs determines that additional work is necessary
33 to accomplish repairs that are the subject of a written estimate
34 and if the repairing audiologist or company did not unreasonably
35 fail to disclose the possible need for the additional work when
36 the estimate was made, the repairing audiologist or company may

1 charge more than the estimate for the repairs if the repairing
2 audiologist or company immediately provides the owner or owner's
3 representative a revised written estimate pursuant to this
4 section and receives authorization to continue with the
5 repairs. If continuation of the repairs is not authorized, the
6 repairing audiologist or company shall return the hearing aid as
7 close as possible to its former condition and shall release the
8 hearing aid to the owner or owner's representative upon payment
9 of charges for repairs actually performed and not in excess of
10 the original estimate.

11 Sec. 9. Minnesota Statutes 2004, section 153A.13,
12 subdivision 5, is amended to read:

13 Subd. 5. [DISPENSER OF HEARING INSTRUMENTS.] "Dispenser of
14 hearing instruments" means a natural person who engages in
15 hearing instrument dispensing whether or not certified by the
16 commissioner of health or licensed by an existing health-related
17 board, except that a person described as follows is not a
18 dispenser of hearing instruments:

19 (1) a student participating in supervised field work that
20 is necessary to meet requirements of an accredited educational
21 program if the student is designated by a title which clearly
22 indicates the student's status as a student trainee; or

23 (2) a person who helps a dispenser of hearing instruments
24 in an administrative or clerical manner and does not engage in
25 hearing instrument dispensing.

26 A person who offers to dispense a hearing instrument, or a
27 person who advertises, holds out to the public, or otherwise
28 represents that the person is authorized to dispense hearing
29 instruments must be certified by the commissioner except when
30 the person is an audiologist as defined in section 148.512.

31 Sec. 10. Minnesota Statutes 2004, section 153A.14,
32 subdivision 2i, is amended to read:

33 Subd. 2i. [CONTINUING EDUCATION REQUIREMENT.] On forms
34 provided by the commissioner, each certified dispenser must
35 submit with the application for renewal of certification
36 evidence of completion of ten course hours of continuing

1 education earned within the 12-month period of July 1 to June 30
2 immediately preceding renewal. Continuing education courses
3 must be directly related to hearing instrument dispensing and
4 approved by the International Hearing Society ~~or-qualify-for~~
5 ~~continuing-education-approved-for-Minnesota-licensed~~
6 ~~audiologists~~. Evidence of completion of the ten course hours of
7 continuing education must be submitted with renewal applications
8 by October 1 of each year. This requirement does not apply to
9 dispensers certified for less than one year. The first report
10 of evidence of completion of the continuing education credits
11 shall be due October 1, 1997.

12 Sec. 11. Minnesota Statutes 2004, section 153A.14,
13 subdivision 4, is amended to read:

14 Subd. 4. [DISPENSING OF HEARING INSTRUMENTS WITHOUT
15 CERTIFICATE.] Except as provided in subdivisions 2a, 4a, and 4c,
16 it is unlawful for any person not holding a valid certificate to
17 dispense a hearing instrument as defined in section 153A.13,
18 subdivision 3. A person who dispenses a hearing instrument
19 without the certificate required by this section is guilty of a
20 gross misdemeanor.

21 Sec. 12. Minnesota Statutes 2004, section 153A.14,
22 subdivision 4c, is amended to read:

23 Subd. 4c. [RECIPROCITY.] (a) A person applying for
24 certification as a hearing instrument dispenser under
25 subdivision 1 who has dispensed hearing instruments in another
26 jurisdiction may dispense hearing instruments as a trainee under
27 indirect supervision if the person:

28 (1) satisfies the provisions of subdivision 4a, paragraph
29 (a);

30 (2) submits a signed and dated affidavit stating that the
31 applicant is not the subject of a disciplinary action or past
32 disciplinary action in this or another jurisdiction and is not
33 disqualified on the basis of section 153A.15, subdivision 1; and

34 (3) provides a copy of a current credential as a hearing
35 instrument dispenser, ~~-an-audiologist, -or-both,~~ held in the
36 District of Columbia or a state or territory of the United

1 States.

2 (b) A person becoming a trainee under this subdivision who
3 fails to take and pass the practical examination described in
4 subdivision 2h, paragraph (a), clause (2), when next offered
5 must cease dispensing hearing instruments unless under direct
6 supervision.

7 Sec. 13. Minnesota Statutes 2004, section 153A.15,
8 subdivision 1, is amended to read:

9 Subdivision 1. [PROHIBITED ACTS.] The commissioner may
10 take enforcement action as provided under subdivision 2 against
11 a dispenser of hearing instruments for the following acts and
12 conduct:

13 (1) prescribing or otherwise recommending to a consumer or
14 potential consumer the use of a hearing instrument, unless the
15 prescription from a physician or recommendation from a hearing
16 instrument dispenser or audiologist is in writing, is based on
17 an audiogram that is delivered to the consumer or potential
18 consumer when the prescription or recommendation is made, and
19 bears the following information in all capital letters of
20 12-point or larger boldface type: "THIS PRESCRIPTION OR
21 RECOMMENDATION MAY BE FILLED BY, AND HEARING INSTRUMENTS MAY BE
22 PURCHASED FROM, THE CERTIFIED DISPENSER OR LICENSED AUDIOLOGIST
23 OF YOUR CHOICE";

24 (2) failing to give a copy of the audiogram, upon which the
25 prescription or recommendation is based, to the consumer when
26 there has been a charge for the audiogram and the consumer
27 requests a copy;

28 (3) dispensing a hearing instrument to a minor person 18
29 years or younger unless evaluated by an audiologist for hearing
30 evaluation and hearing aid evaluation;

31 (4) failing to provide the consumer rights brochure
32 required by section 153A.14, subdivision 9;

33 (5) being disciplined through a revocation, suspension,
34 restriction, or limitation by another state for conduct subject
35 to action under this chapter;

36 (6) presenting advertising that is false or misleading;

1 (7) providing the commissioner with false or misleading
2 statements of credentials, training, or experience;

3 (8) engaging in conduct likely to deceive, defraud, or harm
4 the public; or demonstrating a willful or careless disregard for
5 the health, welfare, or safety of a consumer;

6 (9) splitting fees or promising to pay a portion of a fee
7 to any other professional other than a fee for services rendered
8 by the other professional to the client;

9 (10) engaging in abusive or fraudulent billing practices,
10 including violations of federal Medicare and Medicaid laws, Food
11 and Drug Administration regulations, or state medical assistance
12 laws;

13 (11) obtaining money, property, or services from a consumer
14 through the use of undue influence, high pressure sales tactics,
15 harassment, duress, deception, or fraud;

16 (12) failing to comply with restrictions on sales of
17 hearing aids in sections 153A.14, subdivision 9, and 153A.19;

18 (13) performing the services of a certified hearing
19 instrument dispenser in an incompetent or negligent manner;

20 (14) failing to comply with the requirements of this
21 chapter as an employer, supervisor, or trainee;

22 (15) failing to provide information in a timely manner in
23 response to a request by the commissioner, commissioner's
24 designee, or the advisory council;

25 (16) being convicted within the past five years of
26 violating any laws of the United States, or any state or
27 territory of the United States, and the violation is a felony,
28 gross misdemeanor, or misdemeanor, an essential element of which
29 relates to hearing instrument dispensing, except as provided in
30 chapter 364;

31 (17) failing to cooperate with the commissioner, the
32 commissioner's designee, or the advisory council in any
33 investigation;

34 (18) failing to perform hearing instrument dispensing with
35 reasonable judgment, skill, or safety due to the use of alcohol
36 or drugs, or other physical or mental impairment;

1 (19) failing to fully disclose actions taken against the
2 applicant or the applicant's legal authorization to dispense
3 hearing instruments in this or another state;

4 (20) violating a state or federal court order or judgment,
5 including a conciliation court judgment, relating to the
6 activities of the applicant in hearing instrument dispensing;

7 (21) having been or being disciplined by the commissioner
8 of the Department of Health, or other authority, in this or
9 another jurisdiction, if any of the grounds for the discipline
10 are the same or substantially equivalent to those in sections
11 153A.13 to 153A.19;

12 (22) misrepresenting the purpose of hearing tests, or in
13 any way communicating that the hearing test or hearing test
14 protocol required by section 153A.14, subdivision 4b, is a
15 medical evaluation, a diagnostic hearing evaluation conducted by
16 an audiologist, or is other than a test to select a hearing
17 instrument, except that the hearing instrument dispenser can
18 determine the need for or recommend the consumer obtain a
19 medical evaluation consistent with requirements of the United
20 States Food and Drug Administration;

21 (23) violating any of the provisions of sections 153A.13 to
22 153A.19; and

23 (24) aiding or abetting another person in violating any of
24 the provisions of sections 153A.13 to 153A.19.

25 Sec. 14. Minnesota Statutes 2004, section 153A.20,
26 subdivision 1, is amended to read:

27 Subdivision 1. [MEMBERSHIP.] The commissioner shall
28 appoint nine persons to a Hearing Instrument Dispenser Advisory
29 Council.

30 (a) The nine persons must include:

31 (1) three public members, as defined in section 214.02. At
32 least one of the public members shall be a hearing instrument
33 user and one of the public members shall be either a hearing
34 instrument user or an advocate of one; and

35 (2) three hearing instrument dispensers certified under
36 sections 153A.14 to 153A.20, each of whom is currently, and has

1 been for the five years immediately preceding their appointment,
2 engaged in hearing instrument dispensing in Minnesota and who
3 represent the occupation of hearing instrument dispensing and
4 who are not audiologists; and

5 (3) ~~three audiologists who are certified hearing instrument~~
6 ~~dispensers or are~~ licensed as audiologists under chapter 148.

7 (b) The factors the commissioner may consider when
8 appointing advisory council members include, but are not limited
9 to, professional affiliation, geographical location, and type of
10 practice.

11 (c) No two members of the advisory council shall be
12 employees of, or have binding contracts requiring sales
13 exclusively for, the same hearing instrument manufacturer or the
14 same employer.

15 Sec. 15. [REVISOR'S INSTRUCTION.]

16 The revisor of statutes shall change references from
17 "sections 148.511 to 148.5196" to "sections 148.511 to 148.5198"
18 wherever they appear in Minnesota Statutes and Minnesota Rules.

19 Sec. 16. [REPEALER.]

20 Minnesota Statutes 2004, section 153A.14, subdivision 2a,
21 is repealed.

22 Sec. 17. [EFFECTIVE DATE.]

23 Sections 1 to 14 and 16 are effective August 1, 2005."

24 Delete the title and insert:

25 "A bill for an act relating to health; providing that
26 audiologists need not obtain hearing instrument dispenser
27 certification; providing penalties; amending Minnesota Statutes
28 2004, sections 148.512, subdivision 6, by adding subdivisions;
29 148.515, by adding a subdivision; 148.5194, by adding a
30 subdivision; 148.5195, subdivision 3; 153A.13, subdivision 5;
31 153A.14, subdivisions 2i, 4, 4c; 153A.15, subdivision 1;
32 153A.20, subdivision 1; proposing coding for new law in
33 Minnesota Statutes, chapter 148; repealing Minnesota Statutes
34 2004, section 153A.14, subdivision 2a."

To: Minnesota Representatives and Senators

From: Paul M. D'Amico, Vice President, Amplifon USA, Inc.

Date: April 1, 2005

Subject: Proposed House and Senate Legislation Exempting Audiologists From Certain State Mandated Examination Requirements.

My Company, Amplifon USA, Inc. has its headquarters in Plymouth, Minnesota. We are the largest retailer of hearing aids in the United States. We distribute hearing aids under the Miracle-Ear, Sonus and National Hearing Centers trade names. Currently we support at least 1400 full-time retail locations, either by direct Corporate ownership or by privately owned franchises.

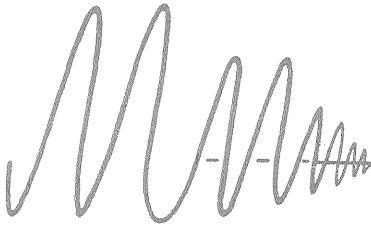
For our Corporate-owned locations, we employ hundreds of licensed staff that provides hearing aid services to consumers. Many of our employees are audiologists, and many are not. We firmly believe that we have the professional expertise and experience in the operating parameters that are required to consistently provide the highest quality hearing aid product and services to the consumer.

We are categorically and emphatically opposed to any efforts and proposed legislation that exempts audiologists from any State mandated examination requirements. Here is the reason for our position.

We strongly believe that anyone that we employ to dispense hearing aids to consumers must demonstrate their expertise and proficiency by passing the State mandated examination. In our experience, there is no correlation between an audiology degree and any type of hearing aid dispensing experience whatsoever. This was directly, clearly and emphatically demonstrated to me a few years ago. I received a call from a from the chairman of an audiology department at a well-known university. He wanted to bring his soon to be graduating masters degree audiology class to our hearing aid manufacturing facility for a tour. I told him that we would gladly accommodate his request. Upon their arrival at our facility, the professor and I had an opportunity to chat a bit. He calmly revealed that this tour of our facility was the student's only exposure to hearing aids, and that hearing aids were not included in any part of their graduate degree curriculum.

Minnesota consumers deserve the highest degree of expertise and service for their hearing aid requirements. We firmly believe that the only way to guarantee this high level of expertise is through the State mandated examination requirements. We strongly encourage you to reject any attempts to exempt any parties from these requirements.

Dr. Josephine Helmbrecht, AuD



MINNESOTA ACADEMY OF AUDIOLOGY

PO Box 20103 • Bloomington, MN 55420
(612) 250-0305
www.minnesotaaudiology.org

Senate File 1718

- Audiologists would be required to hold only one license (instead of 2) to perform the duties listed within the audiology license. Current State of MN Audiology license already includes hearing aid dispensing activities within the Audiology scope of practice.
-
- Current dual-regulation of Audiologists causes the Minnesota Department of Health to duplicate services by reviewing applications twice and reviewing continuing education credits three times in a two year period instead of once
- Consumers protection language was included in this legislation
- Audiology license requires 1/3 more CE hours for renewal than HID certification
- Treats all audiologists as equal rather than tie dispensing designator to audiologists who "profit".
- We have been working with state agencies and other related organizations to provide an amicable solution
- In 29 other states and audiologist needs only an audiology license to practice
- Cost neutral/time positive for the MDH. Fees paid by audiologists for dispensing certification will be spread across all licensed audiologists. We expect costs to MDH, and eventually fees to audiologists to actually decrease.
- Non-Audiologist hearing instrument dispensers would not be affected by this legislation and would continue to be required to hold HID Certification
- Audiologists without HID certification have been polled and support this legislation.

**MINNESOTA SPEECH-LANGUAGE-HEARING ASSOCIATION**

P.O. BOX 26115 • St. Louis Park, MN 55426

Phone: 952/920-0787 • Fax: 952/920-6098 • 1-800-344-8808

E-mail: msha@incnet.com • Web: www.msha.net

March 25, 2005

To Whom It May Concern:

The Minnesota Speech-Language-Hearing Association, MSHA, is a not-for-profit organization with approximately 700 members in the professions of speech-language pathology and audiology. Our goals are concerned with the prevention, assessment and treatment of communication disorders and the study of normal and disordered human communication. One of our specific missions is to promote awareness of, and advocacy for, the rights of persons with communication disorders, including hearing loss.

The Minnesota Speech-Language-Hearing Association supports the Audiologist Hearing Instrument Dispensing Regulation Modification Bill (S.F. 1718; H.F. 1935). This bill provides that audiologists do not need to obtain hearing instrument dispensing certification. It adds grounds for disciplinary action and requirements for hearing instrument dispensing and restrictions on the sale of hearing aids.

Requirements included in the bill along with the audiologist's training, examination, and continuing education provide the consumer with a high standard of protection.

The current regulatory system of dual credentialing for audiologist licensure and certification for dispensing hearing instruments is confusing to the public and a duplication of administrative documentation and regulation for state agencies. Enactment of this bill would reduce confusion for consumers and streamline regulatory administration.

This bill is fiscally neutral. There would be no additional cost to tax payers and it could reduce state agency administrative costs due to a simplified system of regulation.

The Audiologist Hearing Instrument Dispensing Regulation Modification Bill increases protection for consumers and streamlines regulatory system requirements. The Minnesota Speech-Language-Hearing Association supports this bill.

Sincerely yours,

MINNESOTA SPEECH-LANGUAGE-HEARING ASSOCIATION

A handwritten signature in cursive script that reads "Sarah G. Sweeney".

Sarah G. Sweeney
MSHA, Past President

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Sincerely yours,

MINNESOTA SPEECH-LANGUAGE-HEARING ASSOCIATION

A handwritten signature in cursive script that reads "Sarah G. Sweeney".

Sarah G. Sweeney
MSHA, Past President

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
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JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1830 - Physician Assistants

Author: Senator Sheila M. Kiscaden

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) *KTC*

Date: March 31, 2005

S.F. No. 1830 modifies the information required on a prescription issued by a physician assistant.

Section 1 (147A.18, subdivision 1) deletes the requirement for weekly reviews by the supervising physician and replaces it with the requirement that the review be conducted as outlined in the internal protocol.

Section 2 (147A.18, subdivision 3) states that prescriptions initiated by a physician assistant must contain the name and the address of the prescribing physician assistant and removes the requirement of including the telephone number of the physician assistant and the name of the supervising physician.

KC:ph

Senators Kiscaden, Higgins and Kelley introduced--

S.F. No. 1830: Referred to the Committee on Health and Family Security.

1 A bill for an act

2 relating to physician assistants; modifying physician
3 review; modifying information contained on
4 prescriptions; amending Minnesota Statutes 2004,
5 section 147A.18, subdivisions 1, 3.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

7 Section 1. Minnesota Statutes 2004, section 147A.18,
8 subdivision 1, is amended to read:

9 Subdivision 1. [DELEGATION.] (a) A supervising physician
10 may delegate to a physician assistant who is registered with the
11 board, certified by the National Commission on Certification of
12 Physician Assistants or successor agency approved by the board,
13 and who is under the supervising physician's supervision, the
14 authority to prescribe, dispense, and administer legend drugs,
15 medical devices, and controlled substances subject to the
16 requirements in this section. The authority to dispense
17 includes, but is not limited to, the authority to request,
18 receive, and dispense sample drugs. This authority to dispense
19 extends only to those drugs described in the written agreement
20 developed under paragraph (b).

21 (b) The agreement between the physician assistant and
22 supervising physician and any alternate supervising physicians
23 must include a statement by the supervising physician regarding
24 delegation or nondelegation of the functions of prescribing,
25 dispensing, and administering of legend drugs and medical

1 devices to the physician assistant. The statement must include
2 a protocol indicating categories of drugs for which the
3 supervising physician delegates prescriptive and dispensing
4 authority. The delegation must be appropriate to the physician
5 assistant's practice and within the scope of the physician
6 assistant's training. Physician assistants who have been
7 delegated the authority to prescribe, dispense, and administer
8 legend drugs and medical devices shall provide evidence of
9 current certification by the National Commission on
10 Certification of Physician Assistants or its successor agency
11 when registering or reregistering as physician assistants.
12 Physician assistants who have been delegated the authority to
13 prescribe controlled substances must present evidence of the
14 certification and hold a valid DEA certificate. Supervising
15 physicians shall retrospectively review the prescribing,
16 dispensing, and administering of legend and controlled drugs and
17 medical devices by physician assistants, when this authority has
18 been delegated to the physician assistant as part of the
19 delegation agreement between the physician and the physician
20 assistant. This review must take place ~~at-least-weekly~~ as
21 outlined in the internal protocol. The process and schedule for
22 the review must be outlined in the delegation agreement.

23 (c) The board may establish by rule:

24 (1) a system of identifying physician assistants eligible
25 to prescribe, administer, and dispense legend drugs and medical
26 devices;

27 (2) a system of identifying physician assistants eligible
28 to prescribe, administer, and dispense controlled substances;

29 (3) a method of determining the categories of legend and
30 controlled drugs and medical devices that each physician
31 assistant is allowed to prescribe, administer, and dispense; and

32 (4) a system of transmitting to pharmacies a listing of
33 physician assistants eligible to prescribe legend and controlled
34 drugs and medical devices.

35 Sec. 2. Minnesota Statutes 2004, section 147A.18,
36 subdivision 3, is amended to read:

1 Subd. 3. [OTHER REQUIREMENTS AND RESTRICTIONS.] (a) The
2 supervising physician and the physician assistant must complete,
3 sign, and date an internal protocol which lists each category of
4 drug or medical device, or controlled substance the physician
5 assistant may prescribe, dispense, and administer. The
6 supervising physician and physician assistant shall submit the
7 internal protocol to the board upon request. The supervising
8 physician may amend the internal protocol as necessary, within
9 the limits of the completed delegation form in subdivision 5.
10 The supervising physician and physician assistant must sign and
11 date any amendments to the internal protocol. Any amendments
12 resulting in a change to an addition or deletion to categories
13 delegated in the delegation form in subdivision 5 must be
14 submitted to the board according to this chapter, along with the
15 fee required.

16 (b) The supervising physician and physician assistant shall
17 review delegation of prescribing, dispensing, and administering
18 authority on an annual basis at the time of reregistration. The
19 internal protocol must be signed and dated by the supervising
20 physician and physician assistant after review. Any amendments
21 to the internal protocol resulting in changes to the delegation
22 form in subdivision 5 must be submitted to the board according
23 to this chapter, along with the fee required.

24 (c) Each prescription initiated by a physician assistant
25 shall indicate the following:

- 26 (1) the date of issue;
27 (2) the name and address of the patient;
28 (3) the name and quantity of the drug prescribed;
29 (4) directions for use; and
30 (5) the name, and address, ~~and telephone number~~ of the
31 prescribing physician assistant ~~and of the physician serving as~~
32 supervisor.

33 (d) In prescribing, dispensing, and administering legend
34 drugs and medical devices, including controlled substances as
35 defined in section 152.01, subdivision 4, a physician assistant
36 must conform with the agreement, chapter 151, and this chapter.

Senators Kiscaden, LeClair and Lourey introduced--

S.F. No. 1923: Referred to the Committee on Health and Family Security.

1 A bill for an act

2 relating to health; transferring oversight authority
3 for the Office of Mental Health Practice; requiring a
4 report; appropriating money; amending Minnesota
5 Statutes 2004, sections 148B.60; 148B.61; Laws 2003,
6 chapter 118, section 29, as amended.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

8 Section 1. Minnesota Statutes 2004, section 148B.60, is
9 amended to read:

10 148B.60 [DEFINITIONS.]

11 Subdivision 1. [TERMS.] As used in sections 148B.60 to
12 148B.71, the following terms have the meanings given them in
13 this section.

14 Subd. 2. [OFFICE OF MENTAL HEALTH PRACTICE OR OFFICE.]
15 "Office of Mental Health Practice" or "office" means the Office
16 of Mental Health Practice established authorized in section
17 148B.61.

18 Subd. 3. [UNLICENSED MENTAL HEALTH PRACTITIONER OR
19 PRACTITIONER.] "Unlicensed mental health practitioner" or
20 "practitioner" means a person who provides or purports to
21 provide, for remuneration, mental health services as defined in
22 subdivision 4. It does not include persons licensed by the
23 Board of Medical Practice under chapter 147 or registered by the
24 Board of Medical Practice under chapter 147A; the Board of
25 Nursing under sections 148.171 to 148.285; the Board of
26 Psychology under sections 148.88 to 148.98; the Board of Social

1 Work under sections 148B.18 to 148B.289; the Board of Marriage
2 and Family Therapy under sections 148B.29 to 148B.39; the Board
3 of Behavioral Health and Therapy under sections 148B.50 to
4 148B.593 and chapter 148C; or another licensing board if the
5 person is practicing within the scope of the license; members of
6 the clergy who are providing pastoral services in the context of
7 performing and fulfilling the salaried duties and obligations
8 required of a member of the clergy by a religious congregation;
9 American Indian medicine men and women; licensed attorneys;
10 probation officers; licensed school counselors employed by a
11 school district while acting within the scope of employment as
12 school counselors; ~~registered~~ licensed occupational therapists;
13 or licensed occupational therapy assistants. For the purposes
14 of complaint investigation or disciplinary action relating to an
15 individual practitioner, the term includes:

16 (1) persons employed by a program licensed by the
17 commissioner of human services who are acting as mental health
18 practitioners within the scope of their employment;

19 (2) persons employed by a program licensed by the
20 commissioner of human services who are providing chemical
21 dependency counseling services; persons who are providing
22 chemical dependency counseling services in private practice; and

23 (3) clergy who are providing mental health services that
24 are equivalent to those defined in subdivision 4.

25 Subd. 4. [MENTAL HEALTH SERVICES.] "Mental health
26 services" means psychotherapy, behavioral health care, spiritual
27 counseling, hypnosis when not for entertainment, and the
28 professional assessment, treatment, or counseling of another
29 person for a cognitive, behavioral, emotional, social, or mental
30 condition, symptom, or dysfunction, including intrapersonal or
31 interpersonal dysfunctions. The term does not include pastoral
32 services provided by members of the clergy to members of a
33 religious congregation in the context of performing and
34 fulfilling the salaried duties and obligations required of a
35 member of the clergy by that religious congregation.

36 Subd. 5. [MENTAL HEALTH CLIENT OR CLIENT.] "Mental health

1 client" or "client" means a person who receives or pays for the
2 services of a mental health practitioner.

3 Subd. 5a. [MENTAL-HEALTH-RELATED LICENSING
4 BOARDS.] "Mental-health-related licensing boards" means the
5 Boards of Medical Practice, Nursing, Psychology, Social Work,
6 Marriage and Family Therapy, and Behavioral Health and Therapy.

7 ~~Subd. 7. [COMMISSIONER.] "Commissioner" means the~~
8 ~~commissioner of health or the commissioner's designee.~~

9 Subd. 7a. [COMMITTEE.] "Committee" means the Office of
10 Mental Health Practices Committee, consisting of one person
11 appointed by each of the following licensing boards: the Board
12 of Medical Practice; the Board of Nursing; the Board of
13 Psychology; the Board of Social Work; the Board of Marriage and
14 Family Therapy; and the Board of Behavioral Health and Therapy.

15 Subd. 8. [DISCIPLINARY ACTION.] "Disciplinary action"
16 means an adverse action taken by the commissioner against an
17 unlicensed mental health practitioner relating to the person's
18 right to provide mental health services.

19 Sec. 2. Minnesota Statutes 2004, section 148B.61, is
20 amended to read:

21 148B.61 [OFFICE OF MENTAL HEALTH PRACTICE.]

22 Subdivision 1. [CREATION AUTHORITY.] (a) The Office of
23 Mental Health Practice is ~~created in the Department of Health~~
24 ~~transferred to the mental-health-related licensing boards and~~
25 ~~authorized~~ to investigate complaints and take and enforce
26 disciplinary actions against all unlicensed mental health
27 practitioners for violations of prohibited conduct, as defined
28 in section 148B.68.

29 (b) The office shall publish a complaint telephone number,
30 provide an informational Web site, and also serve as a referral
31 point and clearinghouse on complaints against mental health
32 ~~services and both licensed and unlicensed mental health~~
33 ~~professionals, through the dissemination of practitioners.~~ The
34 office shall disseminate objective information to consumers and
35 through the development and performance of public education
36 activities, including outreach, regarding the provision of

1 mental health services and both licensed and unlicensed mental
2 health professionals who provide these services.

3 ~~Subd.--2.--[RULEMAKING.]The commissioner of health shall~~
4 ~~adopt rules necessary to implement, administer, or enforce~~
5 ~~provisions of sections 148B.60 to 148B.71 pursuant to chapter~~
6 ~~14.--The commissioner may not adopt rules that restrict or~~
7 ~~prohibit persons from providing mental health services on the~~
8 ~~basis of education, training, experience, or supervision.~~

9 Subd. 4. [MANAGEMENT, REPORT, AND SUNSET OF THE
10 OFFICE.] (a) The committee shall:

11 (1) designate one board to provide administrative
12 management of the program;

13 (2) set the program budget; and

14 (3) ensure that the program's direction is in accord with
15 its authority.

16 (b) If the participating boards change which board is
17 designated to provide administrative management of the program,
18 any appropriation remaining for the program shall transfer to
19 the newly designated board on the effective date of the change.
20 The participating boards must inform the appropriate legislative
21 committees and the commissioner of finance of any change in the
22 designated board and the amount of any appropriation transferred
23 under this provision.

24 (c) The designated board shall hire the office employees
25 and pay expenses of the program from funds appropriated for that
26 purpose.

27 (d) After July 1, 2008, the committee shall prepare and
28 submit a report to the legislature by January 15, 2009,
29 evaluating the activity of the office and making recommendations
30 concerning the regulation of unlicensed mental health
31 practitioners. In the absence of legislative action to continue
32 the office, the committee and the office expire on June 30, 2009.

33 Sec. 3. Laws 2003, chapter 118, section 29, as amended by
34 Laws 2004, chapter 279, article 5, section 10, is amended to
35 read:

36 Sec. 29. [REPEALER.]

1 (a) Minnesota Statutes 2002, sections 148B.60; 148B.61;
2 148B.63; 148B.64; 148B.65; 148B.66; 148B.67; 148B.68; 148B.69;
3 148B.70; and 148B.71, are repealed.

4 [EFFECTIVE DATE.] This paragraph is effective July 1,
5 2005 2009.

6 (b) Minnesota Statutes 2002, section 148C.01, subdivision
7 6, is repealed.

8 [EFFECTIVE DATE.] This paragraph is effective July 1, 2005.

9 Sec. 4. [APPROPRIATION.]

10 \$..... is appropriated from the state government special
11 revenue fund to the mental-health-related licensing boards as
12 nonrecovery funds.

13 Sec. 5. [REVISOR INSTRUCTION.]

14 The revisor of statutes shall insert "committee" or
15 "committee's" wherever "commissioner of health" or
16 "commissioner's" appears in Minnesota Statutes, sections 148B.60
17 to 148B.71.

18 Sec. 6. [EFFECTIVE DATE.]

19 This act is effective July 1, 2005.

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S.F. No. 1498 - Dental Licensure Provisions

Author: Senator Becky Lourey

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) 

Date: March 29, 2005

SF. No.1498 makes minor modifications to the dental licensure provisions and codifies fees.

Section 1 (150A.01, subdivision 6a) makes technical change in the definition of “faculty dentist” clarifying that the faculty dentist must be licensed as a faculty dentist.

Section 2 (150A.06, subdivision 1a) permits a limited faculty license to be renewed annually and a full faculty license to be renewed biennially.

Section 3 (150A.091) establishes fees in statute.

Subdivision 1 states that fees are not refundable.

Subdivision 2 establishes an application fee.

Subdivision 3 establishes an initial license or registration fee.

Subdivision 4 establishes an annual license fee.

Subdivision 5 establishes a biennial license or registration fee.

Subdivision 6 establishes an annual license late fee.

Subdivision 7 establishes a biennial license or registration late fee.

Subdivision 8 establishes a duplicate license or registration fee.

Subdivision 9 establishes licensure and registration by credentials fee.

Subdivision 10 establishes reinstatement fees.

Subdivision 11 establishes a certificate application fee for anesthesia/sedation.

Subdivision 12 establishes a duplicate certificate fee for anesthesia/sedation.

Subdivision 13 establishes an on site inspection fee.

Subdivision 14 establishes an affidavit of licensure fee.

Subdivision 15 establishes a verification of licensure fee.

Section 4 (150A.10, subdivision 1a) requires a dental hygienist who is injecting anesthetic agents or administering nitrous oxide under the limited authorization provision must be under the general supervision of a licensed dentist. (Currently, the dental hygienist must be under the indirect supervision of a dentist).

KC:ph

Senators Lourey, Foley and Solon introduced--

S.F. No. 1498: Referred to the Committee on Health and Family Security.

A bill for an act

relating to health occupations; modifying dental licensure provisions; establishing fees; amending Minnesota Statutes 2004, sections 150A.01, subdivision 6a; 150A.06, subdivision 1a; 150A.10, subdivision 1a; proposing coding for new law in Minnesota Statutes, chapter 150A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 150A.01, subdivision 6a, is amended to read:

Subd. 6a. [FACULTY DENTIST.] "Faculty dentist" means a person who is licensed to practice dentistry as a faculty member of a school of dentistry, pursuant to section 150A.06, subdivision 1a.

Sec. 2. Minnesota Statutes 2004, section 150A.06, subdivision 1a, is amended to read:

Subd. 1a. [FACULTY DENTISTS.] (a) Faculty members of a school of dentistry must be licensed in order to practice dentistry as defined in section 150A.05. The board may issue to members of the faculty of a school of dentistry a license designated as either a "limited faculty license" or a "full faculty license" entitling the holder to practice dentistry within the terms described in paragraph (b) or (c). The dean of a school of dentistry and program directors of a Minnesota dental hygiene or dental assisting school accredited by the Commission on Dental Accreditation of the American Dental

1 Association shall certify to the board those members of the
2 school's faculty who practice dentistry but are not licensed to
3 practice dentistry in Minnesota. A faculty member who practices
4 dentistry as defined in section 150A.05, before beginning duties
5 in a school of dentistry or a dental hygiene or dental assisting
6 school, shall apply to the board for a limited or full faculty
7 license. ~~The license expires the next July 1 and may, at the~~
8 ~~discretion of the board, be renewed on a yearly basis.~~ Pursuant
9 to Minnesota Rules, chapter 3100, and at the discretion of the
10 board, a limited faculty license must be renewed annually and a
11 full faculty license must be renewed biennially. The faculty
12 applicant shall pay a nonrefundable fee set by the board for
13 issuing and renewing the faculty license. The faculty license
14 is valid during the time the holder remains a member of the
15 faculty of a school of dentistry or a dental hygiene or dental
16 assisting school and subjects the holder to this chapter.

17 (b) The board may issue to dentist members of the faculty
18 of a Minnesota school of dentistry, dental hygiene, or dental
19 assisting accredited by the Commission on Dental Accreditation
20 of the American Dental Association, a license designated as a
21 limited faculty license entitling the holder to practice
22 dentistry within the school and its affiliated teaching
23 facilities, but only for the purposes of teaching or conducting
24 research. The practice of dentistry at a school facility for
25 purposes other than teaching or research is not allowed unless
26 the dentist was a faculty member on August 1, 1993.

27 (c) The board may issue to dentist members of the faculty
28 of a Minnesota school of dentistry, dental hygiene, or dental
29 assisting accredited by the Commission on Dental Accreditation
30 of the American Dental Association a license designated as a
31 full faculty license entitling the holder to practice dentistry
32 within the school and its affiliated teaching facilities and
33 elsewhere if the holder of the license is employed 50 percent
34 time or more by the school in the practice of teaching or
35 research, and upon successful review by the board of the
36 applicant's qualifications as described in subdivisions 1, 1c,

1 and 4 and board rule. The board, at its discretion, may waive
2 specific licensing prerequisites.

3 Sec. 3. [150A.091] [FEES.]

4 Subdivision 1. [FEE REFUNDS.] No fee may be refunded for
5 any reason.

6 Subd. 2. [APPLICATION FEES.] Each applicant for licensure
7 or registration shall submit with a license or registration
8 application a nonrefundable fee in the following amounts in
9 order to administratively process an application:

10 (1) dentist, \$140;

11 (2) limited faculty dentist, \$140;

12 (3) resident dentist, \$55;

13 (4) dental hygienist, \$55;

14 (5) registered dental assistant, \$35; and

15 (6) dental assistant with a limited registration, \$15.

16 Subd. 3. [INITIAL LICENSE OR REGISTRATION FEES.] Along
17 with the application fee, each of the following licensees or
18 registrants shall submit a separate prorated initial license or
19 registration fee. The prorated initial fee shall be established
20 by the board based on the number of months of the licensee's or
21 registrant's initial term as described in Minnesota Rules, part
22 3100.1700, subpart 1a, not to exceed the following monthly fee
23 amounts:

24 (1) dentist, \$14 times the number of months of the initial
25 term;

26 (2) dental hygienist, \$5 times the number of months of the
27 initial term;

28 (3) registered dental assistant, \$3 times the number of
29 months of initial term; and

30 (4) dental assistant with a limited registration, \$1 times
31 the number of months of the initial term.

32 Subd. 4. [ANNUAL LICENSE FEES.] Each limited faculty or
33 resident dentist shall submit with an annual license renewal
34 application a fee established by the board not to exceed the
35 following amounts:

36 (1) limited faculty dentist, \$168; and

1 (2) resident dentist, \$59.

2 Subd. 5. [BIENNIAL LICENSE OR REGISTRATION FEES.] Each of
3 the following licensees or registrants shall submit with a
4 biennial license or registration renewal application a fee as
5 established by the board, not to exceed the following amounts:

6 (1) dentist, \$336;

7 (2) dental hygienist, \$118;

8 (3) registered dental assistant, \$80; and

9 (4) dental assistant with a limited registration, \$24.

10 Subd. 6. [ANNUAL LICENSE LATE FEE.] Applications for
11 renewal of any license received after the time specified in
12 Minnesota Rules, part 3100.1750, must be assessed a late fee
13 equal to 50 percent of the annual renewal fee.

14 Subd. 7. [BIENNIAL LICENSE OR REGISTRATION LATE
15 FEE.] Applications for renewal of any license or registration
16 received after the time specified in Minnesota Rules, part
17 3100.1700, must be assessed a late fee equal to 25 percent of
18 the biennial renewal fee.

19 Subd. 8. [DUPLICATE LICENSE OR REGISTRATION FEE.] Each
20 licensee or registrant shall submit, with a request for issuance
21 of a duplicate of the original license or registration, or of an
22 annual or biennial renewal of it, a fee in the following amounts:

23 (1) original dentist or dental hygiene license, \$35; and

24 (2) initial and renewal registration certificates and
25 license renewal certificates, \$10.

26 Subd. 9. [LICENSURE AND REGISTRATION BY CREDENTIALS.] Each
27 applicant for licensure as a dentist or dental hygienist or for
28 registration as a registered dental assistant by credentials
29 pursuant to section 150A.06, subdivisions 4 and 8, and Minnesota
30 Rules, part 3100.1400, shall submit with the license or
31 registration application a fee in the following amounts:

32 (1) dentist, \$725;

33 (2) dental hygienist, \$175; and

34 (3) registered dental assistant, \$35.

35 Subd. 10. [REINSTATEMENT FEE.] No dentist, dental
36 hygienist, or registered dental assistant whose license or

1 registration has been suspended or revoked may have the license
2 or registration reinstated or a new license or registration
3 issued until a fee has been submitted to the board in the
4 following amounts:

- 5 (1) dentist, \$140;
- 6 (2) dental hygienist, \$55; and
- 7 (3) registered dental assistant, \$35.

8 Subd. 11. [CERTIFICATE APPLICATION FEE FOR
9 ANESTHESIA/SEDATION.] Each dentist shall submit with a general
10 anesthesia or conscious sedation application a fee as
11 established by the board not to exceed the following amounts:

- 12 (1) for both a general anesthesia and conscious sedation
13 application, \$50;
- 14 (2) for a general anesthesia application only, \$50; and
- 15 (3) for a conscious sedation application only, \$50.

16 Subd. 12. [DUPLICATE CERTIFICATE FEE FOR
17 ANESTHESIA/SEDATION.] Each dentist shall submit with a request
18 for issuance of a duplicate of the original general anesthesia
19 or conscious sedation certificate a fee in the amount of \$10.

20 Subd. 13. [ON-SITE INSPECTION FEE.] An on-site inspection
21 fee must be paid to the individual, organization, or agency
22 conducting the inspection and be limited to a maximum fee as
23 determined by the board. Travel, lodging, and other expenses
24 are not part of the on-site inspection fee.

25 Subd. 14. [AFFIDAVIT OF LICENSURE.] Each licensee or
26 registrant shall submit with a request for an affidavit of
27 licensure a fee in the amount of \$10.

28 Subd. 15. [VERIFICATION OF LICENSURE.] Each institution or
29 corporation shall submit with a request for verification of a
30 license or registration a fee in the amount of \$5 for each
31 license or registration to be verified.

32 [EFFECTIVE DATE.] Subdivisions 11 and 12 are effective
33

34 Sec. 4. Minnesota Statutes 2004, section 150A.10,
35 subdivision 1a, is amended to read:

36 Subd. 1a. [LIMITED AUTHORIZATION FOR DENTAL HYGIENISTS.]

1 (a) Notwithstanding subdivision 1, a dental hygienist licensed
2 under this chapter may be employed or retained by a health care
3 facility, program, or nonprofit organization to perform dental
4 hygiene services described under paragraph (b) without the
5 patient first being examined by a licensed dentist if the dental
6 hygienist:

7 (1) has been engaged in the active practice of clinical
8 dental hygiene for not less than 2,400 hours in the past 18
9 months or a career total of 3,000 hours, including a minimum of
10 200 hours of clinical practice in two of the past three years;

11 (2) has entered into a collaborative agreement with a
12 licensed dentist that designates authorization for the services
13 provided by the dental hygienist;

14 (3) has documented participation in courses in infection
15 control and medical emergencies within each continuing education
16 cycle; and

17 (4) maintains current certification in advanced or basic
18 cardiac life support as recognized by the American Heart
19 Association, the American Red Cross, or another agency that is
20 equivalent to the American Heart Association or the American Red
21 Cross.

22 (b) The dental hygiene services authorized to be performed
23 by a dental hygienist under this subdivision are limited to:

24 (1) oral health promotion and disease prevention education;

25 (2) removal of deposits and stains from the surfaces of the
26 teeth;

27 (3) application of topical preventive or prophylactic
28 agents, including fluoride varnishes and pit and fissure
29 sealants;

30 (4) polishing and smoothing restorations;

31 (5) removal of marginal overhangs;

32 (6) performance of preliminary charting;

33 (7) taking of radiographs; and

34 (8) performance of scaling and root planing.

35 The dental hygienist shall not perform injections of anesthetic
36 agents or the administration of nitrous oxide unless under the

1 ~~indirect~~ general supervision of a licensed dentist.

2 Collaborating dental hygienists may work with unregistered and
3 registered dental assistants who may only perform duties for
4 which registration is not required. The performance of dental
5 hygiene services in a health care facility, program, or
6 nonprofit organization as authorized under this subdivision is
7 limited to patients, students, and residents of the facility,
8 program, or organization.

9 (c) A collaborating dentist must be licensed under this
10 chapter and may enter into a collaborative agreement with no
11 more than four dental hygienists unless otherwise authorized by
12 the board. The board shall develop parameters and a process for
13 obtaining authorization to collaborate with more than four
14 dental hygienists. The collaborative agreement must include:

15 (1) consideration for medically compromised patients and
16 medical conditions for which a dental evaluation and treatment
17 plan must occur prior to the provision of dental hygiene
18 services;

19 (2) age- and procedure-specific standard collaborative
20 practice protocols, including recommended intervals for the
21 performance of dental hygiene services and a period of time in
22 which an examination by a dentist should occur;

23 (3) copies of consent to treatment form provided to the
24 patient by the dental hygienist;

25 (4) specific protocols for the placement of pit and fissure
26 sealants and requirements for follow-up care to assure the
27 efficacy of the sealants after application; and

28 (5) a procedure for creating and maintaining dental records
29 for the patients that are treated by the dental hygienist. This
30 procedure must specify where these records are to be located.
31 The collaborative agreement must be signed and maintained by the
32 dentist, the dental hygienist, and the facility, program, or
33 organization; must be reviewed annually by the collaborating
34 dentist and dental hygienist; and must be made available to the
35 board upon request.

36 (d) Before performing any services authorized under this

1 subdivision, a dental hygienist must provide the patient with a
2 consent to treatment form which must include a statement
3 advising the patient that the dental hygiene services provided
4 are not a substitute for a dental examination by a licensed
5 dentist. If the dental hygienist makes any referrals to the
6 patient for further dental procedures, the dental hygienist must
7 fill out a referral form and provide a copy of the form to the
8 collaborating dentist.

9 (e) For the purposes of this subdivision, a "health care
10 facility, program, or nonprofit organization" is limited to a
11 hospital; nursing home; home health agency; group home serving
12 the elderly, disabled, or juveniles; state-operated facility
13 licensed by the commissioner of human services or the
14 commissioner of corrections; and federal, state, or local public
15 health facility, community clinic, tribal clinic, school
16 authority, Head Start program, or nonprofit organization that
17 serves individuals who are uninsured or who are Minnesota health
18 care public program recipients.

19 (f) For purposes of this subdivision, a "collaborative
20 agreement" means a written agreement with a licensed dentist who
21 authorizes and accepts responsibility for the services performed
22 by the dental hygienist. The services authorized under this
23 subdivision and the collaborative agreement may be performed
24 without the presence of a licensed dentist and may be performed
25 at a location other than the usual place of practice of the
26 dentist or dental hygienist and without a dentist's diagnosis
27 and treatment plan, unless specified in the collaborative
28 agreement.

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S.F. No. 1993 - Physical Therapists (With SCS1993A-1)

Author: Senator Becky Lourey

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) *KTC*

Date: March 31, 2005

S.F. No. 1993 modifies provisions relating to physical therapists.

Section 1 [148.65] subdivision 3, defines “physical therapist assistant.”

Section 2 [148.65] subdivision 4, defines “physical therapy aide.”

Section 3 [148.65] subdivision 5, defines “student physical therapist.”

Section 4 [148.65] subdivision 6, defines “student physical therapist assistant.”

Section 5 [148.65] subdivision 7, defines “supportive personnel.”

Section 6 [148.706] authorizes a physical therapist to delegate duties to a physical therapist assistant and assign tasks to the physical therapist aide in accordance with rules. States that physical therapists who instruct student therapists and student assistants are responsible for the functions performed by the students.

Section 7 [148.735] describes cancellation of a license in good standing.

Subdivision 1 states that a physical therapist holding an active license may be granted a license cancellation if the board is not investigating the individual or has not begun disciplinary proceedings against the individual. Such a cancellation shall be reported as a cancellation of a license in good standing.

Subdivision 2 states that license fees are not refundable if a person is permitted license cancellation.

Subdivision 3 states that if a physical therapist who has been granted a cancellation desires to resume practice, the therapist must obtain a new license by applying for licensure and fulfilling the requirements that are then in existence for obtaining an initial license to practice.

Section 8 [148.736] describes cancellation of credentials under a disciplinary order.

Subdivision 1 states that a physical therapist whose right to practice is under suspension, condition, limitation, or restriction may be granted cancellation of credentials by approval of the board. This action shall be reported as cancellation while under discipline.

Subdivision 2 states that a person is not entitled to a refund of license fees if allowed credential cancellation.

Subdivision 3 states that if a therapist who has been granted a credential cancellation desires to resume the practice, that therapist must obtain a new credential by applying to the board and fulfilling the requirements that are in existence for obtaining an initial credential to practice.

Section 9 [148.737] states that the board shall not renew, reissue, reinstate, or restore a license that has lapsed on or after January 1, 2006, and has not been renewed within two annual license renewal cycles starting January 1, 2008. A licensee whose license is cancelled for nonrenewal must obtain a new license by applying for licensure and fulfilling all requirements than in existence for an initial license to practice.

Section 10 [148.75] states that the board may discipline a physical therapist for inadequate supervision of a student physical therapist, physical therapist assistant, student physical therapist assistant, or a physical therapy aide; and for practicing under a lapsed or nonrenewel credential.

Section 11 [148.754] paragraph (a), authorizes the board to direct a physical therapist to submit to a mental or physical examination. States that every physical therapist is deemed to have consented to an evaluation when directed by the board in writing. Failure to submit to the examination constitutes an admission of the allegations.

Paragraph (b) states that the records and orders under this section shall not be used in any other proceeding.

Paragraph (c) permits the board to access medical data and health records without the person's consent if it has probable cause to believe the physical therapist comes under Minnesota Statutes, section 148.75, paragraph (a). A provider is immune from liability. All data obtained is classified as private data.

Section 12 [148.755] authorizes the board without a hearing to temporarily suspend the license of a physical therapist if the board finds that the therapist has violated a statute or rule the board is empowered to enforce. Provides that the board shall schedule a disciplinary hearing.

Section 13 repeals Rules 5601.0100, subparts 3 and 4.

KC:vs

Senator Lourey introduced--

S.F. No. 1993: Referred to the Committee on Health and Family Security.

A bill for an act

relating to health; modifying provisions relating to physical therapists; providing penalties; amending Minnesota Statutes 2004, sections 148.65, by adding subdivisions; 148.706; 148.75; 148.7806; proposing coding for new law in Minnesota Statutes, chapter 148; repealing Minnesota Rules, part 5601.0100, subparts 3, 4.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 148.65, is amended by adding a subdivision to read:

Subd. 3. [PHYSICAL THERAPIST ASSISTANT.] "Physical therapist assistant" means a graduate of a physical therapist assistant educational program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) or a recognized comparable national accrediting agency approved by the board. The physical therapist assistant, under the direction and supervision of the physical therapist, performs physical therapy interventions and assists with coordination, communication, and documentation; and patient-client-related instruction. The physical therapist is not required to be on-site except as required under Minnesota Rules, part 5601.1500, but must be easily available by telecommunications.

Sec. 2. Minnesota Statutes 2004, section 148.65, is amended by adding a subdivision to read:

Subd. 4. [PHYSICAL THERAPY AIDE.] "Physical therapy aide" means a person, working under the direct supervision of a

1 physical therapist, who is not a physical therapist assistant as
2 defined in subdivision 3, who performs tasks as provided under
3 Minnesota Rules, part 5601.1400.

4 Sec. 3. Minnesota Statutes 2004, section 148.65, is
5 amended by adding a subdivision to read:

6 Subd. 5. [STUDENT PHYSICAL THERAPIST.] "Student physical
7 therapist" means a person in a professional educational program,
8 approved by the board under section 148.705, who is satisfying
9 supervised clinical education requirements by performing
10 physical therapy under the on-site supervision of a licensed
11 physical therapist. "On-site supervision" means the physical
12 therapist is easily available for instruction to the student
13 physical therapist. The physical therapist shall have direct
14 contact with the patient during at least every second treatment
15 session by the student physical therapist. Telecommunications,
16 except within the facility, does not meet the requirement of
17 on-site supervision.

18 Sec. 4. Minnesota Statutes 2004, section 148.65, is
19 amended by adding a subdivision to read:

20 Subd. 6. [STUDENT PHYSICAL THERAPIST ASSISTANT.] "Student
21 physical therapist assistant" means a person in a physical
22 therapist assistant educational program accredited by the
23 Commission on Accreditation in Physical Therapy Education
24 (CAPTE) or a recognized comparable national accrediting agency
25 approved by the board. The student physical therapist
26 assistant, under the direct supervision of the physical
27 therapist, or the direct supervision of the physical therapist
28 and physical therapist assistant, performs physical therapy
29 interventions and assists with coordination, communication,
30 documentation, and patient-client-related instruction. "Direct
31 supervision" means the physical therapist is physically present
32 and immediately available to provide instruction to the student
33 physical therapist assistant.

34 Sec. 5. Minnesota Statutes 2004, section 148.65, is
35 amended by adding a subdivision to read:

36 Subd. 7. [SUPPORTIVE PERSONNEL.] "Supportive personnel"

1 means a physical therapist assistant, a physical therapy aide,
2 or an athletic trainer working under a physical
3 therapist-athletic trainer supervisory agreement as provided in
4 section 148.707.

5 Sec. 6. Minnesota Statutes 2004, section 148.65, is
6 amended by adding a subdivision to read:

7 Subd. 8. [ATHLETIC TRAINER.] "Athletic trainer" means a
8 person currently registered in good standing in Minnesota under
9 sections 148.7801 to 148.7815.

10 Sec. 7. Minnesota Statutes 2004, section 148.706, is
11 amended to read:

12 148.706 [SUPERVISION OF ASSISTANTS AND, AIDES, AND
13 STUDENTS.]

14 Every physical therapist who uses the services of an a
15 physical therapist assistant or physical therapy aide for the
16 purpose of assisting in the practice of physical therapy is
17 responsible for functions performed by the assistant or aide
18 while engaged in such assistance. The physical therapist shall
19 ~~permit-the-assistant-or-aide-to-perform-only-those-functions~~
20 ~~which-the-therapist-is-authorized-by-rule-to-delegate-to-a~~
21 ~~physical-therapist-assistant-or-assign-to-a-physical-therapy~~
22 ~~aide-and-shall-provide-supervision-as-specified~~ delegate duties
23 to the physical therapist assistant and assign tasks to the
24 physical therapy aide in accordance with Minnesota Rules, part
25 5601.1400. Physical therapists who instruct student physical
26 therapists and student physical therapist assistants are
27 responsible for the functions performed by the students and
28 shall supervise the students as provided under section 148.65,
29 subdivisions 5 and 6.

30 Sec. 8. [148.707] [SUPERVISION OF ATHLETIC TRAINERS.]

31 Subdivision 1. [FILING REQUIREMENT.] Physical therapists
32 who use athletic trainers pursuant to section 148.7806,
33 paragraph (e), shall file with the board a physical
34 therapist-athletic trainer supervisory agreement, prior to
35 provision of services by the athletic trainer. The board shall
36 notify the physical therapist, in writing, of receipt of the

1 supervisory agreement.

2 Subd. 2. [PHYSICAL THERAPIST-ATHLETIC TRAINER
3 AGREEMENT.] (a) The supervising physical therapist, each
4 alternate supervising physical therapist, and the athletic
5 trainer must sign a supervisory agreement that specifies the
6 physical therapy tasks assigned to the athletic trainer and the
7 direct supervision by the physical therapist. The supervisory
8 agreement must contain:

9 (1) the name, address, telephone number, and license number
10 of record of the supervising physical therapist and any
11 alternate supervising physical therapist;

12 (2) the name, address, telephone number, and registration
13 number of record of the athletic trainer;

14 (3) a statement that the supervising physical therapist and
15 alternate supervising physical therapists assume full
16 responsibility for the physical therapy tasks performed by the
17 athletic trainer, and that the services provided by the athletic
18 trainer are customary to the practice of the supervising
19 physical therapist or alternate supervising physical therapist;

20 (4) documentation of the academic preparation and clinical
21 skills of the athletic trainer to perform the tasks assigned by
22 the supervising physical therapist and each alternate
23 supervising physical therapist, if the tasks assigned by the
24 alternate supervising physical therapist are different from the
25 tasks assigned by the supervising physical therapist. Evidence
26 of clinical skills must show activities by the athletic trainer
27 which have occurred within the year preceding the filing of the
28 supervisory agreement; and

29 (5) a description of each individual physical therapy task
30 assigned by the supervising physical therapist or the alternate
31 supervising physical therapist to the athletic trainer.

32 Physical therapy task assignment does not include examination,
33 evaluation, diagnosis, prognosis, initial treatment, change of
34 treatment, and initial or final documentation.

35 (b) The supervising physical therapist, alternate
36 supervising physical therapists, and the athletic trainer shall

1 review and update the supervisory agreement on an annual basis
2 from the date the board acknowledges receipt of the completed
3 supervisory agreement.

4 (c) The supervising physical therapist shall provide
5 written notification to the board within 30 days of a change of
6 name, address, or telephone number of the physical therapist,
7 alternate supervising physical therapists, or athletic trainer.

8 (d) Modification of tasks assigned by the supervising
9 physical therapist or alternate supervising physical therapist
10 to the athletic trainer must be submitted in writing by the
11 supervising physical therapist to the board at least 30 days
12 prior to the effective date of the modification, and meet the
13 requirements in paragraph (a).

14 Subd. 3. [INFORMED CONSENT.] The supervising physical
15 therapist and alternate supervising physical therapist shall
16 document in the physical therapy record that the patient has
17 been informed by the physical therapist that an athletic trainer
18 is providing physical therapy tasks under direct supervision of
19 the physical therapist and alternate supervising physical
20 therapist.

21 Subd. 4. [DOCUMENTATION.] The supervising physical
22 therapist and alternate supervising physical therapist shall
23 document in the physical therapy record for each treatment
24 session the name of the athletic trainer and all of the physical
25 therapy tasks performed by the athletic trainer.

26 Subd. 5. [PATIENT LIST.] The supervising physical
27 therapist and alternate supervising physical therapist shall
28 maintain a list of all patients seen by the athletic trainer
29 pursuant to section 148.7806, paragraph (e), for a period of two
30 years.

31 Subd. 6. [SUPERVISION.] The supervising physical therapist
32 and alternate supervising physical therapist shall not supervise
33 more than one athletic trainer working under section 148.7806,
34 paragraph (e), at any given time. "Direct supervision" means
35 the supervising physical therapist or alternate supervising
36 physical therapist is physically present and immediately

1 available for instruction and assistance to the athletic
2 trainer. The supervising physical therapist or alternate
3 supervising physical therapist must observe the patient's status
4 before and after physical therapy tasks performed by the
5 athletic trainer. Telecommunications do not meet the
6 requirements of direct supervision.

7 Sec. 9. [148.735] [CANCELLATION OF LICENSE IN GOOD
8 STANDING.]

9 Subdivision 1. [BOARD APPROVAL; REPORTING.] A physical
10 therapist holding an active license to practice physical therapy
11 in the state may, upon approval of the board, be granted license
12 cancellation if the board is not investigating the person as a
13 result of a complaint or information received or if the board
14 has not begun disciplinary proceedings against the person. Such
15 action by the board shall be reported as a cancellation of a
16 license in good standing.

17 Subd. 2. [FEES NONREFUNDABLE.] A physical therapist who
18 receives board approval for license cancellation is not entitled
19 to a refund of any license fees paid for the licensure year in
20 which cancellation of the license occurred.

21 Subd. 3. [NEW LICENSE AFTER CANCELLATION.] If a physical
22 therapist who has been granted board approval for license
23 cancellation desires to resume the practice of physical therapy
24 in Minnesota, that physical therapist must obtain a new license
25 by applying for licensure and fulfilling the requirements then
26 in existence for obtaining an initial license to practice
27 physical therapy in Minnesota.

28 Sec. 10. [148.736] [CANCELLATION OF CREDENTIALS UNDER
29 DISCIPLINARY ORDER.]

30 Subdivision 1. [BOARD APPROVAL; REPORTING.] A physical
31 therapist, whose right to practice is under suspension,
32 condition, limitation, qualification, or restriction by the
33 board may be granted cancellation of credentials by approval of
34 the board. Such action by the board shall be reported as
35 cancellation while under discipline. Credentials, for purposes
36 of this section, means board authorized documentation of the

1 privilege to practice physical therapy.

2 Subd. 2. [FEES NONREFUNDABLE.] A physical therapist who
3 receives board approval for credential cancellation is not
4 entitled to a refund of any fees paid for the credentialing year
5 in which cancellation of the credential occurred.

6 Subd. 3. [NEW CREDENTIAL AFTER CANCELLATION.] If a
7 physical therapist who has been granted board approval for
8 credential cancellation desires to resume the practice of
9 physical therapy in Minnesota, that physical therapist must
10 obtain a new credential by applying to the board and fulfilling
11 the requirements then in existence for obtaining an initial
12 credential to practice physical therapy in Minnesota.

13 Sec. 11. [148.737] [CANCELLATION OF LICENSE FOR
14 NONRENEWAL.]

15 The Board of Physical Therapy shall not renew, reissue,
16 reinstate, or restore a license that has lapsed on or after
17 January 1, 2006, and has not been renewed within two annual
18 license renewal cycles starting January 1, 2008. A licensee
19 whose license is canceled for nonrenewal must obtain a new
20 license by applying for licensure and fulfilling all
21 requirements then in existence for an initial license to
22 practice physical therapy in Minnesota.

23 Sec. 12. Minnesota Statutes 2004, section 148.75, is
24 amended to read:

25 148.75 [LICENSES; DENIAL, SUSPENSION, REVOCATION.]

26 (a) The state Board of Physical Therapy may refuse to grant
27 a license to any physical therapist, or may suspend or revoke
28 the license of any physical therapist for any of the following
29 grounds:

30 (1) using drugs or intoxicating liquors to an extent which
31 affects professional competence;

32 (2) conviction of a felony;

33 (3) conviction for violating any state or federal narcotic
34 law;

35 (4) obtaining a license or attempting to obtain a license
36 by fraud or deception;

1 (5) conduct unbecoming a person licensed as a physical
2 therapist or conduct detrimental to the best interests of the
3 public;

4 (6) gross negligence in the practice of physical therapy as
5 a physical therapist;

6 (7) treating human ailments by physical therapy after an
7 initial 30-day period of patient admittance to treatment has
8 lapsed, except by the order or referral of a person licensed in
9 this state in the practice of medicine as defined in section
10 147.081, the practice of chiropractic as defined in section
11 148.01, the practice of podiatry as defined in section 153.01,
12 or the practice of dentistry as defined in section 150A.05 and
13 whose license is in good standing; or when a previous diagnosis
14 exists indicating an ongoing condition warranting physical
15 therapy treatment, subject to periodic review defined by board
16 of physical therapy rule;

17 (8) treating human ailments, without referral, by physical
18 therapy treatment without first having practiced one year under
19 a physician's orders as verified by the board's records;

20 (9) failing to consult with the patient's health care
21 provider who prescribed the physical therapy treatment if the
22 treatment is altered by the physical therapist from the original
23 written order. The provision does not include written orders to
24 "evaluate and treat";

25 (10) treating human ailments other than by physical therapy
26 unless duly licensed or registered to do so under the laws of
27 this state;

28 (11) inappropriate delegation to a physical therapist
29 assistant or inappropriate task assignment to an aide or
30 inadequate supervision of ~~either-level-of-supportive-personnel~~ a
31 student physical therapist, physical therapist assistant,
32 student physical therapist assistant, or a physical therapy
33 aide;

34 (12) practicing as a physical therapist performing medical
35 diagnosis, the practice of medicine as defined in section
36 147.081, or the practice of chiropractic as defined in section

1 148.01;

2 (13) failing to comply with a reasonable request to obtain
3 appropriate clearance for mental or physical conditions that
4 would interfere with the ability to practice physical therapy,
5 and that may be potentially harmful to patients;

6 (14) dividing fees with, or paying or promising to pay a
7 commission or part of the fee to, any person who contacts the
8 physical therapist for consultation or sends patients to the
9 physical therapist for treatment;

10 (15) engaging in an incentive payment arrangement, other
11 than that prohibited by clause (14), that tends to promote
12 physical therapy overuse, that allows the referring person or
13 person who controls the availability of physical therapy
14 services to a client to profit unreasonably as a result of
15 patient treatment;

16 (16) practicing physical therapy and failing to refer to a
17 licensed health care professional a patient whose medical
18 condition at the time of evaluation has been determined by the
19 physical therapist to be beyond the scope of practice of a
20 physical therapist; and

21 (17) failing to report to the board other licensed physical
22 therapists who violate this section;

23 (18) practice of physical therapy under lapsed or
24 nonrenewed credentials;

25 (19) inappropriate task assignment or inadequate
26 supervision of an athletic trainer under section 148.7806,
27 paragraph (e);

28 (20) failure by a physical therapist to file a physical
29 therapist-athletic trainer supervisory agreement with the board
30 as required under section 148.707, subdivision 1; and

31 (21) failure by a physical therapist to comply with the
32 requirements under section 148.707, subdivisions 2 to 5.

33 (b) A license to practice as a physical therapist is
34 suspended if (1) a guardian of the physical therapist is
35 appointed by order of a court pursuant to sections 524.5-101 to
36 524.5-502, for reasons other than the minority of the physical

1 therapist; or (2) the physical therapist is committed by order
2 of a court pursuant to chapter 253B. The license remains
3 suspended until the physical therapist is restored to capacity
4 by a court and, upon petition by the physical therapist, the
5 suspension is terminated by the Board of Physical Therapy after
6 a hearing.

7 Sec. 13. [148.754] [EXAMINATION; ACCESS TO MEDICAL DATA.]

8 (a) If the board has probable cause to believe that a
9 physical therapist comes under section 148.75, paragraph (a), it
10 may direct the physical therapist to submit to a mental or
11 physical examination. For the purpose of this paragraph, every
12 physical therapist is deemed to have consented to submit to a
13 mental or physical examination when directed in writing by the
14 board and further to have waived all objections to the
15 admissibility of the examining physicians' testimony or
16 examination reports on the ground that they constitute a
17 privileged communication. Failure of the physical therapist to
18 submit to an examination when directed constitutes an admission
19 of the allegations against the person, unless the failure was
20 due to circumstances beyond the person's control, in which case
21 a default and final order may be entered without the taking of
22 testimony or presentation of evidence. A physical therapist
23 affected under this paragraph shall, at reasonable intervals, be
24 given an opportunity to demonstrate that the person can resume
25 the competent practice of physical therapy with reasonable skill
26 and safety to the public.

27 (b) In any proceeding under paragraph (a), neither the
28 record of proceedings nor the orders entered by the board shall
29 be used against a physical therapist in any other proceeding.

30 (c) In addition to ordering a physical or mental
31 examination, the board may, notwithstanding section 13.384,
32 144.651, or any other law limiting access to medical or other
33 health data, obtain medical data and health records relating to
34 a physical therapist or applicant without the person's or
35 applicant's consent if the board has probable cause to believe
36 that a physical therapist comes under paragraph (a). The

1 medical data may be requested from a provider, as defined in
2 section 144.335, subdivision 1, paragraph (b), an insurance
3 company, or a government agency, including the Department of
4 Human Services. A provider, insurance company, or government
5 agency shall comply with any written request of the board under
6 this paragraph and is not liable in any action for damages for
7 releasing the data requested by the board if the data are
8 released pursuant to a written request under this paragraph,
9 unless the information is false and the provider giving the
10 information knew, or had reason to believe, the information was
11 false. Information obtained under this paragraph is classified
12 as private under sections 13.01 to 13.87.

13 Sec. 14. [148.755] [TEMPORARY SUSPENSION OF LICENSE.]

14 In addition to any other remedy provided by law, the board
15 may, without a hearing, temporarily suspend the license of a
16 physical therapist if the board finds that the physical
17 therapist has violated a statute or rule which the board is
18 empowered to enforce and continued practice by the physical
19 therapist would create a serious risk of harm to the public.
20 The suspension shall take effect upon written notice to the
21 physical therapist, specifying the statute or rule violated.
22 The suspension shall remain in effect until the board issues a
23 final order in the matter after a hearing. At the time it
24 issues the suspension notice, the board shall schedule a
25 disciplinary hearing to be held pursuant to the Administrative
26 Procedure Act, chapter 14. The physical therapist shall be
27 provided with at least 20 days' notice of any hearing held
28 pursuant to this section. The hearing shall be scheduled to
29 begin no later than 30 days after the issuance of the suspension
30 order.

31 Sec. 15. Minnesota Statutes 2004, section 148.7806, is
32 amended to read:

33 148.7806 [ATHLETIC TRAINING.]

34 Athletic training by a registered athletic trainer under
35 section 148.7808 includes the activities described in paragraphs
36 (a) to (e).

- 1 (a) An athletic trainer shall:
- 2 (1) prevent, recognize, and evaluate athletic injuries;
- 3 (2) give emergency care and first aid;
- 4 (3) manage and treat athletic injuries; and
- 5 (4) rehabilitate and physically recondition athletic
- 6 injuries.

7 The athletic trainer may use modalities such as cold, heat,

8 light, sound, electricity, exercise, and mechanical devices for

9 treatment and rehabilitation of athletic injuries to athletes in

10 the primary employment site.

11 (b) The primary physician shall establish evaluation and

12 treatment protocols to be used by the athletic trainer. The

13 primary physician shall record the protocols on a form

14 prescribed by the board. The protocol form must be updated

15 yearly at the athletic trainer's registration renewal time and

16 kept on file by the athletic trainer.

17 (c) At the primary employment site, except in a corporate

18 setting, an athletic trainer may evaluate and treat an athlete

19 for an athletic injury not previously diagnosed for not more

20 than 30 days, or a period of time as designated by the primary

21 physician on the protocol form, from the date of the initial

22 evaluation and treatment. Preventative care after resolution of

23 the injury is not considered treatment. This paragraph does not

24 apply to a person who is referred for treatment by a person

25 licensed in this state to practice medicine as defined in

26 section 147.081, to practice chiropractic as defined in section

27 148.01, to practice podiatry as defined in section 153.01, or to

28 practice dentistry as defined in section 150A.05 and whose

29 license is in good standing.

30 (d) An athletic trainer may:

31 (1) organize and administer an athletic training program

32 including, but not limited to, educating and counseling

33 athletes;

34 (2) monitor the signs, symptoms, general behavior, and

35 general physical response of an athlete to treatment and

36 rehabilitation including, but not limited to, whether the signs,

1 symptoms, reactions, behavior, or general response show abnormal
2 characteristics; and

3 (3) make suggestions to the primary physician or other
4 treating provider for a modification in the treatment and
5 rehabilitation of an injured athlete based on the indicators in
6 clause (2).

7 (e) In a clinical, corporate, and physical therapy setting,
8 when the service provided is, or is represented as being,
9 physical therapy, an athletic trainer may work only under the
10 direct supervision as defined in section 148.707 of a physical
11 therapist as defined in section 148.65.

12 Sec. 16. [REPEALER.]

13 Minnesota Rules, part 5601.0100, subparts 3 and 4, are
14 repealed.

1 Senator moves to amend S.F. No. 1993 as follows:
2 Page 3, line 1, delete the comma in both places and after
3 "assistant" insert "and" and after "aide" insert a period
4 Page 3, delete lines 2 to 9
5 Pages 3 to 6, delete section 8
6 Page 9, line 22, after the semicolon, insert "and"
7 Page 9, line 24, delete the semicolon
8 Page 9, delete lines 25 to 31
9 Page 9, line 32, delete everything before the period
10 Pages 11 to 13, delete section 15
11 Renumber the sections in sequence and correct the internal
12 references
13 Amend the title accordingly



MINNESOTA BOARD OF PHYSICAL THERAPY

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SF1993 AMENDMENT: Background on Athletic Trainer language

I. MN PT Practice Act definitions include:

- Physical therapist (MS 148.65)
- Physical therapist assistant (MR 5601.0100)
- Physical therapy aide (MR 5601.0100), supervision described in MR 5601.1400 as "under the direct supervision of a licensed physical therapist who is readily available for advice, instruction, or immediate assistance."

II. MN Athletic Trainer's Practice Act MS 148.7806 (*marked with yellow tab*)

"Athletic training by a registered athletic trainer under section 148.7808 includes activities described in paragraphs (a) to (e)....

(e) In a clinical, corporate, and physical therapy setting, when the service provided is, or is represented as being, physical therapy, an athletic trainer may work only under the direct supervision of a physical therapist as defined in section 148.65.

III. US District Court, District of Minnesota Civ.No. 02-270 (RHKISRN) Memorandum Opinion **And Order** (*marked with orange tab*) (dated July 22, 2004, signed by Judge Richard H Kyle, US District Judge) in section 11 includes:

"treat athletic injuries in a physical therapy setting, it is hard to see why physical therapists would need to supervise them, given that athletic trainers ordinarily treat athletic injuries without supervision –jcj, 148.7806(a). **Instead, the more sensible reading of this provision is that physical therapists need to supervise athletic trainers in a physical therapy setting because the legislature intended athletic trainers to perform *physical therapy*.**

In sum, the Minnesota legislature intended that athletic trainers could provide physical therapy services when working under direct supervision of a physical therapist and did not intend for athletic trainers to function only as physical therapy aides...

IV. Currently: An undefined situation

Language will be developed that provides:

- Clarity
- Accountability
- Transparency
- Public protection



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Minnesota Statutes 2004, 148.7806

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Minnesota Statutes 2004, Table of Chapters

Table of contents for Chapter 148

148.7806 Athletic training.

Athletic training by a registered athletic trainer under section 148.7808 includes the activities described in paragraphs (a) to (e).

(a) An athletic trainer shall:

(1) prevent, recognize, and evaluate athletic injuries;

(2) give emergency care and first aid;

(3) manage and treat athletic injuries; and

(4) rehabilitate and physically recondition athletic injuries.

The athletic trainer may use modalities such as cold, heat, light, sound, electricity, exercise, and mechanical devices for treatment and rehabilitation of athletic injuries to athletes in the primary employment site.

(b) The primary physician shall establish evaluation and treatment protocols to be used by the athletic trainer. The primary physician shall record the protocols on a form prescribed by the board. The protocol form must be updated yearly at the athletic trainer's registration renewal time and kept on file by the athletic trainer.

(c) At the primary employment site, except in a corporate setting, an athletic trainer may evaluate and treat an athlete for an athletic injury not previously diagnosed for not more than 30 days, or a period of time as designated by the primary physician on the protocol form, from the date of the initial evaluation and treatment. Preventative care after resolution of the injury is not considered treatment. This paragraph does not apply to a person who is referred for treatment by a person licensed in this state to practice medicine as defined in section 147.081, to practice chiropractic as defined in section 148.01, to practice podiatry as defined in section 153.01, or to practice dentistry as defined in section 150A.05 and whose license is in good standing.

(d) An athletic trainer may:

(1) organize and administer an athletic training program including, but not limited to, educating and counseling athletes;

(2) monitor the signs, symptoms, general behavior, and general physical response of an athlete to treatment and rehabilitation including, but not limited to, whether the signs, symptoms, reactions, behavior, or general response show abnormal characteristics; and

(3) make suggestions to the primary physician or other treating provider for a modification in the treatment and rehabilitation of an injured athlete based on the indicators in clause (2).

(e) In a clinical, corporate, and physical therapy setting, when the service provided is, or is represented as being, physical therapy, an athletic trainer may work only under the direct supervision of a physical therapist as defined in section 148.65.

HIST: 1993 c 232 s 7

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General questions or comments.

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America, ex rel.
Toni Lee,

Plaintiff,

Civ. No. 02-270 (RHKISRN)
MEMORANDUM OPINION
AND ORDER

v.

Fairview Health System,

Defendant.

Robert J. Hajek, Warchol Berndt & Hajek, PA, Minneapolis, Minnesota, for Plaintiff.

William R. Stoeri, Ross C. D'Emanuele, and Gina L. Cesaretti, Dorsey & Whitney, LLP, Minneapolis, Minnesota, for Defendant.

Introduction

In this *qui tam* suit, Plaintiff Toni Lee alleges that Defendant Fairview Health System's ("Fairview") submissions of Medicare and Medicaid claims to the government for reimbursement of physical therapy services performed by athletic trainers constitute false claims in violation of the False Claims Act, 31 U.S.C. § 3729 et seq. ("FCA"). Fairview has moved to dismiss Lee's Complaint. For the reasons set forth below, the Court will grant Fairview's Motion.

Background

Lee was employed by Fairview as a licensed physical therapist from October 1997 until July 2001. (Compl. ¶¶ 3, 5.) Fairview provides physical therapy services to Medicare and Medicaid patients at, *inter alia*, its Institute of Athletic Medicine and University Therapy Center. (Id. ¶ 4.) Patients needing physical therapy are referred to Fairview for treatment by their treating physicians. (JCL ¶ 7.) During her tenure, Lee alleges that Fairview allowed athletic trainers to perform physical therapy services and then billed Medicare and Medicaid for reimbursement of those services. (Id. ¶¶ 11, 31-33.) She contends that physical therapy services cannot be delegated to athletic trainers under Minnesota law (Id. ¶ 32), physical therapy performed contrary to Minnesota law is not subject to reimbursement by Medicare and Medicaid (id. ¶ 33), and, consequently, Fairview violated the FCA by submitting claims for those services to Medicare and Medicaid (Id. ¶ 38). Lee filed this *qui tam* action in January 2002. The United States has declined to intervene. (See Doc. No. 9.)

Standard of Review

Under Rule 12(b)(6), all factual allegations must be accepted as true and every reasonable inference must be made in favor of the complainant. Fed. R. Civ. P. 12(b)(6); see Midwestern Mach., Inc. v. Northwest Airlines, Inc., 167 F.3d 439, 441 (8th Cir.

Although Lee asserts other claims against Fairview in her Complaint, she does not oppose dismissal of those claims. (Pl.'s Mem. in Opp'n at 1.) Accordingly, those claims will be dismissed with prejudice.

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1999); Carney v. Houston, 33 F.3d 893, 894 (8th Cir. 1994). “[D]ismissal under Rule

12(b)(6) serves to eliminate actions which are fatally flawed in their legal premises and [destined] to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity.” Young v. City of St. Charles, Mo., 244 F.3d 623, 627 (8th Cir. 2001) (citation omitted). A cause of action “should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief” Schaller Tel. Co. v. Golden Sky Sys., Inc., 298 F.3d 736, 740 (8th Cir. 2002) (citations omitted). Said another way, “dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief” Gebhardt v. ConAgra Foods, Inc., 335 F.3d 824, 829 (8th Cir. 2003) (citation and internal quotations omitted).

Analysis

Lee argues that Fairview has made false or fraudulent claims to the government for Medicare and Medicaid reimbursement of physical therapy services in violation of the FCA. The claims were false, in her view, because Fairview demanded payment notwithstanding alleged violations of Minnesota law regulating physical therapy. (Pl.'s Mem. in Opp'n at 6.) Fairview has moved to dismiss Lee's Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Fairview contends, *inter alia*, that Lee's claim fails as a matter of law because under the Minnesota Athletic Trainer Act athletic trainers may perform physical therapy

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services when supervised by physical therapists. (Def's Mem. in Supp. at 11-12; Def.'s Reply Mem. in Supp. at 2-5.) The Court will first discuss the applicable physical therapy statutes and regulations and then turn to Fairview's Motion to Dismiss.

A. Physical Therapy Regulations

Medicare “pays for outpatient physical therapy services if they meet the following conditions,” including that “[t]hey are furnished . . . [b]y or under the personal supervision of a physical therapist in private practice as described in paragraph (c).” 42 C.F.R. § 410.60(a)(3)(ii). Paragraph (c) provides that

[i]n order to qualify under Medicare as a supplier of outpatient physical therapy services, each individual physical therapist in private practice must

[b]e legally authorized (if applicable, licensed, certified, or registered) to engage in the private practice of physical therapy by the State in which he or she practices, and practice only within the scope of his or her license, certification, or registration.

j4. § 410.60(c)(1)(i) (emphasis added).

Minnesota regulates both the practice of physical therapy and athletic training. A

“physical therapist” practices “physical therapy.” Minn. Stat. § 148.65, subd. 2. “Physical therapy” is “the evaluation or treatment or both of any person by the employment of physical measures and the use of therapeutic exercises and rehabilitative procedures, with or without assistive devices, for the purpose of preventing, correcting, or alleviating a physical or mental disability.” Minn. Stat. § 148.65, subd. 1. Under the Minnesota

Board of Physical Therapy’s regulations, physical therapists may delegate some “patient

4

treatment procedures only to a physical therapist assistant² who has sufficient didactic and clinical preparation” and delegate “tasks related to preparation of patient and equipment for treatment, housekeeping, transportation, clerical duties, departmental maintenance, and selected treatment procedures” to a physical therapy aide.³ Minn. R. 5601.1400 (footnotes added).

An “athletic trainer” engages in “athletic training.” Minn. Stat. § 148.7802, subd. 6. “Athletic training...includes the activities described in paragraphs (a) to (e).” Minn. Stat. §

148.7806. Paragraph (a) provides that an athletic trainer shall

- (1) prevent, recognize, and evaluate athletic injuries;
- (2) give emergency care and first aid;
- (3) manage and treat athletic injuries; and
- (4) rehabilitate and physically recondition athletic injuries.

The athletic trainer may use modalities such as cold, heat, light, sound, electricity, exercise, and mechanical devices for treatment and rehabilitation of athletic injuries to athletes in the primary employment site.

² A “physical therapist assistant” is a “skilled technical worker who is a graduate of a physical therapist assistant educational program accredited by the American Physical Therapy Association or a comparable accrediting agency. The physical therapist assistant performs selected physical therapy treatments and related duties as delegated by the physical therapist to assist the physical therapist in patient-, client-, and resident-related activities.” Minn. R. 5601.0100, subp. 3.

A “physical therapy aide” is a “supportive worker who has been trained on the job to perform tasks assigned by a supervising licensed physical therapist.” Minn. R. 5601.0100, subp.

4.

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jcj~ § 148.7806(a).⁴ Paragraph (e) provides that “[i]n a clinical, corporate, and physical therapy setting, when the service provided is, or is represented as being, physical therapy, an athletic trainer may work only under the direct supervision of a physical therapist.” IC.L

§ 148.7806(e).

B. FCA Claim

Lee contends that Fairview violated the FCA by seeking reimbursement for physical therapy services despite Fairview’s “violations of applicable regulatory statutes and rules regarding use of athletic trainers to provide physical therapy services outside of the scope permitted by Minnesota law which regulates physical therapists.” (P1.’s Mem. in Opp’n at 6.) Congress enacted the FCA to protect government funds and property from fraudulent claims. Costner v. URS Consultants, Inc., 153 F.3d 667, 676 (8th Cir. 1998). “Under the qui tam provisions of the [FCA], private persons acting on behalf of the government may sue those who defraud the government and share in any proceeds ultimately recovered.” IC.L at 675; see 31 U.S.C. § 3730(b). The FCA imposes liability upon any person who, *inter alia*, “knowingly presents, or causes to be presented, to an officer or employee of the United States Government... a false or fraudulent claim for payment or approval.” 31 U.S.C. § 3729(a)(1). “To prove allegations brought under the FCA, then, [plaintiffs] must show that a claim for payment from the government was

‘An “athletic injury” is “an injury sustained by a person as a result of the person’s participation in exercises, sports, games, or recreation requiring physical strength, agility, flexibility, range of motion, speed, or stamina.” Minn. Stat. § 148.7802, subd 5.

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made and that the claim was false or fraudulent.” Costner, 153 F.3d at 677 (citation and internal quotations omitted).

Lee asserts an “implied false certification” theory of FCA liability. (~ P1.’s Mem. in Opp’n at 5; Audio Tape: Oral Argument (6/15/04).) “An implied false certification claim is based on the notion that the act of submitting a claim for reimbursement itself implies compliance with governing federal rules that are a precondition to payment.” Mikes v. Straus, 274 F.3d 687, 699 (2d Cir. 2001). Although the Eighth Circuit has not addressed this issue, other courts agree that implied false certification is viable only when the underlying Federal statute or regulation provides that compliance is a condition or prerequisite to payment.⁵ ~L at 700 (“[I]mplied false certification is appropriately applied only when the underlying statute or regulation upon which the plaintiff relies expressly states the provider must comply in order to be paid.”); see also United States ex rd. Willard v. Humana Health Plan of Texas, Inc., 336 F.3d 375, 382 (5th Cir. 2003) (stating that under the “implied certification” theory “the critical point is that an action on which payment was conditioned had not been performed”); United States ex rel. Augustine v. Century Health Servs., Inc., 289 F.3d 409, 415 (6th Cir. 2002) (explaining that FCA liability “can attach if the claimant violates its continuing duty to comply with the regulations on which payment is conditioned”); United States ex

While the scope of the implied false certification theory may be even narrower in the health care context, see Mikes, 274 F.3d at 699-700, the Court need not test the theory's boundaries for the purposes of this Motion.

7

rd. Siewick v. Jamieson Science and Eng'g. Inc., 214 F.3d 1372, 1376 (D.C. Cir. 2000) ("Courts have been ready to infer certification from silence, but only where certification was a prerequisite to the government action sought." (citations omitted)); Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 793 (4th Cir. 1999) ("[The FCAI claim fails on the pleadings because [the plaintiff] has never asserted that such implied certifications were in any way related to, let alone prerequisites for, receiving continued funding.").

Lee asserts that Fairview's "demand for payment constitutes an implicit representation that it complied with the requirement[]" under the Medicare regulations that physical therapists must practice within the scope of their license. (Pl.'s Mem. in Opp'n at 5; see j~ at 2 (citing 42 C.F.R. § 416.60(c)(1)(i).) This representation, in her view, was false. She comes to this conclusion by first asserting that Minnesota's physical therapist statutes and regulations define only three categories of individuals who may perform functions in a physical therapy setting—physical therapists, physical therapy assistants, and physical therapy aides. (j~j.. at 2-3.) Athletic trainers, she continues, are not physical therapists or physical therapist assistants because athletic trainers do not have the required training or accreditation. (ICL~ at 4.) Therefore, athletic trainers "must function as physical therapy aides in a physical therapy setting." (~) But because physical therapy aides can only do certain limited "tasks," Fairview's physical therapists practiced outside the scope of their licence by delegating physical therapy services to athletic trainers. (Id. at 4-5.)

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C. Application of the "Implied False Certification" Theory to Lee's FCA Claim

Assuming that the Eighth Circuit would recognize the "implied false certification"

theory of FCA liability, and also assuming that the Medicare regulations condition payment upon Fairview's physical therapists practicing within the scope of their licenses (as delineated by Minnesota law), Lee's action nonetheless fails for three reasons.

First, Lee's argument that only physical therapists, physical therapist assistants, and physical therapy aides may perform functions in a physical therapy setting is incorrect. In defining the activities of athletic training, the Minnesota Athletic Trainers Act provides that "[un a clinical, corporate, and physical therapy setting, when the service provided is, or is represented as being, physical therapy, an athletic trainer may work only under the direct supervision of a physical therapist." Minn. Stat. § 148.7806(e). The clear legislative intent expressed by this provision is that athletic trainers may provide physical therapy services when working under the direct supervision of a physical therapist. ~ Haug v. Bank of America. N.A., 317 F.3d 832, 835 (8th Cir. 2003) ("Where the language of a statute is unambiguous, the statute should be enforced as written unless there is clear legislative intent to the contrary. ... If the intent of the statute is clear, the judicial inquiry ends." (citations and internal quotations omitted)). Because the legislature obviously intended athletic trainers to play a role in physical

therapy, Lee's reading of the law would render § 148.7806(e) void. S~ United States v. Campos-Serrano, 404 U.S. 293, 301 n.14 (1971) ("[A] statute ought, upon the whole, to

be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” (citation and internal quotations omitted)).

Second, Lee’s argument that athletic trainers must function as physical therapy aides is incorrect. It is clear that Minnesota’s lawmakers did not intend for such a result. For example, the level of supervision imposed upon athletic trainers is markedly different from that imposed upon physical therapy aides. When the service provided is physical therapy, an athletic trainer works “under the direct supervision of a physical therapist.” Mm. Stat. § 148.7806(a). But when a physical therapist aide performs his tasks, he works “under the direct supervision of a licensed physical therapist *who is readily available for advice, instruction, or immediate assistance*” and the physical therapist “must observe the patient’s status before and after the treatment [is] administered.” Minn. R. 5601.1400 (emphasis added). In addition, athletic trainers have more training and education than physical therapy aides. To become a registered athletic trainer, one must complete an approved education program,⁶ have a baccalaureate degree from an accredited college or university, and earn a qualifying score on a credentialing

⁶ An “approved education program” is “a university, college, or other post-secondary education program of athletic training that, at the time the student completes the program, is approved or accredited by the National Athletic Trainers Association Professional Education Committee, the National Athletic Trainers Association Board of Certification, or the Joint Review Committee on Educational Programs in Athletic Training in collaboration with the American Academy of Family Physicians, the American Academy of Pediatrics, the American Medical Association, and the National Athletic Trainers Association.” Minn. Stat. § 148.7802, subd. 3.

examination.⁷ Minn. Stat. § 148.7808, subd. 1(2), (4), and (9). In contrast, to become a physical therapy aide, one must only be “trained on the job to perform tasks assigned by a supervising licensed physical therapist.” Minn. R. 5601.0 100, subp. 4. As Fairview notes, in light of these differences it is illogical to suggest that the legislature separately enacted § 148.7806(e) to grant registered athletic trainers the authority to perform tasks that anyone trained on the job is authorized to do as a physical therapy aide. Such a reading would render § 148.7806(e) superfluous. ~ Campos-Serrano, 404 U.S. at 301

n.14.

Finally, Lee’s argument, made by her counsel at oral argument, that the word “work,” as used in § 148.7806(e), means treating athletic injuries and not physical therapy is also incorrect. (Audio Tape: Oral Argument (6/15/04).) Under Lee’s construction, the statute would read: “In a clinical, corporate, and physical therapy setting, when the service provided is, or is represented as being, physical therapy, an athletic trainer may *treat athletic injuries* only under the direct supervision of a physical therapist.” If the legislature intended athletic trainers to only treat athletic injuries in a physical therapy setting, however, it would have said so. It certainly knew how to say this, see Minn. Stat.

§ 148.7806(a)(3) (“An athletic trainer shall . . . manage and *treat athletic injuries.*” (emphasis added)), but it chose not to in this context. Moreover, if athletic trainers only

~ A “credentialing examination” is “an examination administered by the National Athletic Trainers Association Board of Certification for credentialing as an athletic trainer, or an examination for credentialing offered by a national testing service that is approved by the board.” Minn. Stat. § 148.7802, subd. 9.

11

treat athletic injuries in a physical therapy setting, it is hard to see why physical therapists would need to supervise them, given that athletic trainers ordinarily treat athletic injuries without supervision. ~ jçj, § 148.7806(a). Instead, the more sensible reading of this provision is that physical therapists need to supervise athletic trainers in a physical therapy setting because the legislature intended athletic trainers to perform *physical therapy*.⁸

In sum, the Minnesota legislature intended that athletic trainers could provide physical therapy services when working under the direct supervision of a physical therapist and did not intend for athletic trainers to function only as physical therapy aides. Because Lee does not assert in her Complaint that Fairview’s athletic trainers were not under the direct supervision of a physical therapist—in fact, at oral argument Lee’s counsel conceded that “whether there is a lack of supervision or a non-lack of supervision

is irrelevant” (Audio Tape: Oral Argument (6/15/04))—she fails to allege that the physical therapists were practicing outside the scope of their license. As such, her “implied false certification” FCA claim fails. Accordingly, the Court will grant Fairview’s Motion to Dismiss.⁹

8 Although Lee has cited Minnesota Board of Physical Therapy and Minnesota Board of Medical Practice decisions disciplining physical therapists who had inappropriately delegated physical therapy duties to physical therapist assistants and physical therapy aides (~ Hajek Aff Exs. 1-3), no decision disciplined a physical therapist for delegating physical therapy duties to an athletic trainer.

~ Lee’s request to amend her pleadings (~ Pl.’s Mem. in Opp’n at 8) will be denied as futile. MIM&S Fin., Inc. v. National Ass’n of Sec. Dealers, Inc., 364 F.3d 908,

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D. Fairview’s Request for Attorneys’ Fees, Costs, and Disbursements

Fairview has requested attorneys’ fees, costs, and disbursements pursuant to 31 U.S.C. § 3730(g). (Def’s Mem. in Supp. at 25; Def.’s Reply Mem. in Supp. at 10.) Although Fairview has not filed a Motion, see Fed. R. Civ. P. 7(b)(1), the Court will address its request in the interest of judicial economy.

Section 3730(g) provides that “[i]n civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.” 31 U.S.C. § 3730(g). Section 2412(d) of Title 28 provides that

a court shall award to a prevailing party other than the United States fees and other

expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action. . .brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). The “United States” includes any agency and any official of the United States acting in his or her official capacity.” icj~ § 2412(d)(2)(C). A “party” means

any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.. . . may be a party regardless of the net worth of such organization.

910 (8th Cir. 2004) (“When amending a pleading would be futile, a court will not grant leave to amend.”). No set of facts can rehabilitate Lee’s fatally flawed interpretation of Minnesota law.

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§ 2412(d)(2)(B)(ii).

The Court will not award attorneys’ fees, costs, or disbursements to Fairview. This action was not brought by the United States; rather, it is a qui tam suit brought by Lee, a private plaintiff, and the United States has declined to intervene.’⁰ Moreover, Fairview has presented no evidence demonstrating that it is a “party,” as that term is defined, entitled to fees and costs.

Conclusion

Based on the foregoing, and all of the files, records, and proceedings herein, **IT IS ORDERED** that Defendant Fairview Health System’s Motion to Dismiss (Doe. No. 22) is **GRANTED**. Plaintiff Toni Lee’s Complaint (Doe. No. 1) is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The appropriate provision for Fairview’s request is § 3730(d)(4), which provides:

If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys’ fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

31 U.S.C. § 3730(d)(4). But even if Fairview had utilized this provision, the Court would not award it fees and expenses because Lee's claim was not "clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment." ~

Dated: July 22, 2004

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s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge

15



American Physical Therapy Association

MINNESOTA CHAPTER

Date: April 1, 2005
To: MN Senate Health and Family Security Committee
Re: SF 1993—Physical Therapy Technical Correction Bill

To Whom it Concerns:

The Minnesota Chapter of the American Physical Therapy Association (MN APTA) supports SF 1993.

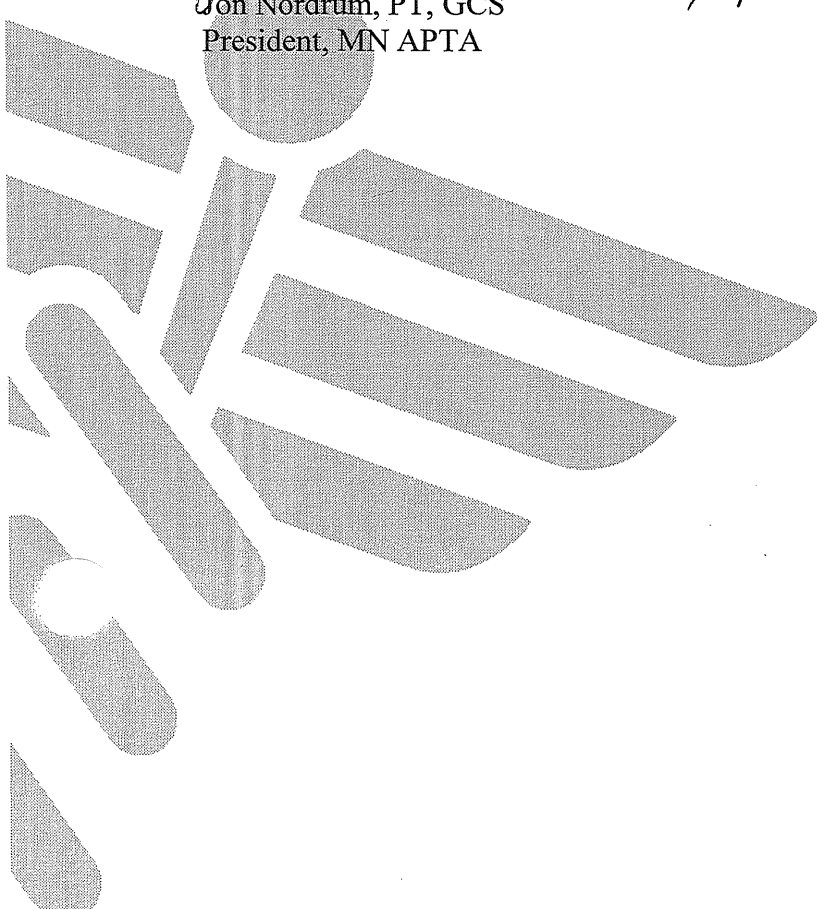
This bill is being brought forward by the MN Board of Physical Therapy.

The association, which represents over 1,500 members, considers SF 1993 a technical correction bill and as such, makes no substantive change in the practice of physical therapy. It is clarifying in nature only and we support the bill wholeheartedly.

Sincerely,

A handwritten signature in black ink that reads "Jon Nordrum, PT, GCS" followed by a stylized flourish.

Jon Nordrum, PT, GCS
President, MN APTA



**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
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JO ANNE ZOFF SELLNER
DIRECTOR

Senate
State of Minnesota

S.F. No. 309 - Licensed Professional Counselors

Author: Senator Sheila M. Kiscaden

Prepared by: Katie Cavanor, Senate Counsel (651/296-3801) *KTC*

Date: March 22, 2005

S.F. No. 309 makes a number of changes to the licensed professional counselor provisions.

Section 1 (148.53, subdivision 1) permits an applicant for licensure to have completed a doctoral degree program in counseling or a masters or doctoral degree in a related field as determined by the board. Requires the program to include a minimum of 48 semester hours or 72 quarter hours. Permits an applicant to demonstrate competence in professional counseling by passing a national exam that is equivalent to the National Counseling Exam as determined by the board. Removes the requirement that the specific academic course work meet standards established by the Council for Accreditation of Counseling and Related Education Programs (CACREP). Specifies that a licensed psychological practitioner is eligible to be licensed as a professional counselor and is only required to comply with the paragraph (a), clause (4). Specifies that a licensed psychologist need only show evidence of licensure from the Board of Psychology to be licensed as a professional counselor. States that if the masters or doctoral degree is from a program that is recognized by CACREP the applicant is deemed to have met the specific course work requirements.

Section 2 (148B.53, subdivision 3) makes a technical change.

Section 3 (148B.531) permits an individual whose degree included less than the required number of hours, or did not complete the required number of hours of supervised professional practice, or did not complete the course work in all the content areas, to complete these requirements postdegree under certain conditions.

Section 4 (148B.54, subdivision 2) requires a licensee at the completion of the first four years of licensure to submit evidence of completion of 12 additional postgraduate semester credit hours or its equivalent.

Section 5 (148B.561) permits the board to place any disciplinary provisions that were placed on the professional counselor in another state on the license of the professional counselor in this state.

Section 6(148B.59) authorizes the board to impose disciplinary action against an applicant or licensee who has surrendered or voluntarily terminated a license or certificate during a board investigation of a complaint as part of a disciplinary order or while under an order; has been subject to a corrective action in another jurisdiction or by another regulatory authority; or has been adjudicated as mentally incompetent, mentally ill, mentally retarded, or as chemically dependent, etc. States that fee splitting includes paying, offering to pay, receiving, or agreeing to receive a commission, rebate, or remuneration, directly or indirectly, for the referral of clients.

Section 7 (148B.5901) authorizes the board to temporarily suspend the credentials of a licensee after conducting a preliminary inquiry to determine if the board reasonably believes that the licensee has violated a statute or rule and that continuing to practice would create an imminent risk of harm to others.

Section 8 (148B.5905) authorizes the board to direct an applicant or licensee to submit to a mental, physical, or chemical dependency examination or evaluation.

Section 9 (148B.5907) states that a board proceeding against a licensee shall not be instituted unless it is begun within seven years from the date of some portion of the alleged misconduct, with some exceptions.

Section 10 (148B.5925) states that a provider is not required to provide copies of test, test materials, or scoring keys to any individual who has completed a test or to an individual not qualified to administer, score, and interpret the test if the provider determines that access would compromise the objectivity, fairness, or integrity of the testing process.

Section 11 authorizes the board to use the expedited rulemaking process.

KC:ph

Senators Kiscaden, Wergin, Nienow, Lourey and Foley introduced--
S.F. No. 309: Referred to the Committee on Health and Family Security.

1 A bill for an act
2 relating to health; modifying provisions for licensed
3 professional counselors; authorizing certain
4 rulemaking; amending Minnesota Statutes 2004, sections
5 148B.53, subdivisions 1, 3; 148B.54, subdivision 2;
6 148B.59; proposing coding for new law in Minnesota
7 Statutes, chapter 148B.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

9 Section 1. Minnesota Statutes 2004, section 148B.53,
10 subdivision 1, is amended to read:

11 Subdivision 1. [GENERAL REQUIREMENTS.] (a) To be licensed
12 as a licensed professional counselor (LPC), an applicant must
13 provide evidence satisfactory to the board that the applicant:

14 (1) is at least 18 years of age;

15 (2) is of good moral character;

16 (3) has completed a master's or doctoral degree program in
17 counseling or a related field, as determined by the board, that
18 includes a minimum of 48 semester hours or 72 quarter hours and
19 a supervised field experience of not fewer than 700 hours that
20 is counseling in nature;

21 (4) has submitted to the board a plan for supervision
22 during the first 2,000 hours of professional practice or has
23 submitted proof of supervised professional practice that is
24 acceptable to the board; and

25 (5) has demonstrated competence in professional counseling
26 by passing the National Counseling Exam (NCE) administered by

1 the National Board for Certified Counselors, Inc. (NBCC)
2 ~~including-obtaining-a-passing-score-on-the-examination-accepted~~
3 ~~by-the-board-based-on-the-determinations-made-by-the-NBCC~~ or an
4 equivalent national examination as determined by the board, and
5 ethical, oral, and situational examinations if prescribed by the
6 board.

7 (b) The degree described in paragraph (a), clause (3), must
8 be from a counseling program recognized by the Council for
9 Accreditation of Counseling and Related Education Programs
10 (CACREP) or from an institution of higher education that is
11 accredited by a regional accrediting organization recognized by
12 the Council for Higher Education Accreditation (CHEA). Except
13 as provided in paragraph (e), specific academic course content
14 and training must ~~meet-standards-established-by-the-CACREP,~~
15 including include course work in each of the following subject
16 areas:

17 (1) the helping relationship, including counseling theory
18 and practice;

19 (2) human growth and development;

20 (3) lifestyle and career development;

21 (4) group dynamics, processes, counseling, and consulting;

22 (5) assessment and appraisal;

23 (6) social and cultural foundations, including
24 multicultural issues;

25 (7) principles of etiology, treatment planning, and
26 prevention of mental and emotional disorders and dysfunctional
27 behavior;

28 (8) family counseling and therapy;

29 (9) research and evaluation; and

30 (10) professional counseling orientation and ethics.

31 (c) To be licensed as a professional counselor, a
32 psychological practitioner licensed under section 148.908 need
33 only show evidence of licensure under that section and is not
34 required to comply with paragraph (a), clauses (1) to (3) and
35 (5), or paragraph (b).

36 (d) To be licensed as a professional counselor, a Minnesota

1 licensed psychologist need only show evidence of licensure from
 2 the Minnesota Board of Psychology and is not required to comply
 3 with paragraph (a) or (b).

4 (e) If the degree described in paragraph (a), clause (3),
 5 is from a counseling program recognized by the Council for
 6 Accreditation of Counseling and Related Education Programs
 7 (CACREP), the applicant is deemed to have met the specific
 8 course work requirements of paragraph (b).

9 Sec. 2. Minnesota Statutes 2004, section 148B.53,
 10 subdivision 3, is amended to read:

11 Subd. 3. [FEE.] ~~Each applicant shall pay a~~
 12 Nonrefundable fee fees are as follows:

- 13 (1) initial license application fee for licensed
 14 professional counseling (LPC) - \$250;
 15 (2) annual active license renewal fee for LPC - \$200 or
 16 equivalent;
 17 (3) annual inactive license renewal fee for LPC - \$100;
 18 (4) license renewal late fee - \$100 per month or portion
 19 thereof;
 20 (5) copy of board order or stipulation - \$10;
 21 (6) certificate of good standing or license verification -
 22 \$10;
 23 (7) duplicate certificate fee - \$10;
 24 (8) professional firm renewal fee - \$25;
 25 (9) initial registration fee - \$50; and
 26 (10) annual registration renewal fee - \$25.

27 Sec. 3. [148B.531] [POSTDEGREE COMPLETION OF DEGREE
 28 REQUIREMENTS FOR LICENSURE.]

29 An individual whose degree upon which licensure is to be
 30 based included less than 48 semester hours or 72 quarter hours,
 31 who did not complete 700 hours of supervised professional
 32 practice as part of the degree program, or who did not complete
 33 course work in all of the content areas required by section
 34 148B.53, subdivision 1, paragraph (b), may complete these
 35 requirements postdegree, if:

- 36 (1) all course work and field experiences are completed

1 through an institution of higher education that is accredited by
2 a regional accrediting organization recognized by the Council
3 for Higher Education Accreditation (CHEA) or through a
4 counseling program recognized by the Council for Accreditation
5 of Counseling and Related Education Programs (CACREP);

6 (2) all course work and field experiences are taken and
7 passed for credit; and

8 (3) no more than 20 semester credits or 30 quarter credits
9 are completed postdegree for purposes of licensure unless the
10 credits are earned as part of an organized sequence of study.

11 Sec. 4. Minnesota Statutes 2004, section 148B.54,
12 subdivision 2, is amended to read:

13 Subd. 2. [CONTINUING EDUCATION.] At the completion of the
14 first ~~two~~ four years of licensure, a licensee must provide
15 evidence satisfactory to the board of completion of 12
16 additional postgraduate semester credit hours or its equivalent
17 in counseling as determined by the board, except that no
18 licensee shall be required to show evidence of greater than 60
19 semester hours or its equivalent. Thereafter, at the time of
20 renewal, each licensee shall provide evidence satisfactory to
21 the board that the licensee has completed during each two-year
22 period at least the equivalent of 40 clock hours of professional
23 postdegree continuing education in programs approved by the
24 board and continues to be qualified to practice under sections
25 148B.50 to 148B.593.

26 Sec. 5. [148B.561] [RETALIATORY PROVISIONS.]

27 If by the laws of any state or the rulings or decisions of
28 the appropriate officers or boards thereof, any burden,
29 obligation, requirement, disqualification, or disability is put
30 upon licensed professional counselors licensed and in good
31 standing in this state, affecting the right of these licensed
32 professional counselors to be registered or licensed in that
33 state, then the same or like burden, obligation, requirement,
34 disqualification, or disability may be put upon the licensure in
35 this state of licensed professional counselors registered in
36 that state.

1 Sec. 6. Minnesota Statutes 2004, section 148B.59, is
2 amended to read:

3 148B.59 [GROUNDS FOR DISCIPLINARY ACTION; FORMS OF
4 DISCIPLINARY ACTION; RESTORATION OF LICENSE.]

5 (a) The board may impose disciplinary action as described
6 in paragraph (b) against an applicant or licensee whom the
7 board, by a preponderance of the evidence, determines:

8 (1) has violated a statute, rule, or order that the board
9 issued or is empowered to enforce;

10 (2) has engaged in fraudulent, deceptive, or dishonest
11 conduct, whether or not the conduct relates to the practice of
12 licensed professional counseling, that adversely affects the
13 person's ability or fitness to practice professional counseling;

14 (3) has engaged in unprofessional conduct or any other
15 conduct which has the potential for causing harm to the public,
16 including any departure from or failure to conform to the
17 minimum standards of acceptable and prevailing practice without
18 actual injury having to be established;

19 (4) has been convicted of or has pled guilty or nolo
20 contendere to a felony or other crime, an element of which is
21 dishonesty or fraud, or has been shown to have engaged in acts
22 or practices tending to show that the applicant or licensee is
23 incompetent or has engaged in conduct reflecting adversely on
24 the applicant's or licensee's ability or fitness to engage in
25 the practice of professional counseling;

26 (5) has employed fraud or deception in obtaining or
27 renewing a license, or in passing an examination;

28 (6) has had any counseling license, certificate,
29 registration, privilege to take an examination, or other similar
30 authority denied, revoked, suspended, canceled, limited, or not
31 renewed for cause in any jurisdiction or has surrendered or
32 voluntarily terminated a license or certificate during a board
33 investigation of a complaint, as part of a disciplinary order,
34 or while under a disciplinary order;

35 (7) has failed to meet any requirement for the issuance or
36 renewal of the person's license. The burden of proof is on the

1 applicant or licensee to demonstrate the qualifications or
2 satisfy the requirements for a license under the Licensed
3 Professional Counseling Act;

4 (8) has failed to cooperate with an investigation of the
5 board;

6 (9) has demonstrated an inability to practice professional
7 counseling with reasonable skill and safety to clients due to
8 any mental or physical illness or condition;

9 (10) has engaged in fee splitting. This clause does not
10 apply to the distribution of revenues from a partnership, group
11 practice, nonprofit corporation, or professional corporation to
12 its partners, shareholders, members, or employees if the
13 revenues consist only of fees for services performed by the
14 licensee or under a licensee's administrative authority. Fee
15 splitting includes, but is not limited to:

16 (i) dividing fees with another person or a professional
17 corporation, unless the division is in proportion to the
18 services provided and the responsibility assumed by each
19 professional; and

20 (ii) referring a client to any health care provider as
21 defined in section 144.335 in which the referring licensee has a
22 significant financial interest, unless the licensee has
23 disclosed in advance to the client the licensee's own financial
24 interest; ~~or~~ and

25 (iii) paying, offering to pay, receiving, or agreeing to
26 receive a commission, rebate, or remuneration, directly or
27 indirectly, primarily for the referral of clients;

28 (11) has engaged in conduct with a patient client that is
29 sexual or may reasonably be interpreted by the patient client as
30 sexual, or in any verbal behavior that is seductive or sexually
31 demeaning to a patient client;

32 (12) has been subject to a corrective action or similar
33 action in another jurisdiction or by another regulatory
34 authority; or

35 (13) has been adjudicated as mentally incompetent, mentally
36 ill, or mentally retarded or as a chemically dependent person, a

1 person dangerous to the public, a sexually dangerous person, or
2 a person who has a sexual psychopathic personality by a court of
3 competent jurisdiction within this state or an equivalent
4 adjudication from another state. Adjudication automatically
5 suspends a license for the duration thereof unless the board
6 orders otherwise.

7 (b) If grounds for disciplinary action exist under
8 paragraph (a), the board may take one or more of the following
9 actions:

10 (1) refuse to grant or renew a license;

11 (2) revoke a license;

12 (3) suspend a license;

13 (4) impose limitations or conditions on a licensee's
14 practice of professional counseling, including, but not limited
15 to, limiting the scope of practice to designated competencies,
16 imposing retraining or rehabilitation requirements, requiring
17 the licensee to practice under supervision, or conditioning
18 continued practice on the demonstration of knowledge or skill by
19 appropriate examination or other review of skill and competence;

20 (5) censure or reprimand the licensee;

21 (6) refuse to permit an applicant to take the licensure
22 examination or refuse to release an applicant's examination
23 grade if the board finds that it is in the public interest; or

24 (7) impose a civil penalty not exceeding \$10,000 for each
25 separate violation, the amount of the civil penalty to be fixed
26 so as to deprive the applicant or licensee of any economic
27 advantage gained by reason of the violation charged, to
28 discourage similar violations or to reimburse the board for the
29 cost of the investigation and proceeding, including, but not
30 limited to, fees paid for services provided by the Office of
31 Administrative Hearings, legal and investigative services
32 provided by the Office of the Attorney General, court reporters,
33 witnesses, reproduction of records, board members' per diem
34 compensation, board staff time, and travel costs and expenses
35 incurred by board staff and board members.

36 (c) In lieu of or in addition to paragraph (b), the board

1 may require, as a condition of continued licensure, termination
2 of suspension, reinstatement of license, examination, or release
3 of examination grades, that the applicant or licensee:

4 (1) submit to a quality review, as specified by the board,
5 of the applicant's or licensee's ability, skills, or quality of
6 work; and

7 (2) complete to the satisfaction of the board educational
8 courses specified by the board.

9 The board may also refer a licensee, if appropriate, to the
10 health professionals services program described in sections
11 214.31 to 214.37.

12 (d) Service of the order is effective if the order is
13 served on the applicant, licensee, or counsel of record
14 personally or by mail to the most recent address provided to the
15 board for the licensee, applicant, or counsel of record. The
16 order shall state the reasons for the entry of the order.

17 Sec. 7. [148B.5901] [TEMPORARY SUSPENSION OF LICENSE.]

18 (a) In addition to any other remedy provided by law, the
19 board may issue an order to temporarily suspend the credentials
20 of a licensee after conducting a preliminary inquiry to
21 determine if the board reasonably believes that the licensee has
22 violated a statute or rule that the board is empowered to
23 enforce and whether continued practice by the licensee would
24 create an imminent risk of harm to others.

25 (b) The order may prohibit the licensee from engaging in
26 the practice of licensed professional counseling in whole or in
27 part and may condition the end of a suspension on the licensee's
28 compliance with a statute, rule, or order that the board has
29 issued or is empowered to enforce.

30 (c) The order shall give notice of the right to a hearing
31 according to this subdivision and shall state the reasons for
32 the entry of the order.

33 (d) Service of the order is effective when the order is
34 served on the licensee personally or by certified mail, which is
35 complete upon receipt, refusal, or return for nondelivery to the
36 most recent address provided to the board for the licensee.

1 (e) At the time the board issues a temporary suspension
2 order, the board shall schedule a hearing to be held before its
3 own members. The hearing shall begin no later than 60 days
4 after issuance of the temporary suspension order or within 15
5 working days of the date of the board's receipt of a request for
6 hearing by a licensee, on the sole issue of whether there is a
7 reasonable basis to continue, modify, or lift the temporary
8 suspension. The hearing is not subject to chapter 14. Evidence
9 presented by the board or the licensee shall be in affidavit
10 form only. The licensee or counsel of record may appear for
11 oral argument.

12 (f) Within five working days of the hearing, the board
13 shall issue its order and, if the suspension is continued,
14 schedule a contested case hearing within 30 days of the issuance
15 of the order. Notwithstanding chapter 14, the administrative
16 law judge shall issue a report within 30 days after closing the
17 contested case hearing record. The board shall issue a final
18 order within 30 days of receipt of the administrative law
19 judge's report.

20 Sec. 8. [148B.5905] [MENTAL, PHYSICAL, OR CHEMICAL
21 DEPENDENCY EXAMINATION OR EVALUATION; ACCESS TO MEDICAL DATA.]

22 (a) If the board has probable cause to believe section
23 148B.59, paragraph (a), clause (9), applies to a licensee or
24 applicant, the board may direct the person to submit to a
25 mental, physical, or chemical dependency examination or
26 evaluation. For the purpose of this section, every licensee and
27 applicant is deemed to have consented to submit to a mental,
28 physical, or chemical dependency examination or evaluation when
29 directed in writing by the board and to have waived all
30 objections to the admissibility of the examining professionals'
31 testimony or examination reports on the grounds that the
32 testimony or examination reports constitute a privileged
33 communication. Failure of a licensee or applicant to submit to
34 an examination when directed by the board constitutes an
35 admission of the allegations against the person, unless the
36 failure was due to circumstances beyond the person's control, in

1 which case a default and final order may be entered without the
2 taking of testimony or presentation of evidence. A licensee or
3 applicant affected under this paragraph shall at reasonable
4 intervals be given an opportunity to demonstrate that the person
5 can resume the competent practice of licensed professional
6 counseling with reasonable skill and safety to the public. In
7 any proceeding under this paragraph, neither the record of
8 proceedings nor the orders entered by the board shall be used
9 against a licensee or applicant in any other proceeding.

10 (b) In addition to ordering a physical or mental
11 examination, the board may, notwithstanding section 13.384,
12 144.651, or any other law limiting access to medical or other
13 health data, obtain medical data and health records relating to
14 a licensee or applicant without the licensee's or applicant's
15 consent if the board has probable cause to believe that section
16 148B.59, paragraph (a), clause (9), applies to the licensee or
17 applicant. The medical data may be requested from a provider,
18 as defined in section 144.335, subdivision 1, paragraph (b); an
19 insurance company; or a government agency, including the
20 Department of Human Services. A provider, insurance company, or
21 government agency shall comply with any written request of the
22 board under this subdivision and is not liable in any action for
23 damages for releasing the data requested by the board if the
24 data are released pursuant to a written request under this
25 subdivision, unless the information is false and the provider
26 giving the information knew, or had reason to believe, the
27 information was false. Information obtained under this
28 subdivision is classified as private under sections 13.01 to
29 13.87.

30 Sec. 9. [148B.5907] [LIMITATION PERIOD.]

31 (a) A board proceeding against a licensee shall not be
32 instituted unless it is begun within seven years from the date
33 of some portion of the alleged misconduct that is complained of.

34 (b) The following are exceptions to the limitation period
35 in paragraph (a):

36 (1) complaints alleging a violation of section 148B.59,

1 paragraph (a), clauses (2), (4), (5), and (6);

2 (2) complaints alleging sexual intercourse or other
3 physical intimacies with a client or any verbal or physical
4 behavior that is sexually seductive or sexually demeaning to the
5 client; and

6 (3) complaints alleging sexual intercourse or other
7 physical intimacies with a former client, or any verbal or
8 physical behavior that is sexually demeaning to the former
9 client, for a period of two years following the date of the last
10 professional contact with the former client, whether or not the
11 provider has formally terminated the professional relationship.

12 Physical intimacies under clauses (2) and (3) include
13 handling of the breasts, genital areas, buttocks, or thighs of
14 either sex by either the provider or the client.

15 (c) If a complaint is received by the board less than 12
16 months from the expiration of the limitation period in paragraph
17 (a), the limitation period is extended for a period of 12 months
18 from the date the complaint is received by the board.

19 (d) If misconduct is alleged that involves a client who is
20 a minor, the limitation period in paragraph (a) does not begin
21 until the minor reaches the age of 18.

22 (e) For purposes of this subdivision only, "proceeding"
23 means the service of a notice of conference, or in cases in
24 which a notice of conference was not served, a notice of hearing.

25 Sec. 10. [148B.5925] [TEST SECURITY.]

26 Notwithstanding section 144.335, subdivision 2, paragraphs
27 (a) and (b), a provider shall not be required to provide copies
28 of tests, test materials, or scoring keys to any individual who
29 has completed a test or to an individual not qualified to
30 administer, score, and interpret the test, if the provider
31 reasonably determines that access would compromise the
32 objectivity, fairness, or integrity of the testing process for
33 the individual or others. If the provider makes this
34 determination, the provider shall, at the discretion of the
35 individual who has completed the test, release the information
36 either to another provider who is qualified to administer,

1 score, and interpret the test or furnish a summary of the test
2 results to the individual or to a third party designated by the
3 individual.

4 Sec. 11. [AUTHORIZATION FOR EXPEDITED RULEMAKING
5 AUTHORITY.]

6 The Board of Behavioral Health and Therapy may use the
7 expedited rulemaking process under Minnesota Statutes, section
8 14.389, for adopting and amending rules to conform with sections
9 1 to 10.

1 Senator moves to amend S.F. No. 309 as follows:

2 Page 4, after line 25, insert:

3 "Sec. 5. [148B.555] [EXPERIENCED COUNSELOR TRANSITION.]

4 (a) An applicant for licensure who, prior to December 31,
5 2003, completed a master's or doctoral degree program in
6 counseling or a related field, as determined by the board, and
7 whose degree was from a counseling program recognized by the
8 Council for Accreditation of Counseling and Related Education
9 Programs (CACREP) or from an institution of higher education
10 that is accredited by a regional accrediting organization
11 recognized by the Council for Higher Education Accreditation
12 (CHEA), need not comply with the requirements of section
13 148B.53, subdivision 1, paragraph (a), clause (3), or (b), so
14 long as the applicant can document five years of full-time
15 postdegree work experience within the practice of professional
16 counseling as defined under section 148B.50, subdivisions 4 and
17 5.

18 (b) This section expires July 1, 2007."

19 Renumber the sections in sequence and correct the internal
20 references

21 Amend the title accordingly

1 Senator moves to amend S.F. No. 309 as follows:

2 Page 12, after line 3, insert:

3 "Sec. 11. Minnesota Statutes 2004, section 148C.04,
4 subdivision 4, is amended to read:

5 Subd. 4. [REQUIREMENTS FOR LICENSURE AFTER JULY 1, 2008.]

6 An applicant for a license must submit evidence to the
7 commissioner that the applicant has met one of the following
8 requirements:

9 (1) the applicant must have:

10 (i) received a bachelor's degree from an accredited school
11 or educational program, including 18 semester credits or 270
12 clock hours of academic course work in accordance with
13 subdivision 5a, paragraph (a), from an accredited school or
14 educational program and 880 clock hours of supervised alcohol
15 and drug counseling practicum;

16 (ii) completed a written case presentation and
17 satisfactorily passed an oral examination established by the
18 commissioner that demonstrates competence in the core functions;

19 (iii) submitted to the commissioner a plan for supervision
20 during the first 2,000 hours of professional practice, or
21 submitted proof of supervised professional practice that is
22 acceptable to the commissioner; and

23 ~~(iii)~~ (iv) satisfactorily passed a written examination as
24 established by the commissioner; or

25 (2) the applicant must meet the requirements of section
26 148C.07.

27 Sec. 12. Minnesota Statutes 2004, section 148C.04,
28 subdivision 6, is amended to read:

29 Subd. 6. [TEMPORARY PERMIT REQUIREMENTS.] (a) The
30 commissioner shall issue a temporary permit to practice alcohol
31 and drug counseling prior to being licensed under this chapter
32 if the person:

33 (1) either:

34 (i) submits verification of a current and unrestricted
35 credential for the practice of alcohol and drug counseling from
36 a national certification body or a certification or licensing

1 body from another state, United States territory, or federally
2 recognized tribal authority;

3 (ii) submits verification of the completion of at least 64
4 semester credits, including 270 clock hours or 18 semester
5 credits of formal classroom education in alcohol and drug
6 counseling and at least 880 clock hours of alcohol and drug
7 counseling practicum from an accredited school or educational
8 program;

9 (iii) applies to renew a lapsed license according to the
10 requirements of section 148C.055, subdivision 3, clauses (1) and
11 (2), or section 148C.055, subdivision 4, clauses (1) and (2); or

12 (iv) meets the requirements of section 148C.11, subdivision
13 1, paragraph (c), or 6, clauses (1), (2), and (5);

14 (2) applies, in writing, on an application form provided by
15 the commissioner, which includes the nonrefundable temporary
16 permit fee as specified in section 148C.12 and an affirmation by
17 the person's supervisor, as defined in paragraph (c), clause
18 (1), which is signed and dated by the person and the person's
19 supervisor; and

20 (3) has not been disqualified to practice temporarily on
21 the basis of a background investigation under section 148C.09,
22 subdivision 1a.

23 (b) The commissioner must notify the person in writing
24 within 90 days from the date the completed application and all
25 required information is received by the commissioner whether the
26 person is qualified to practice under this subdivision.

27 (c) A person practicing under this subdivision:

28 (1) may practice under tribal jurisdiction or under the
29 direct supervision of a person who is licensed under this
30 chapter;

31 (2) is subject to the Rules of Professional Conduct set by
32 rule; and

33 (3) is not subject to the continuing education requirements
34 of section 148C.075.

35 (d) A person practicing under this subdivision must use the
36 title or description stating or implying that the person is a

1 trainee engaged in the practice of alcohol and drug counseling.

2 (e) A person practicing under this subdivision must
3 annually submit a renewal application on forms provided by the
4 commissioner with the renewal fee required in section 148C.12,
5 subdivision 3, and the commissioner may renew the temporary
6 permit if the trainee meets the requirements of this
7 subdivision. A trainee may renew a practice permit no more than
8 five times.

9 (f) A temporary permit expires if not renewed, upon a
10 change of employment of the trainee or upon a change in
11 supervision, or upon the granting or denial by the commissioner
12 of a license.

13 Sec. 13. Minnesota Statutes 2004, section 148C.10,
14 subdivision 2, is amended to read:

15 Subd. 2. [USE OF TITLES.] No person shall present
16 themselves or any other individual to the public by any title
17 incorporating the words "licensed alcohol and drug counselor" or
18 otherwise hold themselves out to the public by any title or
19 description stating or implying that they are licensed or
20 otherwise qualified to practice alcohol and drug counseling
21 unless that individual holds a valid license. Persons issued a
22 temporary permit must use titles consistent with section
23 148C.04, subdivision 6, paragraph ~~(e)~~ (d).

24 Sec. 14. Minnesota Statutes 2004, section 148C.11,
25 subdivision 1, is amended to read:

26 Subdivision 1. [OTHER PROFESSIONALS.] (a) Nothing in this
27 chapter prevents members of other professions or occupations
28 from performing functions for which they are qualified or
29 licensed. This exception includes, but is not limited to:
30 licensed physicians₇i; registered nurses₇i; licensed practical
31 nurses₇i; licensed psychological practitioners₇i; members of the
32 clergy₇i; American Indian medicine men and women₇i; licensed
33 attorneys₇i; probation officers₇i; licensed marriage and family
34 therapists₇i; licensed social workers₇i; social workers employed
35 by city, county, or state agencies; licensed professional
36 counselors₇i; licensed school counselors₇i; registered

1 occupational therapists or occupational therapy assistants;
2 city, county, or state employees when providing assessments or
3 case management under Minnesota Rules, chapter 9530; and until
4 July 1, 2005, individuals providing integrated dual-diagnosis
5 treatment in adult mental health rehabilitative programs
6 certified by the Department of Human Services under section
7 256B.0622 or 256B.0623.

8 (b) Nothing in this chapter prohibits technicians and
9 resident managers in programs licensed by the Department of
10 Human Services from discharging their duties as provided in
11 Minnesota Rules, chapter 9530.

12 (c) Any person who is exempt under this ~~section~~ subdivision
13 but who elects to obtain a license under this chapter is subject
14 to this chapter to the same extent as other licensees. The
15 commissioner shall issue a license without examination to an
16 applicant who is licensed or registered in a profession
17 identified in paragraph (a) if the applicant:

18 (1) shows evidence of current licensure or registration;
19 and

20 (2) has submitted to the commissioner a plan for
21 supervision during the first 2,000 hours of professional
22 practice or has submitted proof of supervised professional
23 practice that is acceptable to the commissioner.

24 ~~These persons~~ Any person who is exempt from licensure
25 under this section must not, ~~however,~~ use a title incorporating
26 the words "alcohol and drug counselor" or "licensed alcohol and
27 drug counselor" or otherwise hold themselves out to the public
28 by any title or description stating or implying that they are
29 engaged in the practice of alcohol and drug counseling, or that
30 they are licensed to engage in the practice of alcohol and drug
31 counseling unless that person is also licensed as an alcohol and
32 drug counselor. Persons engaged in the practice of alcohol and
33 drug counseling are not exempt from the commissioner's
34 jurisdiction solely by the use of one of the above titles.

35 Sec. 15. Minnesota Statutes 2004, section 148C.11,
36 subdivision 4, is amended to read:

1 Subd. 4. [HOSPITAL ALCOHOL AND DRUG COUNSELORS.] Effective
2 January 1, ~~2006~~ 2007, hospitals employing alcohol and drug
3 counselors shall be required to employ licensed alcohol and drug
4 counselors. An alcohol or drug counselor employed by a hospital
5 must be licensed as an alcohol and drug counselor in accordance
6 with this chapter.

7 Sec. 16. Minnesota Statutes 2004, section 148C.11,
8 subdivision 5, is amended to read:

9 Subd. 5. [CITY, COUNTY, AND STATE AGENCY ALCOHOL AND DRUG
10 COUNSELORS.] Effective January 1, ~~2006~~ 2007, city, county, and
11 state agencies employing alcohol and drug counselors shall be
12 required to employ licensed alcohol and drug counselors. An
13 alcohol and drug counselor employed by a city, county, or state
14 agency must be licensed as an alcohol and drug counselor in
15 accordance with this chapter.

16 Sec. 17. Minnesota Statutes 2004, section 148C.11,
17 subdivision 6, is amended to read:

18 Subd. 6. [TRANSITION PERIOD FOR HOSPITAL AND CITY, COUNTY,
19 AND STATE AGENCY ALCOHOL AND DRUG COUNSELORS.] For the period
20 between July 1, 2003, and January 1, ~~2006~~ 2007, the commissioner
21 shall grant a license to an individual who is employed as an
22 alcohol and drug counselor at a Minnesota school district or
23 hospital, or a city, county, or state agency in Minnesota, if
24 the individual meets the requirements in section 148C.0351 and:

25 (1) was employed as an alcohol and drug counselor at a
26 school district, a hospital, or a city, county, or state agency
27 before August 1, 2002; ~~(2)~~ has 8,000 hours of alcohol and drug
28 counselor work experience; ~~(3)~~ has completed a written case
29 presentation and satisfactorily passed an oral examination
30 established by the commissioner; ~~(4)~~ and has satisfactorily
31 passed a written examination as established by the commissioner;
32 ~~and-(5)-meets-the-requirements-in-section-148C-0351~~ or

33 (2) is credentialed as a board certified counselor (BCC) or
34 board certified counselor reciprocal (BCCR) by the Minnesota
35 Certification Board; or

36 (3) has 14,000 hours of supervised alcohol and drug

1 counselor work experience as documented by the employer.

2 Sec. 18. Minnesota Statutes 2004, section 148C.12,
3 subdivision 3, is amended to read:

4 Subd. 3. [TEMPORARY PERMIT FEE.] The initial fee for
5 applicants under section 148C.04, subdivision 6, paragraph (a),
6 is \$100. The fee for annual renewal of a temporary permit
7 is ~~\$100~~ \$150, but when the first expiration date occurs in less
8 or more than one year, the fee must be prorated."

9 Renumber the sections in sequence and correct the internal
10 references

11 Amend the title accordingly

1 Senator moves to amend S.F. No. 309 as follows:

2 Page 12, after line 3, insert:

3 "Sec. 11. Minnesota Statutes 2004, section 148C.03,
4 subdivision 1, is amended to read:

5 Subdivision 1. [GENERAL.] The commissioner shall~~7-after~~
6 ~~consultation-with-the-advisory-council-or-a-committee~~
7 ~~established-by-rule:~~

8 (a) adopt and enforce rules for licensure of alcohol and
9 drug counselors, including establishing standards and methods of
10 determining whether applicants and licensees are qualified under
11 section 148C.04. The rules must provide for examinations and
12 establish standards for the regulation of professional conduct.
13 The rules must be designed to protect the public;

14 (b) ~~develop-and-7-at-least-twice-a-year-7-administer-an~~
15 ~~examination-to-assess-applicants'-knowledge-and-skills.--The~~
16 ~~commissioner-may-contract-for-the-administration-of-an~~
17 ~~examination-with-an-entity-designated-by-the-commissioner.--The~~
18 ~~examinations-must-be-psychometrically-valid-and-reliable-7-must~~
19 ~~be-written-and-oral-7-with-the-oral-examination-based-on-a~~
20 ~~written-case-presentation-7-must-minimize-cultural-bias-7-and-must~~
21 ~~be-balanced-in-various-theories-relative-to-the-practice-of~~
22 ~~alcohol-and-drug-counseling-7~~

23 (c) issue licenses to individuals qualified under sections
24 148C.01 to 148C.11;

25 (d) (c) issue copies of the rules for licensure to all
26 applicants;

27 (e) (d) adopt rules to establish and implement procedures,
28 including a standard disciplinary process and rules of
29 professional conduct;

30 (f) (e) carry out disciplinary actions against licensees;

31 (g) (f) ~~establish-7-with-the-advice-and-recommendations-of~~
32 ~~the-advisory-council-7~~ written internal operating procedures for
33 receiving and investigating complaints and for taking
34 disciplinary actions as appropriate;

35 (h) (g) educate the public about the existence and content
36 of the rules for alcohol and drug counselor licensing to enable

1 consumers to file complaints against licensees who may have
2 violated the rules;

3 ~~(h)~~ (h) evaluate the rules in order to refine and improve
4 the methods used to enforce the commissioner's standards; and

5 ~~(i)~~ (i) collect license fees for alcohol and drug
6 counselors.

7 Sec. 12. Minnesota Statutes 2004, section 148C.04,
8 subdivision 3, is amended to read:

9 Subd. 3. [REQUIREMENTS FOR LICENSURE BEFORE JULY 1, 2008.]

10 An applicant for a license must furnish evidence satisfactory to
11 the commissioner that the applicant has met all the requirements
12 in clauses (1) to (3). The applicant must have:

13 (1) received an associate degree, or an equivalent number
14 of credit hours, and a certificate in alcohol and drug
15 counseling, including 18 semester credits or 270 clock hours of
16 academic course work in accordance with subdivision 5a,
17 paragraph (a), from an accredited school or educational program
18 and 880 clock hours of supervised alcohol and drug counseling
19 practicum;

20 (2) completed one of the following:

21 (i) a written case presentation and satisfactorily passed
22 an oral examination established-by-the-commissioner that
23 demonstrates competence in the core functions as determined by
24 the board; or

25 (ii) satisfactorily completed 2,000 hours of supervised
26 postdegree equivalent professional practice in accordance with
27 section 148C.044; and

28 (3) satisfactorily passed a written ~~examination-as~~
29 ~~established-by-the-commissioner~~ examinations for licensure as
30 determined by the board.

31 Sec. 13. [148C.044] [SUPERVISED POSTDEGREE PROFESSIONAL
32 PRACTICE.]

33 Subdivision 1. [SUPERVISION.] For the purpose of this
34 section, "supervision" means documented interactive
35 consultation, which, subject to the limitations in subdivision
36 4, paragraph (a), clause (2), may be conducted in person, by

1 telephone, or by audio or audiovisual electronic device, with a
2 supervisor as defined in subdivision 2. The supervision must be
3 adequate to ensure the quality and competence of the activities
4 supervised. Supervisory consultation must include discussions
5 on the nature and content of the practice of the supervisee,
6 including, but not limited to, a review of a representative
7 sample of counseling services in the supervisee's practice.

8 Subd. 2. [POSTDEGREE PROFESSIONAL PRACTICE.] "Postdegree
9 professional practice" means required postdegree paid or
10 volunteer work experience and training that involves the
11 professional oversight by a supervisor approved by the board and
12 that satisfies the supervision requirements in subdivision 4.

13 Subd. 3. [SUPERVISOR REQUIREMENTS.] For purposes of this
14 section, a supervisor shall:

15 (1) be a licensed alcohol and drug counselor or other
16 qualified professional as determined by the board;

17 (2) have four years of experience in providing alcohol and
18 drug counseling;

19 (3) have received a minimum of 12 hours of training in
20 clinical and ethical supervision, which may include graduate
21 course work, continuing education courses, workshops, or a
22 combination thereof; and

23 (4) supervise no more than three persons in postdegree
24 professional practice.

25 Subd. 4. [SUPERVISED PRACTICE REQUIREMENTS FOR
26 LICENSURE.] (a) The content of supervision must include:

27 (1) knowledge, skills, values, and ethics with specific
28 application to the practice issues faced by the supervisee,
29 including the core functions as described in section 148C.01,
30 subdivision 9;

31 (2) the standards of practice and ethical conduct, with
32 particular emphasis given to the counselor's role and
33 appropriate responsibilities, professional boundaries, and power
34 dynamics; and

35 (3) the supervisee's permissible scope of practice, as
36 defined by section 148C.01, subdivision 10.

1 (b) The supervision must be obtained at the rate of one
2 hour of supervision per 40 hours of professional practice, for a
3 total of 50 hours of supervision. The supervision must be
4 evenly distributed over the course of the supervised
5 professional practice. At least 75 percent of the required
6 supervision hours must be received in person. The remaining 25
7 percent of the required hours may be received by telephone or by
8 audio or audiovisual electronic device. At least 50 percent of
9 the required hours of supervision must be received on an
10 individual basis. The remaining 50 percent may be received in a
11 group setting.

12 (c) The supervision must be completed in no fewer than 12
13 consecutive months and no more than 36 consecutive months.

14 (d) The applicant shall include with an application for
15 licensure verification of completion of the 2,000 hours of
16 supervised professional practice. Verification must be on a
17 form specified by the board. The supervisor shall verify that
18 the supervisee has completed the required hours of supervision
19 in accordance with this section. The supervised practice
20 required under this section is unacceptable if the supervisor
21 attests that the supervisee's performance, competence, or
22 adherence to the standards of practice and ethical conduct has
23 been unsatisfactory.

24 Sec. 14. Minnesota Statutes 2004, section 148C.091,
25 subdivision 1, is amended to read:

26 Subdivision 1. [FORMS OF DISCIPLINARY ACTION.] When the
27 commissioner finds that an applicant or a licensed alcohol and
28 drug counselor has violated a provision or provisions of
29 sections 148C.01 to 148C.11, or rules promulgated under this
30 chapter, the commissioner may take one or more of the following
31 actions:

- 32 (1) refuse to grant a license;
- 33 (2) revoke the license;
- 34 (3) suspend the license;
- 35 (4) impose limitations or conditions;
- 36 (5) impose a civil penalty not exceeding \$10,000 for each

1 separate violation, the amount of the civil penalty to be fixed
2 so as to deprive the counselor of any economic advantage gained
3 by reason of the violation charged or to reimburse the
4 commissioner for all costs of the investigation and proceeding;
5 including, but not limited to, the amount paid by the
6 commissioner for services from the Office of Administrative
7 Hearings, attorney fees, court reports, witnesses, reproduction
8 of records, ~~advisory-council-members'-per-diem-compensation,~~
9 staff time, and expense incurred by ~~advisory-council-members-and~~
10 staff of the department;

11 (6) order the counselor to provide uncompensated
12 professional service under supervision at a designated public
13 hospital, clinic, or other health care institution;

14 (7) censure or reprimand the counselor; or

15 (8) any other action justified by the case.

16 Sec. 15. Minnesota Statutes 2004, section 214.01,
17 subdivision 2, is amended to read:

18 Subd. 2. [HEALTH-RELATED LICENSING BOARD.] "Health-related
19 licensing board" means the Board of Examiners of Nursing Home
20 Administrators established pursuant to section 144A.19, the
21 Office of Unlicensed Complementary and Alternative Health Care
22 Practice established pursuant to section 146A.02, the Board of
23 Medical Practice created pursuant to section 147.01, the Board
24 of Nursing created pursuant to section 148.181, the Board of
25 Chiropractic Examiners established pursuant to section 148.02,
26 the Board of Optometry established pursuant to section 148.52,
27 the Board of Physical Therapy established pursuant to section
28 148.67, the Board of Psychology established pursuant to section
29 148.90, the Board of Social Work pursuant to section 148B.19,
30 the Board of Marriage and Family Therapy pursuant to section
31 148B.30, the Office of Mental Health Practice established
32 pursuant to section 148B.61, the Board of Behavioral Health and
33 Therapy established by section 148B.51, ~~the-Alcohol-and-Drug~~
34 ~~Counselors-Licensing-Advisory-Council-established-pursuant-to~~
35 ~~section-148C-02,~~ the Board of Dietetics and Nutrition Practice
36 established under section 148.622, the Board of Dentistry

1 established pursuant to section 150A.02, the Board of Pharmacy
2 pursuant to section 151.02, the Board of Podiatric Medicine
3 established pursuant to section 153.02, and the Board of
4 Veterinary Medicine, established pursuant to section 156.01.

5 Sec. 16. Minnesota Statutes 2004, section 214.103,
6 subdivision 1, is amended to read:

7 Subdivision 1. [APPLICATION.] For purposes of this
8 section, "board" means "health-related licensing board" and does
9 not include ~~the-Alcohol-and-Drug-Counselors-Licensing-Advisory~~
10 ~~Council-established-pursuant-to-section-148C.027-or~~ the
11 non-health-related licensing boards. Nothing in this section
12 supersedes section 214.10, subdivisions 2a, 3, 8, and 9, as they
13 apply to the health-related licensing boards."

14 Page 12, after line 9, insert:

15 "Sec. 18. [REPEALER.]

16 Minnesota Statutes 2004, sections 148C.02 and 148C.12,
17 subdivision 4, are repealed. Minnesota Rules, parts 4747.0030,
18 subparts 11 and 16; 4747.1200; and 4747.1300, are repealed.

19 Sec. 19. [EFFECTIVE DATE.]

20 This act is effective July 1, 2005."

21 Renumber the sections in sequence and correct the internal
22 references

23 Amend the title as follows:

24 Page 1, line 3, after the semicolon, insert "implementing
25 oversight transition for alcohol and drug counselors;"

26 Page 1, line 6, after the semicolon, insert "148C.03,
27 subdivision 1; 148C.04, subdivision 3; 148C.091, subdivision 1;
28 214.01, subdivision 2; 214.103, subdivision 1;"

29 Page 1, line 7, delete "chapter" and insert "chapters" and
30 before the period insert "; 148C; repealing Minnesota Statutes
31 2004, sections 148C.02; 148C.12, subdivision 4; Minnesota Rules,
32 parts 4747.0030, subparts 11, 16; 4747.1200; 4747.1300"

- 1 Senator moves to amend S.F. No. 309 as follows:
- 2 Page 1, line 17, after "board" insert "based on the
- 3 criteria in paragraph (b)"
- 4 Page 3, line 35, after "postdegree" insert "in order to
- 5 obtain licensure"
- 6 Pages 10 and 11, delete section 9
- 7 Page 11, line 25, delete "10" and insert "9" and delete
- 8 "TEST" and insert "ASSESSMENT TOOL"
- 9 Page 11, line 28, delete "tests" and insert "assessment
- 10 tools" and delete "test" and insert "assessment tool"
- 11 Page 11, lines 29, 30, and 35, delete "test" and insert
- 12 "assessment tool"
- 13 Page 12, line 1, delete "test" and insert "assessment tool"
- 14 in both places
- 15 Page 12, line 4, delete "11" and insert "10"
- 16 Page 12, line 9, delete "10" and insert "9"