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SUNSET COMMISSION: HEALTH LICENSING BOARDS SECTION 27 REPORTING REQUIREMENTS STUDY AND PROPOSED LEGISLATION

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EXECUTIVE SUMMARY

The Health Licensing Boards ("HLBs") and the Minnesota Department of Health, Health Occupations Program ("HOP"), reviewed the statutory and rule reporting mandates, policies and procedures relating to reporting of health care practice violations, and data on actual reporting practices by institutions and individuals. The HLBs and HOP regularly receive reports from those who are in the best position to be providing them, namely patients and clients. Other licensees are highly active reporters, either in their capacity as co-workers, subsequent care providers, competitors, or supervisors. Other licensees have strong motivations to report – it protects clients and patients, helps maintain high standards of practice within the professions, and may fulfill their statutorily-required duty to report. Institutional clients are less frequent reporters, with the exception that health care facilities, as employers of licensed health professionals, tend to be active reporters.

In this study, the HLBs and HOP looked to other states for guidance on the process of imposing civil penalties on institutions that and individuals who fail to report. Many of the states with authority to assess civil penalties against institutions that failed to report do not regularly use that authority, primarily because of the cost of providing due process protections to the alleged violators. More successful statutory schemes allow boards to cross-report an institution to the state agency that already has authority over the institution and provide statutory authority for that agency to assess a civil penalty.

After conducting this study, the HLBs and HOP plan to undertake additional efforts to better educate licensees and institutions about the current duties to report. Lack of reporting has generally not been a substantial obstacle in the HLBs and HOP's enforcement practices. The larger obstacle is difficulty accessing underlying data because an institution claims peer review protected status over the data.

The proposed legislation is based on existing statutory language for reporting requirements and sets forth a penalty scheme whereby the Boards have the authority to refer violating entities to the state agency in the best position to assess a penalty.

I. Legislative charge and study parameters

Section 27 of the Laws of Minnesota 2012, Chapter 278, Article 2, was enacted during the 2012 Regular Session as the Health Licensing Boards underwent Sunset Commission review. Section 27 directed the Health Licensing Boards ("HLBs") and the Commissioner of Health to jointly study and submit draft legislation to develop consistent requirements for the reporting of health care practice violations. The statutory mandate is as follows:

> Sec. 27 HEALTH-RELATED LICENSING BOARDS REPORTING OBLIGATIONS
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> (a) By January 15, 2013, the health-related licensing boards and the commissioner of health as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, shall jointly study and submit draft legislation to the Sunset Commission and the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services developing consistent reporting requirements that require institutions, professional societies, other licensed professionals, courts, insurers, and other entities to report conduct constituting grounds for disciplinary action to the respective regulatory entity. The study and draft legislation shall include a self-reporting requirement that requires the licensed individual to report to the respective regulatory entity any action that would require a report to be filed by another specific entity. The study and draft legislation shall also include penalties that may be imposed for failure to report.
>
> (b) Health-related boards with existing statutory obligations shall participate to ensure that the existing reporting requirements are consistent with the recommended requirements and draft legislation.

Laws of Minnesota 2012, Chapter 278, Article 2, Section 27(a) [Health-Related Licensing Boards Reporting Requirements].

The HLBs include the Minnesota Boards of Nursing Home Administrators, Medical Practice, Nursing, Chiropractic Examiners, Optometry, Physical Therapy, Psychology, Social Work, Marriage and Family Therapy, Behavioral Health and

Therapy, Dietetics and Nutrition, Dentistry, Pharmacy, Podiatric Medicine, and Veterinary Medicine, as set forth in Minn. Stat. § 214.01, subd. 2 (2012).[1]

The MDH occupations evaluated in this report are housed in MDH's Health Occupations Program ("HOP"), which is part of the Compliance Monitoring Division in the Policy, Quality and Compliance Bureau. The specific occupations included in this study are hearing instrument dispensers, audiologists, speech language pathologists, occupational therapists, and occupational therapy assistants.[2]

The HLBs have as their primary mission the protection of the public's health and safety by providing reasonable assurance that the individuals who practice health care in Minnesota are competent, ethical practitioners with the necessary knowledge and skills to successfully fulfill their titles and roles. HOP protects Minnesota consumers by regulating specific allied healthcare practitioners to ensure that they meet community standards of care and provide safe and competent services to consumers. Both the HLBs' and HOP's regulatory processes are dependent on receiving reports of potential violations of their practice acts.

The HLBs have boards, comprised of both lay members and practitioners, that receive complaints, authorize investigations, review investigations, negotiate to settle complaints, and take disciplinary action on licenses when appropriate. HOP convenes an advisory council, comprised of both lay members and consumers, that functions in much the same way as the HLBs' boards. Both the HLBs and HOP have disciplinary processes governed by Minn. Ch. 214.

The HLBs and HOP submit this study and draft legislation with the immediate goal of satisfying their collective duty under the Sunset Commission legislation and with the broader goals of advancing public protection, developing greater consistency in legislation, and using the resources of the State of Minnesota efficiency and effectively.

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[1] Although the Office of Unlicensed Complementary and Alternative Care Practice ("OCAP") is defined as a health licensing board under Minn. Stat. § 214.01, subd. 2, OCAP was created within MDH as a consumer protection activity. OCAP does not license practitioners and is not a board. OCAP's regulatory activity includes investigating consumer complaints and serving as an information clearinghouse for consumers and practitioners.

[2] See LAWS OF MINNESOTA 2012, CHAPTER 278, Article 2, Section 27(a) [HEALTH-RELATED LICENSING BOARDS REPORTING REQUIREMENTS].

This study summarizes and analyzes Minnesota legislation, other states' legislation, constitutional law, and anecdotal evidence of practices in Minnesota and other states. The legislation proposed by the HLBs and HOP embodies the best practices as discerned from analysis of this data.

II. Current Health Licensing Board and Health Occupations Program reporting requirements and penalties

A. In Minnesota

1. Most comprehensive reporting mandates

Practice acts for seven of the HLBs are include comprehensive statutory language governing reporting of violations. The seven boards are Podiatric Medicine, Dentistry, Nursing, Medical Practice, Marriage and Family Therapy, Behavioral Health and Therapy, and Chiropractic Examiners. The statutory language is similar for all seven boards.

The reporting mandates require that the following entities report to the licensee's board violations of the practice act and/or physical or mental impairments affecting a licensee's ability to practice his or her health profession: (1) institutions, including hospitals, clinics, prepaid medical plans, or other health care institution or organization located in Minnesota; (2) professional societies, including state or local societies; (3) licensed health professionals; (4) insurers and medical clinics, hospitals, political subdivisions, or other entities that provide professional liability coverage on behalf of licensees; (5) courts; and (6) licensees themselves (self-reports). The mandates require the entities to make their reports within 30 days after the violation occurs. Several of these statutes have been in place since the mid- to late-1980s.

The statutory language governing the Board of Nursing does not contain a specific self-reporting requirement. Nevertheless, the "licensed professional" duty to report subdivision would likely be construed as requiring a self-report, considering that it requires reporting about the conduct of "a person licensed by a health-related licensing boards," which by definition would include all licensed nurses.

2. Less comprehensive reporting mandates

The Board of Social Work also has a reporting requirement statute, although it is not as comprehensive as the statutes discussed above. The Board of Social Work's statute requires reporting by (1) institutions, including state agencies, political subdivisions, local units of government, private agencies, hospitals, clinics, prepaid medical plans, and other health care institutions; (2) state or local professional societies or associations; and (3) licensed health professionals, which can be interpreted to include a requirement to self-report. Minn. Stat. §§148E.240, .285 (2012).

The Board of Veterinary Medicine requires that courts report to the board persons who have been adjudicated mentally ill or chemically dependent, who are in need of a legal guardian, or who have been found guilty of a felony or gross misdemeanor, including those related to controlled substances and driving while intoxicated. Minn. Stat. § 156.122 (2012).

The Board of Physical Therapy includes a self-reporting requirement in its rules. Minn. R. 5601.3200. Although the rules do not require reporting other than self-reporting, the Board has statutory authority to take disciplinary action on the license of a licensee who has "failed to report to the board other physical therapists who violate" the disciplinary statute. Minn. Stat. § 148.75(a)(17)(2012).

The Board of Psychology also has a limited reporting requirement in its rules. A psychologist is required to make a report with the board when he or she has reason to believe another psychologist is having or has had sexual contact with a client or has failed to report abuse of children or vulnerable adults. Minn. R. 7200.4900, subp. 10. The Board of Psychology is in the process of seeking rule amendments to add additional reporting requirements.

Although lacking explicit reporting requirement statutes, the Boards of Nursing Home Administrators, Behavioral Health and Therapy, Dietetics and Nutrition, like the other HLBs, have authority to take disciplinary action on the license of an individual who provides false information to the board as part of the licensing and renewal process. The "false information to the board" provision would support disciplinary action if a board application asks self-report questions and the licensee failed to self-report.

Only two boards, the Boards of Optometry and Pharmacy, lack specific statutory or rule authority to take action for a failure to self-report.

Similar to the majority of the HLBs, the statutory framework governing HOP has fairly stringent self-reporting requirements. Specific statutory requirements, summarized below, vary among the programs. However, applications for all HOP programs include questions abut commission of statutorily-defined prohibited acts. Minn. Stat. §§ 148.5195, subd. 3; 148.6448, subd. 1; and 153A.15, subd. 1 (2012). Licenses or certificates will not be issued if any question is left unaddressed. Statutes for all programs allow disciplinary action for making false or misleading statements or failing to disclose. Id. Specific statutory language reinforces the requirement to disclose, as follows:

- Occupational therapy practitioners must disclose a description of (i) any jurisdiction's refusal to credential the applicant; (ii) any professional disciplinary action; (iii) information about physical or mental conditions or chemical dependency impairing the applicant's ability to practice; (iv) certain misdemeanor or felony convictions; or (v) state or federal court orders or judgments related to their practice. Minn. Stat. § 148.6420 (2012).
- Audiologists and speech-language pathologist applying for temporary licensure must sign an affidavit attesting that the applicant has not been the subject of past or present disciplinary action in Minnesota or other licensing jurisdictions and is not disqualified from licensure based on prohibited acts. Minn. Stat. §§ 148.5175(a)(1) (2012).
- Hearing instrument dispensers must notify HOP of conduct that may form the basis for disciplinary action and of a settlement, conciliation court judgment or award based on negligence, intentional acts, or contractual violations committed in the dispensing of hearing instruments. Dispensers must also disclose conduct falling within a list of prohibited acts. HOP may take disciplinary action for failure to dispense hearing instruments in compliance with state and Food and Drug Administration regulations. Minn. Stat. §§153A.14, subd. 11 (2012).

3. Special case of HLB self-reports

A significant number of HLB licensee self-reports are by individuals who find themselves unable to practice with reasonable skill and safety due to illness; use of alcohol and/or drugs; or a mental, physical, or psychological condition. These individuals have statutory authority to self-report either to their licensing board or to the Health Professional Services Program ("HPSP"). Minn. Stat. § 214.33, subd. 2 (2012). If an individual chooses to report to HPSP, that report is a confidential report unavailable to the licensing and/or regulatory board. Minn. Stat. § 214.34, subd. 1 (2012). If the individual is noncompliant with the

monitoring program that HPSP sets forth, then the individual will, under most circumstances, be reported to the individual's respective licensing board or regulatory entity. The HLBs will consider that report to be made by HPSP, even though the initial report was a self-report.

As a result of the confidential nature of HPSP self-reports, the HLB self-report category is not included in the following analysis about compliance with reporting requirements. Any data on self-reports would likely significantly under-represent the actual value.

Under Minn. Stat. §§ 148.5195, subd. 5; 148.6448, subd. 6; and 153A.15, subd. 5, the Commissioner of Health is also authorized to contract with HPSP for monitoring services, but the HPSP provisions set forth in Minn. Ch. 214 do not apply to the HOP programs included in this report.

4. Compliance with reporting requirements

Very few of the HLBs keep detailed data on who/what entities are reporting violations to the HLBs. With the exception of the Boards of Medical Practice and Nursing, the following evidence is anecdotal.[3]

a. HLBs with Most Comprehensive Reporting Requirements

The Board of Medical Practice provided 10-year historical data on five categories of reporters. Over the course of the past 10 years, BMP has received the following number of reports from the following entities:

ENTITY	AVERAGE NUMBER OF REPORTS PER YEAR
Insurers	102
Other licensees	75
Institutions	33
Professional Societies	1
Courts	0.4

[3] The data does not include client or patient reports because these reports are not part of the legislative study. Nonetheless, client and patient reports make up a significant portion of the total reports received by the HLBs and HOP.

The Board of Nursing provided 2-year data on comparable categories of reporters. Over the course of the past 2 years, the Board of Nursing has received the following number of reports from the following entities:

ENTITY	AVERAGE NUMBER OF REPORTS PER YEAR
Insurers	1
Other licensees	12
Institutions as represented by co-workers, supervisors, or representative of employers	515
Professional Societies	not identified as a category of reporter
Courts	1.5

The other two boards with the most comprehensive reporting requirements, the Board of Chiropractic Examiners and the Board of Marriage and Family Therapy, reported similar reporting patterns, with one notable exception – the failure of insurers to make reports to these entities with the same regularity that it makes reports to the Board of Medical Practice.

The Board of Chiropractic Examiners reports that most of its reports come from other licensed chiropractors and mental health care providers. One insurance company is fairly compliant with the reporting requirements, but the other insurers are not. Courts, professional societies, and other institutions have not provided any reports to the Board of Chiropractic Examiners during the recent history of the board.

The Board of Marriage and Family Therapy reports that, of the categories of reporters listed above, most of its reports (10-15 percent) come from other licensed professionals, most often other licensed marriage and family therapists. The Board of Marriage and Family Therapy receives approximately 1-2 reports per year (approximately 30 over the past 15 years) from institutions. The Board of Marriage and Family Therapy has received no more than two reports from each insurers and professional societies in the past 15 years. The Board of Marriage and Family Therapy has received no reports from courts or professional societies.

b. HLBs and HOP with Less Comprehensive Reporting Requirements

The Board of Social Work reports that, of the categories listed above, the majority of their reports come from either other licensed health professionals, including co-workers, supervisors, subordinate employees, and subsequent health care providers, or institutions, as the employer of the social worker. The other licensed health professionals category is the second largest source of reports overall, second only to clients themselves. The Board of Social Work has received no reports from courts, insurers, or professional societies.

The Board of Physical Therapy reports that, of the categories listed above, the majority of the reports come from other licensed professionals and institutions, collectively 35 percent. Insurers are responsible for approximately 5 percent of total reports. Professional societies are responsible for approximately 5 percent of total reports. The Board of Physical Therapy has received no reports from courts.

The Board of Veterinary Medicine reports that it has received one or two reports from courts during the past 10 years.

HOP provided the number of allegations reported to MDH during FY 2011 and FY 2012 by entities including insurers, other professionals, institutions, professional societies, and courts. HOP staff is included in the category "institutions."

ENTITY	TOTAL NUMBER OF REPORTS IN FY 2011 AND 2012 AUDs	TOTAL NUMBER OF REPORTS IN FY 2011 AND 2012 HIDs	TOTAL NUMBER OF REPORTS IN FY 2011 AND 2012 OTPs	TOTAL NUMBER OF REPORTS IN FY 2011 AND 2012 SLPs
Insurers	0	0	0	0
Other licensees	5	16	3	0
Institutions, including other agencies, MDH, and employers	1	7	70	8
Professional Societies	0	0	0	0
Courts	0	0	0	0

Additional data provided by HOP indicates that the majority of allegations against audiologists and hearing instrument dispensers come from clients or their representatives and about one-third are from other professionals. The majority of reports on occupational therapy practitioners and speech language pathologists come from institutions as described in the table above. HOP reports that it has received reports from courts on hearing instrument dispensers in the past, although not within the last two years.

5. Penalties

Notably, none of the HLBs or HOP has statutory authority to impose a direct fine on insurers, institutions, other licensees, courts, or professional societies for failure to report. Any fines imposed on the basis of a failure to report could be assessed only on a licensee by the licensee's board as part of the disciplinary process.

Few of the HLBs reported having taken action against a licensee for failure to report, either a failure to self-report or to cross-report about another licensee. The Board of Medical Practice was the most active, reporting 34 disciplinary actions since 1986 that included a citation for failure to report, for an average of 1.3 citations a year. The majority of these failure-to-report citations were for a failure to report a relapse to alcohol or drug use. A much smaller portion of the failure-to-report citations were for a failure to report disciplinary action in another state.

HOP reports that it has taken disciplinary action against practitioners who failed to report and then failed to cooperate in HOP's investigation. Usually, this conduct results in a revocation of the right to practice.

6. Summary of data

In general, the HLBs and HOP receive reports from those in the best position to provide them, i.e., other licensees and the clients or patients themselves. Licensees are highly active reporters, either in their capacity as co-workers, subsequent care providers, or supervisors. Licensees have strong motivation to report substandard practices - - it protects patients and clients and helps maintain high standards of practice within the profession. Moreover, other licensees and clients or patients are often the first category of reporters that have access to the factual information indicating that a potential violation has occurred.

Institutional clients are somewhat less frequent reporters, with the exception that health care facilities, as employers of licensed health professionals, are highly active reporters. In part, these facilities depend on, for example, chiefs of staff or nurse managers, who themselves are licensees, to file the reports on behalf of the facility.

Similar to the HLBs, HOP receives reports from various entities, including those identified above. This is due, in part, to the vulnerability of the clients served, the practitioners work setting, and whether the work location or employer is a regulated entity. For example, speech-language pathologists may be licensed by the Minnesota Department of Education in order to work in a K-12 facility and, as such, MDE has an interest in reporting potential violations to HOP. Similarly, speech-language pathologists, occupational therapy practitioners, and audiologists may be employed in a facility licensed by MDH or Minnesota Department of Human Services serving vulnerable populations. In these cases, the facilities have an interest in reporting potential violations to HOP.

B. Examples from other states

1. Statutory language

Statutes from other states were surveyed to determine existing statutory options for failure-to-report penalties. Most states' health licensing boards include provisions allowing the licensee's own licensing board or agency to take disciplinary action for a failure to self-report.

Some states, including Virginia, North Dakota, North Carolina, New Mexico, and Maryland, allow boards to impose civil penalties for failure to report. These provisions do not include a requirement that the alleged perpetrator be given notice and/or opportunity to be heard on the alleged failure to report.

Other states, including West Virginia, have fairly detailed statutory schemes for imposing civil penalties with due process protections for the alleged violators. The West Virginia Board of Medicine governing statute requires reports from courts, licensed physicians and podiatrists, insurers, professional societies, managed care organizations, and hospitals. The same statute provides a process for the board to impose a civil penalty for failure to report. The process is as follows: (1) the board makes a probable cause determination that the mandated reporter failed to report; (2) the board provides the mandated reporter with written notice of the alleged failure and a time and place for a hearing on the allegations;

(3) the board reviews the record at the hearing and may assess a civil penalty of between one thousand and ten thousand dollars for any violation; and (4) if the mandated reporter fails to pay, the board may refer the matter to the attorney general to institute a civil action to recover the civil penalty. W.V. Code §30-3-14 (2012). Other states, including Kansas, have less specific legislation that provides that entities and individuals accused of failing to report are to have notice and opportunity to be heard on the allegations.

In contrast, the Nevada Board of Medicine allows a board, to report an in-state insurer to the Nevada Division of Insurance of the Department of Business and Industry ("NDI") for failure to comply with board reporting requirements. The NDI is authorized to hold a hearing and impose an administrative fine of not more than $10,000 for each violation. Nev. Rev. Stat. § 630.3067 (2012).

Additionally, the Federation of State Medical Board, a national non-profit organization representing the 70 state medical and osteopathic licensing boards, recommends that state boards have statutory authority to impose civil penalties on entities and individuals for failure to report as a mechanism to ensure compliance with reporting requirements.[4]

2. Anecdotal evidence from other states

State health licensing boards with authority to impose civil penalties on non-licensee entities for failure to report rarely exercise that authority. Anecdotally, the state boards report that the external expenses and staff time required to conduct a hearing deter boards from regularly invoking the penalty provision.

III. Potential impediments to proposed penalties for failure to report

A. Procedural due process

In order to fully satisfy constitutional due process, any statute that authorizes the HLBs or HOP to impose a fine must include a notice and opportunity to be heard process.

The HLBs are experienced with individual due process protections. In cases where a licensee contests the discipline that the board attempts to impose, the

[4] Federation of State Medical Boards, "Essentials of a State Medical and Osteopathic Practice Act," (13th Ed.), p. 25.

licensee is entitled to an evidentiary hearing before the Office of Administrative Hearings, during which an administrative law judge makes findings of fact and recommendations to the board, and a hearing before the board itself, during which the board makes a final determination on the facts, the legal issues, and imposes discipline when appropriate.

Similarly, HOP has due process protections built into its disciplinary process. When HOP makes an initial determination that a practitioner has engaged in prohibited acts and proposes discipline, the practitioner has 30 days within which to respond to that determination. If the practitioner fails to respond, the determination becomes public within 30 days of receipt by the practitioner. In cases where a practitioner objects to the discipline HOP attempts to impose, practitioners may petition for a contested case before an administrative law judge, who makes findings of fact and recommendations. The administrative law judge's findings and recommendations are reviewed by the Commissioner of Health, who makes the final determination on whether disciplinary action is appropriate.

Were the legislature to include a failure-to-report penalty provision with due process protections, the HLBs and HOP would likely incur sizeable expenses in order to assess and then enforce any penalty. At a minimum, the HLBs and HOP would need to provide an evidentiary hearing at a board meeting and some sort of appeal process. Moreover the HLBs and HOP would expend financial and staff resources proving the case for the penalty at the hearing. The process of assessing the penalty would divert resources from the HLBs' and HOP's primary mission, protecting the public.

B. Jurisdiction

Additionally, there are concerns about whether the HLBs and HOP should have jurisdiction over non-licensee entities, including insurers, professional societies, hospitals and other health care institutions, and licensees regulated by other HLBs or HOP. Although the legislature generally has the ability to confer jurisdiction statutorily, there are concerns about requiring licensees and other entities, such as hospitals, insurers, and professional societies to be regulated by multiple state agencies. A better practice would be to follow the Nevada model and have the HLBs and HOP report a failure to report to the state agency that is already regulating or is in the best position to regulate the non-reporting entity. For example, an insurer who fails to report would be reported to the Minnesota Department of Commerce for investigation and possible penalty assessment.

C. Cross-reports

Moreover, the HLBs and HOP have concerns about imposing on licensees a duty to become experts in the standard of care of other professions. Any reporting requirement will need to be limited to actions that the licensee has actual knowledge is a violation. Otherwise, all licensees may be held to a standard of expertise in health care professions that they do not actually practice and are not licensed to practice.

D. Minnesota courts – separation of powers and judicial immunity

Any statute that gives an executive branch agency, such as the HLBs and HOP, authority to impose a penalty on the judicial branch, the courts, raises separation of powers and judicial immunity concerns. The statute will appear, on its face, to allow the executive branch agency to infringe on the judicial branch's authority to police itself, its regulatees, and its staff. There are few, if any, instances in Minnesota state government where one state agency is authorized to impose a fine or penalty on other state agencies, especially those in another branch of government. Legislation generally only authorizes fines and civil penalties to be imposed on individuals who are citizens of Minnesota and/or entities organized under the laws of or doing business in Minnesota.

Moreover, costs, which will ultimately be born by taxpayers, will be incurred in order to transfer funds from one branch of government to another to satisfy any civil penalty imposed.

E. Minnesota Data Practices Act

As the law currently stands, all complaints filed with the HLBs and HOP are confidential data under the Minnesota Data Practices Act while an investigation is active. Minn. Stat. § 13.41, subd. 4 (2012). Once a complaint file becomes inactive, regardless of the disposition, the data becomes private, meaning that the reporter/complainant has access to his or her report but the licensee does not unless the reporter/complainant gives consent. Minn. Stat. § 13.41, subd. 2(a) (2012). The HLBs and HOP anticipate that any legislative change to reporting requirements will allow the HLBs and HOP to treat reports made under a reporting requirement statute in the same manner as other complaints for purposes of the Minnesota Data Practices Act – confidential during an investigation and private once the file becomes inactive.

IV. Proposed legislation

A. Location of proposed legislation

The HLBs propose that the proposed legislation be located in Minn. Ch. 214. Although each of the HLBs have their own practice acts, Minn. Ch. 214 acts as a unifying framework for operating the HLBs. To maintain consistency across the HLBs, it is recommended that a comprehensive reporting requirement statute be added to Minn. Ch. 214. In accord, the legislation that currently governs HLB reporting requirements for the Boards of Dentistry, Nursing, Medical Practice, Marriage and Family Therapy, Behavioral Health and Therapy, Chiropractic Examiners, OCAP, Podiatric Medicine, Social Work, and Veterinary Medicine would need to be repealed. Moreover, the Boards of Psychology and Physical Therapy will need to repeal their rules governing reporting requirements.

HOP proposes that the proposed legislation be added to each of individual practice acts for audiologists and speech-language pathologists, occupational therapy practitioners, and hearing instrument dispensers. Unlike the HLBs, HOP does not have a comprehensive statutory framework governing the occupations that are part of this study. As a result, the legislation will need to be added to each practice act individually.

B. Proposed penalty provision

After review and consideration of the data in this study, the HLBs and HOP propose to model the penalty provision of the reporting requirements legislation on Nevada's statute. For reporters other than licensees and the courts, it is more efficient, from resource and a consolidation of state authority perspectives, to authorize the HLBs and HOP to refer the alleged violating entity to the governmental agency with the most direct authority to oversee the entity's actions. For example, if an insurer fails to report, the HLBs and HOP will refer that insurer to the Department of Commerce for the penalty assessment process. If a physician fails to report the actions of a nurse, the Board of Nursing will refer that physician to the Board of Medical Practice for the penalty assessment process. If a hospital fails to report, the HLBs and HOP will refer that hospital to the Minnesota Department of Health for the penalty assessment process.

The advantage of this reporting process is two-fold. First, the civil penalty authority is vested in a state agency that has authority and a process in place for regulating the entity or individual. No additional state resources are needed to

establish a process. Second, the entity or individual will have one primary regulatory scheme and be regulated primarily by one state agency, instead of multiple state agencies. For example, a hospital will be under the jurisdiction of MDH, instead of MDH and each HLB individually.

As explained in this study, the HLBs, with the exception of the Boards of Pharmacy and Optometry, and HOP have authority to take action against a licensee or certificate holder who fails to make a self-report. The HLBs and HOP are not proposing a change in that authority.

C. Implementation considerations

The Board of Medical Practice attributes some of the success of its reporting requirement statute to the fact that the medical associations and the board have been active in educating licensees and other entities about the reporting requirements. For example, during the initial licensing interview, the Board of Medical Practice spends time educating licensees about their duty to report. If the mandatory reporting requirement legislation passes and/or makes changes for boards that already require reporting, the HLBs and HOP will engage in a campaign to educate licensees and other entities about the requirements, including posting notifications on their respective websites.

Furthermore, the HLBs and HOP, especially those that do not already have the most comprehensive reporting requirements legislation, will need to review their licensing and renewal documents to ensure that licensees are provided with a Tennessen warning. Minn. Stat. §13.04, subd. 2 (2012). Specifically, applicants and licensees will need to be notified that (1) the data they supply might be used to determine if a reporting requirement violation occurred and (2) the data they supply might be forwarded to another state agency to determine if a reporting requirement violation occurred.

As a concluding note, many licensees, whether in their capacity as supervisors, managers, competitors, co-workers, or subsequent care providers, are fulfilling their reporting requirements. The challenge with required reporting is that the HLBs are often unable to access underlying documents and data because an institutional reporter asserts peer review privilege. Minn. Stat. § 145.64 (2012). As a result, the HLBs may receive a report that a potential violation has occurred, but then be unable to determine if a violation has occurred because of the absence or unavailability of the underlying data. To ensure public protection, legislative

focus may more appropriately be placed on creating a mechanism to better balance peer review protection with public protection mission of the HLBs and HOP.

REPORTING OBLIGATIONS – HEALTH LICENSING BOARDS DRAFT

Subdivision 1. Permission to report. A person who has knowledge of any conduct constituting grounds for discipline under disciplinary statutes of the health licensing boards, as defined in Minn. Stat. § 214.01, subd. 2, may report the violation to the applicable health licensing board.

Subdivision 2. Institutions; penalty (a) Any hospital, clinic, pharmacy, prepaid medical plan, other health care institution or organization, state agency, or private agency located in this state shall report to the applicable health licensing board any action taken by the institution or organization or any of its administrators or health care or other committees to revoke, suspend, restrict, or condition a licensed or regulated health care provider'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. The institution or organization shall also report the resignation of any health care provider prior to the conclusion of any disciplinary proceeding, or prior to the commence of formal charges but after the health care provider had knowledge that formal charges were contemplated or in preparation. Each report made under this subdivision must state the nature of the action taken, state in detail the reasons for the action, and identify the specific patient or client records upon which the action was based. (b) The health licensing boards shall report any failure to comply with subdivision (a) to the Minnesota Department of Health. If, after a hearing, the Minnesota Department of Health determines that any such institution failed to comply with the requirements of section 2, the Minnesota Department of Health shall impose an administrative fine in accordance with its authority under law.

Subdivision 3. Professional societies; failure to comply. (a) A state or local society shall report to the appropriate board any termination, revocation, or suspension of membership or any other disciplinary action taken against a health care provider. If the society has received a complaint that might be grounds for discipline under a health licensing board's disciplinary statutes against a member of the society on whom it has not taken disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the appropriate health licensing board. This subdivision does not apply to a society when it performs peer review functions as an agent of an outside entity, organization, institution, or system. (b) The health licensing boards shall report any failure to comply with subdivision (a) to the professional society's national governing body.

Subdivision 4. Persons regulated by the health licensing boards; penalty. (a) A licensed or regulated health care provider, persons holding a temporary or residency permit issued by any health licensing board, persons holding a registration issued by any health licensing board, and any other person otherwise regulated by the health licensing boards shall report to the appropriate health licensing board personal knowledge of a licensed or regulated health care provider's conduct that the person reasonably believes constitutes grounds for disciplinary action under the respective health licensing board's statutes, including specifically that the individual may be medically or physically unable to practice the licensed or regulated profession with reasonable skill and safety. No report is required if the information was obtained during the course of a patient/client-health care provider relationship and the treating health care provider successfully counsels the individual to limit or withdraw from practice to the extent required by the impairment. (b) The health licensing boards shall report any failure to comply with subdivision (a) to the licensee's respective health licensing board. If, after a hearing, the health licensing board determines that the licensee failed to comply with subdivision 4, the health licensing board shall, along with other actions allowed by law, impose a civil penalty in accordance with the health licensing board's authority to assess penalties.

Subdivision 5. Insurers and other entities; penalty. (a) Four time each year as prescribed by each health licensing board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13) and providing professional liability insurance to persons or entities regulated by the health licensing boards, shall submit to each health licensing board a report concerning the licensed health professionals or entities against whom professional malpractice settlements or awards have been made to a plaintiff.

(b) A medical clinic, hospital, political subdivision or other entity that provides professional liability coverage on behalf of persons or entities regulated by the health licensing boards shall submit to the board a report concerning malpractice settlements or awards paid on behalf of the person or entity regulated by the health licensing boards, and any settlements or awards paid by a clinic, hospital, political subdivision, or other entity on its own behalf because of care rendered by the person regulated by the health licensing board. 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 reports in paragraphs (a) and (b) must contain at least the following information: (1) the total number of settlements or awards made to any plaintiff(s);

(2) the date the settlements or awards to any plaintiff(s) were made; (3) the allegations contained in the claim or complaint leading to the settlements or awards made to any plaintiff(s); (4) the dollar amount of each settlement or award; (5) the regular address of the practice or business of the person or entity licensed or regulated by the health licensing board against whom an award was made or with whom settlement was made; and (6) the name of the person or entity licensed or regulated by the health licensing board against whom an award was made or with whom a settlement was made.

The reporting entity shall, in addition to the above information, report to the board any information it possesses that tends to substantiate a charge that a person regulated by the health licensing boards may have engaged in conduct violating a statute or rule of the respective health licensing board.

(d) The health licensing boards shall report any failure to comply with subdivisions (a) through (c) to the Minnesota Department of Commerce for entities specified in (a) and to the Minnesota Department of Health for entities specified in (b). If, after a hearing, the Minnesota Department of Commerce determines that the insurer or other entity failed to comply with subdivisions (a) through (c), the Minnesota Department of Commerce or the Minnesota Department of Health shall impose a fine in accordance with its authority under the law.

Subdivision 6. Courts. The court administrator of district court or any other court of competent jurisdiction shall report to the appropriate health licensing board any judgment or other determination of the court that finds or includes a finding that a person licensed or regulated by the health licensing board is mentally ill, mentally incompetent, guilty of a felony, or guilty of a violation of federal or state narcotics laws or controlled substances acts, guilty of an abuse or fraud under Medicare or Medicaid, appoints a guardian of the person licensed or regulated by a board pursuant to sections 524.5-101-.502, or commits a person licensed or regulated by a board pursuant to chapter 253B.

Subdivision 7. Self-reporting; penalty. (a) A person regulated by a health licensing board shall report to his or her respective board any personal action that would require that a report be filed with the board by any person, institution, professional health care society, licensed health professional, insurer or other entity, or court pursuant subdivisions 2 to 6. (b) If, after a hearing, a health licensing board determines that a licensee failed to self-report, the health licensing board shall, along with other actions allowed by law, impose a fine in accordance with the health licensing board's authority to assess penalties..

Subdivision 8. Deadlines; forms. Reports required by subdivisions 2 to 7 must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The health licensing boards may provide forms for the submission of reports required by this section, may require that reports be submitted on forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Subdivision 9. Subpoenas. The health licensing boards may issue subpoenas for the production of any reports required by subdivisions 2 to 7 or any related documents.

REPORTING OBLIGATIONS - HOP

Subdivision 1. Permission to report. A person who has knowledge of any conduct constituting grounds for discipline under sections *(insert relevant statutory framework(s))* may report the violation to the Minnesota Department of Health, Health Occupations Program, ("MDH HOP") as regulator of audiologists, speech-language pathologist, hearing aid dispensers, and occupational therapy practitioners.

Subdivision 2. Institutions. (a) Any hospital, clinic, pharmacy, prepaid medical plan, other health care institution or organization, state agency, or private agency located in this state shall report to the MDH HOP any action taken by the institution or organization or any of its administrators or health care or other committees to revoke, suspend, restrict, or condition a licensed or regulated health professional'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. The institution or organization shall also report the resignation of any licensed or regulated health care provider prior to the conclusion of any disciplinary proceeding, or prior to the commence of formal charges but after the licensed or regulated health care provider had knowledge that formal charges were contemplated or in preparation. Each report made under this subdivision must state the nature of the action taken, state in detail the reasons for the action, and identify the specific patient or client records upon which the action was based. (b) The MDH HOP shall report any failure to comply with subdivision (a) to the respective division of the Minnesota Department of Health as regulator of health care institutions. If, after a hearing, the Minnesota Department of Health determines that any such institution failed to comply with the requirements of subdivision (a), the Minnesota Department of Health shall impose an administrative fine in accordance with its authority under the law.

Subdivision 3. Professional health care societies; failure to report. (a) A state or local health care society shall report to the MDH HOP any termination, revocation, or suspension of membership or any other disciplinary action taken against a licensed or regulated health care provider. If the society has received a complaint that might be grounds for discipline under the Minnesota Department of Health's disciplinary statutes against a member of the society on whom it has not taken disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the MDH HOP. This subdivision does not apply to a society when it performs peer review functions as an agent of an outside entity, organization, institution, or system. (b) The MDH HOP shall report any failure to

comply with subdivision (a) to the professional health care society's national governing body.

Subdivision 4. Licensed health professionals; penalty. (a) The MDH HOP licensed or regulated health care providers shall report to the MDH HOP personal knowledge of a licensed or regulated health care provider's conduct that the person reasonably believes constitutes grounds for disciplinary action under the respective Minnesota Department of Health statutes, including specifically that the individual may be medically or physically unable to practice the licensed profession with reasonable skill and safety. No report is required if the information was obtained during the course of a patient/client-health care provider relationship and the treating health care provider successfully counsels the individual to limit or withdraw from practice to the extent required by the impairment. (b) The MDH HOP shall report any failure to comply with subdivision (a) to the respective division of the Minnesota Department of Health. If, after a hearing, the Minnesota Department of Health determines that the regulatee failed to comply with subdivision (a), the Minnesota Department of Health shall impose a civil penalty in accordance with its authority under the law.

Subdivision 5. Insurers and other entities. (a) Four time each year as prescribed by each health licensing board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13) and providing professional liability insurance to persons regulated or licensed by the MDH HOP, shall submit to the MDH HOP a report concerning the regulated or licensed health care providers against whom professional malpractice settlements or awards have been made to a plaintiff.

(b) A medical clinic, hospital, political subdivision or other entity that provides professional liability coverage on behalf of persons licensed or regulated by the MDH HOP shall submit to the MDH HOP a report concerning malpractice settlements or awards paid on behalf of licensed or regulated health care provider, and any settlements or awards paid by a clinic, hospital, political subdivision, or other entity on its own behalf because of care rendered by the licensed or regulated health care provider. 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 reports in paragraphs (a) and (b) must contain at least the following information: (1) the total number of settlements or awards made to any plaintiff(s); (2) the date the settlements or awards to any plaintiff(s) were made; (3) the allegations contained in the claim or complaint leading to the settlements or awards made to any plaintiff(s); (4) the dollar amount of each settlement or award; (5) the regular address

of the practice or business of the licensed or regulated health care provider against whom an award was made or with whom settlement was made; and (6) the name of the licensed or regulated health care provider against whom an award was made or with whom a settlement was made.

The reporting entity shall, in addition to the above information, report to the board or the Minnesota Department of Health any information it possesses that tends to substantiate a charge that a licensed or regulated health care provider may have engaged in conduct violating a statute or rule of the MDH HOP.

(d) The MDH HOP shall report any failure to comply with subdivision (a) through (c) to the Minnesota Department of Commerce for entities listed in (a) or the Minnesota Department of Health for entities listed in (b). If, after a hearing, the Minnesota Department of Commerce or the Minnesota Department of Health determines that the insurer or other entity failed to comply with subdivisions (a) through (c), the Minnesota Department of Commerce or the Minnesota Department of Health shall impose a fine in accordance with its authority under the law.

Subdivision 6. Courts. The court administrator of district court or any other court of competent jurisdiction shall report to the MDH HOP any judgment or other determination of the court that finds or includes a finding that a licensed or regulated health care provider is mentally ill, mentally incompetent, guilty of a felony, or guilty of a violation of federal or state narcotics laws or controlled substances acts, guilty of an abuse or fraud under Medicare or Medicaid, appoints a guardian of the licensed or regulated health care provider pursuant to sections 524.5-101-.502, or commits a licensed or regulated health care provider pursuant to chapter 253B.

Subdivision 7. Self-reporting. (a) A licensed or regulated health care provider shall report to the MDH HOP any personal action that would require that a report be filed with the MDH HOP by an person, institution, professional health care society, licensed or regulated health professional, insurer or other entity, or court pursuant subdivisions 2 to 6. (b) If, after a hearing, the MDH HOP determines that a licensed or regulated health care provider failed to self-report as required in subdivision (a), the Minnesota Department of Health shall, along with other actions allowed by law, impose a fine of not more than $1000 per violation.

Subdivision 8. Deadlines; forms. Reports required by subdivisions 2 to 7 must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The MDH HOP may provide forms for the submission of reports required

by this section, may require that reports be submitted on forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Subdivision 9. Subpoenas. The MDH HOP may issue subpoenas for the production of any reports required by subdivisions 2 to 7 or any related documents.