

148B.69 DISCIPLINARY ACTIONS.

Subdivision 1. **Forms of disciplinary action.** When the committee finds that an unlicensed mental health practitioner has violated a provision or provisions of this chapter, the committee may take one or more of the following actions, only against the individual practitioner:

(1) revoke the right to practice;

(2) suspend the right to practice;

(3) impose limitations or conditions on the practitioner's provision of mental health services, the imposition of rehabilitation requirements, or the requirement of practice under supervision;

(4) 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 practitioner of any economic advantage gained by reason of the violation charged or to reimburse the Office of Mental Health Practice for all costs of the investigation and proceeding;

(5) order the practitioner to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution;

(6) censure or reprimand the practitioner;

(7) impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the Office of Administrative Hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the staff of the Office of Mental Health Practice; or

(8) any other action justified by the case.

Subd. 2. **Discovery; subpoenas.** In all matters relating to the lawful activities of the Office of Mental Health Practice, the committee 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 or 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 committee or by a subpoena of the committee to do so may, upon application to the district court in any district, be ordered to comply with the order or subpoena. The committee 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. 2a. **Hearings.** If the committee proposes to take action against the practitioner as described in subdivision 1, the committee must first notify the person against whom the action is proposed to be taken and provide the person with an opportunity to request a hearing under the contested case provisions of chapter 14. If the person does not request a hearing by notifying the committee within 30 days after service of the notice of the proposed action, the committee may proceed with the action without a hearing.

Subd. 3. **Reinstatement.** The committee may at the committee's discretion reinstate the right to practice and may impose any disciplinary measure listed under subdivision 1.

Subd. 4. **Temporary suspension.** In addition to any other remedy provided by law, the committee may, acting through a person to whom the committee has delegated this authority and without a hearing, temporarily suspend the right of an unlicensed mental health practitioner to practice if the committee's delegate finds that the practitioner has violated a statute or rule that the committee is empowered to enforce and continued practice by the practitioner would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the committee issues a final order in the matter after a hearing or upon agreement between the committee and the practitioner. Service of the order is effective if the order is served on the practitioner or counsel of record personally or by first class mail. Within ten days of service of the order, the committee shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the office or practitioner shall be in affidavit form only. The practitioner or the counsel of record may appear for oral argument. Within five working days after the hearing, the committee shall issue the committee's 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 committee shall issue a final order within 30 days after receipt of that report.

Subd. 5. **Automatic suspension.** The right to practice is automatically suspended if (1) a guardian of an unlicensed mental health practitioner is appointed by order of a court under sections 524.5-101 to 524.5-502, or (2) the practitioner is committed by order of a court pursuant to chapter 253B. The right to practice remains suspended until the practitioner is restored to capacity by a court and, upon petition by the practitioner, the suspension is terminated by the committee after a hearing or upon agreement between the committee and the practitioner.

Subd. 6. **Public employees.** Notwithstanding subdivision 1, the committee must not take disciplinary action against an employee of the state or a political subdivision of the state. If, after an investigation conducted in compliance with and with the authority granted under sections 148B.60 to 148B.71, the committee determines that the employee violated a provision or provisions of this chapter, the committee shall report to the employee's employer the committee's findings and the actions the committee recommends that the employer take. The committee's recommendations are not binding on the employer.

Subd. 7. **Release to obtain nonpublic data.** An unlicensed mental health practitioner who is the subject of an investigation must sign a release authorizing the committee to obtain criminal conviction data, reports about abuse or neglect of clients, and other information pertaining to investigations of violations of statutes or rules from the Bureau of Criminal Apprehension, the Federal Bureau of Investigation, the Department of Human Services, the Office of Health Facilities Complaints, private certification organizations, county social service agencies, the Division of Driver and Vehicle Services in the Department of Public Safety, adult protection services, child protection services, and other agencies that regulate provision of health care services. After the committee gives written notice to an individual who is the subject of an investigation, the agencies shall assist the committee with the investigation by giving the committee the requested data.

History: 1991 c 292 art 2 s 59; 1Sp1994 c 1 art 2 s 16; 1996 c 305 art 1 s 41; 1998 c 317 s 11; 2000 c 460 s 34; 2004 c 146 art 3 s 47; 2005 c 147 art 8 s 4

NOTE: This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.