

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **2117**

02/08/2012 Authored by Abeler

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to health occupations; modifying complaint processes; prohibiting
1.3 licenses to certain individuals with felony-level sexual conduct convictions;
1.4 amending Minnesota Statutes 2010, sections 214.103; 364.09; proposing coding
1.5 for new law in Minnesota Statutes, chapter 214.

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

1.7 Section 1. Minnesota Statutes 2010, section 214.103, is amended to read:

1.8 **214.103 HEALTH-RELATED LICENSING BOARDS; COMPLAINT,**
1.9 **INVESTIGATION, AND HEARING.**

1.10 Subdivision 1. **Application.** For purposes of this section, "board" means
1.11 "health-related licensing board" and does not include the non-health-related licensing
1.12 boards. Nothing in this section supersedes section 214.10, subdivisions 2a, 3, 8, and 9, as
1.13 they apply to the health-related licensing boards.

1.14 Subd. 2. **Receipt of complaint.** The boards shall receive and resolve complaints
1.15 or other communications, whether oral or written, against regulated persons. Before
1.16 resolving an oral complaint, the executive director or a board member designated by the
1.17 board to review complaints ~~may~~ shall require the complainant to state the complaint in
1.18 writing or authorize transcribing the complaint. The executive director or the designated
1.19 board member shall determine whether the complaint alleges or implies a violation of
1.20 a statute or rule which the board is empowered to enforce. The executive director or
1.21 the designated board member may consult with the designee of the attorney general as
1.22 to a board's jurisdiction over a complaint. If the executive director or the designated
1.23 board member determines that it is necessary, the executive director may seek additional
1.24 information to determine whether the complaint is jurisdictional or to clarify the nature

of the allegations by obtaining records or other written material, obtaining a handwriting sample from the regulated person, clarifying the alleged facts with the complainant, and requesting a written response from the subject of the complaint.

Subd. 2a. Notifications and resolution. (a) No more than 14 calendar days after receiving a complaint regarding a licensee, the board shall notify the complainant that the board has received the complaint and shall provide the complainant with the written description of the board's complaint process. The board shall periodically, but no less than every 120 days, notify the complainant of the status of the complaint consistent with section 13.41.

(b) Except as provided in paragraph (d), no more than 60 calendar days after receiving a complaint regarding a licensee, the board must notify the licensee that the board has received a complaint and inform the licensee of:

(1) the substance of the complaint;

(2) the sections of the law that have allegedly been violated;

(3) the sections of the professional rules that have allegedly been violated; and

(4) whether an investigation is being conducted.

(c) The board shall periodically, but not less than every 120 days, notify the licensee of the status of the complaint consistent with section 13.41.

(d) Paragraphs (b) and (c) do not apply if the board determines that the notice would compromise the board's investigation and that the notice cannot reasonably be accomplished within this time.

(e) No more than one year after receiving a complaint regarding a licensee, the board must resolve or dismiss the complaint unless the board determines that resolving or dismissing the complaint cannot reasonably be accomplished in this time and is not in the public interest.

(f) Failure to make notifications or to resolve the complaint within the time established in this subdivision shall not deprive the board of jurisdiction to complete the investigation or to take corrective, disciplinary, or other action against the licensee that is authorized by law. Such a failure by the board shall not be the basis for a licensee's request for the board to dismiss a complaint, and shall not be considered by an administrative law judge, the board, or any reviewing court.

Subd. 3. Referral to other agencies. The executive director shall forward to another governmental agency any complaints received by the board which do not relate to the board's jurisdiction but which relate to matters within the jurisdiction of another governmental agency. The agency shall advise the executive director of the disposition of the complaint. A complaint or other information received by another governmental

agency relating to a statute or rule which a board is empowered to enforce must be forwarded to the executive director of the board to be processed in accordance with this section. Governmental agencies may coordinate and conduct joint investigations of complaints that involve more than one governmental agency.

Subd. 4. **Role of the attorney general.** The executive director or the designated board member shall forward a complaint and any additional information to the designee of the attorney general when the executive director or the designated board member determines that a complaint is jurisdictional and:

(1) requires investigation before the executive director or the designated board member may resolve the complaint;

(2) that attempts at resolution for disciplinary action or the initiation of a contested case hearing is appropriate;

(3) that an agreement for corrective action is warranted; or

(4) that the complaint should be dismissed, consistent with subdivision 8.

Subd. 5. **Investigation by attorney general.** (a) If the executive director or the designated board member determines that investigation is necessary before resolving the complaint, the executive director shall forward the complaint and any additional information to the designee of the attorney general. The designee of the attorney general shall evaluate the communications forwarded and investigate as appropriate.

(b) The designee of the attorney general may also investigate any other complaint forwarded under subdivision 3 when the designee of the attorney general determines that investigation is necessary.

(c) In the process of evaluation and investigation, the designee shall consult with or seek the assistance of the executive director or the designated board member. The designee may also consult with or seek the assistance of other qualified persons who are not members of the board who the designee believes will materially aid in the process of evaluation or investigation.

(d) Upon completion of the investigation, the designee shall forward the investigative report to the executive director with recommendations for further consideration or dismissal.

Subd. 6. **Attempts at resolution.** (a) At any time after receipt of a complaint, the executive director or the designated board member may attempt to resolve the complaint with the regulated person. The available means for resolution include a conference or any other written or oral communication with the regulated person. A conference may be held for the purposes of investigation, negotiation, education, or conciliation. Neither the executive director nor any member of a board's staff shall be a voting member in any

4.1 attempts at resolutions that may result in disciplinary or corrective action. The results
4.2 of attempts at resolution with the regulated person may include a recommendation to
4.3 the board for disciplinary action, an agreement between the executive director or the
4.4 designated board member and the regulated person for corrective action, or the dismissal
4.5 of a complaint. If attempts at resolution are not in the public interest ~~or are not satisfactory~~
4.6 ~~to the executive director or the designated board member, then the executive director or~~
4.7 ~~the designated board member may initiate,~~ a contested case hearing may be initiated.

4.8 (1) The designee of the attorney general shall represent the board in all attempts at
4.9 resolution which the executive director or the designated board member anticipate may
4.10 result in disciplinary action. A stipulation between the executive director or the designated
4.11 board member and the regulated person shall be presented to the board for the board's
4.12 consideration. An approved stipulation and resulting order shall become public data.

4.13 (2) The designee of the attorney general shall represent the board upon the request of
4.14 the executive director or the designated board member in all attempts at resolution which
4.15 the executive director or the designated board member anticipate may result in corrective
4.16 action. Any agreement between the executive director or the designated board member
4.17 and the regulated person for corrective action shall be in writing and shall be reviewed by
4.18 the designee of the attorney general prior to its execution. The agreement for corrective
4.19 action shall provide for dismissal of the complaint upon successful completion by the
4.20 regulated person of the corrective action.

4.21 (b) Upon receipt of a complaint alleging sexual contact or sexual conduct with a
4.22 client, the board must forward the complaint to the designee of the attorney general for
4.23 an investigation. If, after it is investigated, the complaint appears to provide a basis for
4.24 disciplinary action, the board shall resolve the complaint by disciplinary action or initiate
4.25 a contested case hearing. Notwithstanding paragraph (a), clause (2), a board may not take
4.26 corrective action or dismiss a complaint alleging sexual contact or sexual conduct with a
4.27 client unless, in the opinion of the executive director, the designated board member, and the
4.28 designee of the attorney general, there is insufficient evidence to justify disciplinary action.

4.29 Subd. 7. **Contested case hearing.** If the executive director or the designated board
4.30 member determines that attempts at resolution of a complaint are not in the public interest
4.31 ~~or are not satisfactory to the executive director or the designated board member,~~ the
4.32 executive director or the designated board member, after consultation with the designee
4.33 of the attorney general, and the concurrence of a second board member, may initiate a
4.34 contested case hearing under chapter 14. The designated board member or any board
4.35 member who was consulted during the course of an investigation may participate at the

5.1 contested case hearing. A designated or consulted board member may not deliberate or
5.2 vote in any proceeding before the board pertaining to the case.

5.3 Subd. 8. **Dismissal and reopening of a complaint.** (a) A complaint may not be
5.4 dismissed without the concurrence of at least two board members and, upon the request
5.5 of the complainant, a review by a representative of the attorney general's office. The
5.6 designee of the attorney general must review before dismissal any complaints which
5.7 allege any violation of chapter 609, any conduct which would be required to be reported
5.8 under section 626.556 or 626.557, any sexual contact or sexual conduct with a client,
5.9 any violation of a federal law, any actual or potential inability to practice the regulated
5.10 profession or occupation by reason of illness, use of alcohol, drugs, chemicals, or any other
5.11 materials, or as a result of any mental or physical condition, any violation of state medical
5.12 assistance laws, or any disciplinary action related to credentialing in another jurisdiction
5.13 or country which was based on the same or related conduct specified in this subdivision.

5.14 (b) The board may reopen a dismissed complaint if the board receives newly
5.15 discovered information that was not available to the board during the initial investigation
5.16 of the complaint, or if the board receives a new complaint that indicates a pattern of
5.17 behavior or conduct.

5.18 Subd. 9. **Information to complainant.** A board shall furnish to a person who made
5.19 a complaint a written description of the board's complaint process, and actions of the
5.20 board relating to the complaint.

5.21 Subd. 10. **Prohibited participation by board member.** A board member who
5.22 has actual bias or a current or former direct financial or professional connection with a
5.23 regulated person may not vote in board actions relating to the regulated person.

5.24 Sec. 2. **[214.107] CONVICTION OF FELONY-LEVEL CRIMINAL SEXUAL**
5.25 **CONDUCT OFFENSE.**

5.26 Subdivision 1. **Applicability.** This section applies to the health-related licensing
5.27 boards, as defined in section 214.01, subdivision 2, except the Board of Medical Practice
5.28 and the Board of Chiropractic Examiners, and also applies to the Board of Barber
5.29 Examiners, the Board of Cosmetologist Examiners, and professions credentialed by the
5.30 Minnesota Department of Health: (1) speech-language pathologists and audiologists; (2)
5.31 hearing instrument dispensers; and (3) occupational therapists and occupational therapy
5.32 assistants.

5.33 Subd. 2. **Issuing and renewing credential to practice.** (a) Except as provided in
5.34 paragraph (f), a credentialing authority listed in subdivision 1 shall not issue or renew a
5.35 credential to practice to any person who has been convicted on or after August 1, 2011, of

any of the provisions of section 609.342, subdivision 1; 609.343, subdivision 1; 609.344, subdivision 1, clauses (c) to (o); or 609.345, subdivision 1, clauses (b) to (o).

(b) A credentialing authority listed in subdivision 1 shall not issue or renew a credential to practice to any person who has been convicted in any other state or country on or after August 1, 2011, of an offense where the elements of the offense are substantially similar to any of the offenses listed in paragraph (a).

(c) A credential to practice is automatically revoked if the credentialed person is convicted of an offense listed in paragraph (a).

(d) A credential to practice that has been denied or revoked under this section is not subject to chapter 364.

(e) For purposes of this section, "conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court, unless the court stays imposition or execution of the sentence and final disposition of the case is accomplished at a nonfelony level.

(f) A credentialing authority listed in subdivision 1 may establish criteria whereby an individual convicted of an offense listed in paragraph (a) may become credentialed provided that the criteria:

(1) utilize a rebuttable presumption that the applicant is not suitable for credentialing;

(2) provide a standard for overcoming the presumption; and

(3) require that a minimum of ten years has elapsed since the applicant was released from any incarceration or supervisory jurisdiction related to the offense.

A credentialing authority listed in subdivision 1 shall not consider an application under this paragraph if the board determines that the victim involved in the offense was a patient or a client of the applicant at the time of the offense.

EFFECTIVE DATE. This section is effective for credentials issued or renewed on or after August 1, 2011.

Sec. 3. Minnesota Statutes 2010, section 364.09, is amended to read:

364.09 EXCEPTIONS.

(a) This chapter does not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapters 245A and 245C; to eligibility for school bus driver endorsements; to eligibility for special transportation service endorsements; to eligibility for a commercial driver training instructor license, which is

governed by section 171.35 and rules adopted under that section; to emergency medical services personnel, or to the licensing by political subdivisions of taxicab drivers, if the applicant for the license has been discharged from sentence for a conviction within the ten years immediately preceding application of a violation of any of the following:

(1) sections 609.185 to 609.21, 609.221 to 609.223, 609.342 to 609.3451, or 617.23, subdivision 2 or 3;

(2) any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more; or

(3) a violation of chapter 169 or 169A involving driving under the influence, leaving the scene of an accident, or reckless or careless driving.

This chapter also shall not apply to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) This chapter does not apply to a school district or to eligibility for a license issued or renewed by the Board of Teaching or the commissioner of education.

(c) Nothing in this section precludes the Minnesota Police and Peace Officers Training Board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

(d) This chapter does not apply to a license to practice medicine that has been denied or revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.

(e) This chapter does not apply to any person who has been denied a license to practice chiropractic or whose license to practice chiropractic has been revoked by the board in accordance with section 148.10, subdivision 7.

(f) This chapter does not apply to any person who has been denied a credential to practice or whose credential to practice has been revoked by a credentialing authority according to section 214.107, subdivision 2.

EFFECTIVE DATE. This section is effective for credentials issued or renewed on or after August 1, 2011.

Sec. 4. **WORKING GROUP; PSYCHIATRIC MEDICATIONS.**

(a) The commissioner of health shall convene a working group composed of the executive directors of the Boards of Medical Practice, Psychology, Social Work, Nursing, and Behavioral Health and Therapy and one representative from each professional association to make recommendations on the feasibility of developing collaborative agreements between psychiatrists and psychologists, social workers, and licensed

8.1 professional clinical counselors for administration and management of psychiatric
8.2 medications.

8.3 (b) The executive directors shall take the lead in setting the agenda, convening
8.4 subsequent meetings, and presenting a written report to the chairs and ranking minority
8.5 members of the legislative committees with jurisdiction over health and human services.
8.6 The report and recommendations for legislation shall be submitted no later than January
8.7 1, 2012.

8.8 (c) The working group is not subject to Minnesota Statutes, section 15.059.