SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 2738

(SENATE AUTHORS: PUTNAM)

DATE	D-PG	OFFICIAL STATUS
03/08/2023	1436	Introduction and first reading Referred to Health and Human Services

A bill for an act

relating to health; modifying membership of Board of Medical Practice; establishing requirements for complaint review committee membership and processes; establishing requirements for information on provider profiles on Board of Medicine website; establishing requirements for posted information at points of patient contact; requiring an audit; requiring reports; amending Minnesota Statutes 2022, sections 147.01, subdivisions 1, 2, 4; 147.02, subdivision 5; 147.091, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 147.

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

Section 1. Minnesota Statutes 2022, section 147.01, subdivision 1, is amended to read:

Subdivision 1. **Creation; terms.** (a) The Board of Medical Practice consists of ~~16~~ 17 residents of the state of Minnesota appointed by the governor. ~~Eleven~~ Nine board members must be licensed to practice medicine under this chapter. At least one board member must hold a degree of doctor of medicine, and at least one board member must hold a degree of doctor of osteopathic medicine. ~~Five~~ Eight board members must be public members as defined by section 214.02 and must meet the criteria in paragraph (b). The governor shall make appointments to the board which reflect the geography of the state. In making these appointments, the governor shall ensure that ~~no more than~~ one public member resides in each United States congressional district, and that at least one member who is not a public member resides in each United States congressional district. The board members holding the degree of doctor of medicine or doctor of osteopathic medicine must, as a whole, reflect the broad mix of expertise of physicians practicing in Minnesota. A member may be reappointed but shall not serve more than eight years consecutively. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements are as provided in sections 214.07 to 214.09. The

provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations are as provided in chapter 214.

(b) Each public member must meet the following criteria:

(1) has experience in consumer advocacy or public interest advocacy relating to health care safety and quality improvement;

(2) has communication and negotiation skills;

(3) has expressed commitment to the time necessary to fully participate in all board activities;

(4) has education or training in particular health care concerns of diverse demographic groups;

(5) has current community connections to organizations representing diverse population groups or has expressed intent to establish community connections to organizations representing diverse population groups; and

(6) has experience serving on civic, educational, or benevolent organizations.

EFFECTIVE DATE. This section is effective January 1, 2024.

Sec. 2. Minnesota Statutes 2022, section 147.01, subdivision 2, is amended to read:

Subd. 2. **Recommendations for appointment.** (a) Prior to the end of the term of a doctor of medicine or public member on the board, or within 60 days after a doctor of medicine or public member position on the board becomes vacant, the State Medical Association, the Mental Health Association of Minnesota, patient safety advocacy organizations, and other interested persons and organizations may recommend to the governor doctors of medicine and public members qualified to serve on the board. Prior to the end of the term of an osteopathic physician, or within 60 days after an osteopathic physician membership becomes vacant, the Minnesota Osteopathic Medical Society may recommend to the governor three osteopathic physicians qualified to serve on the board. The governor may appoint members to the board from the list of persons recommended or from among other qualified candidates.

(b) At least 60 days prior to filling the vacancy of any public member, notice of the vacancy for the public member must be published in the newspaper of record in the congressional district in which the vacancy will occur.

EFFECTIVE DATE. This section is effective January 1, 2024.

Sec. 3. Minnesota Statutes 2022, section 147.01, subdivision 4, is amended to read:

Subd. 4. **Disclosure.** Subject to the exceptions listed in this subdivision, all communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction are confidential and privileged and any disciplinary hearing shall be closed to the public, except that a complainant, respondent, or the legal representative of a complainant or respondent must be provided access to all communications and information received and any disciplinary hearing held in relation to proceedings in which the complainant or respondent are subjects.

(a) Upon application of a party in a proceeding before the board ~~under section 147.091~~, the board shall produce and permit the inspection and copying, by or on behalf of the moving party, of any designated documents or papers relevant to the proceedings, in accordance with the provisions of rule 34, Minnesota Rules of Civil Procedure.

(b) If the board takes corrective action or imposes disciplinary measures of any kind, whether by contested case or by settlement agreement, the name and business address of the licensee, the nature of the misconduct, and the action taken by the board are public data. If disciplinary action is taken by settlement agreement, the entire agreement is public data. The board shall decide disciplinary matters, whether by settlement or by contested case, by roll call vote. The votes are public data.

(c) The board shall exchange information with other licensing boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (c), and may release information in the reports required under section 147.02, subdivision 6.

(d) The board shall upon request furnish to a person who made a complaint, or the alleged victim ~~of a violation of section 147.091, subdivision 1, paragraph (t)~~, or both, a description of the activities and actions of the board relating to that complaint, a summary of the results of an investigation of that complaint, and the reasons for actions taken by the board.

(e) A probable cause hearing held pursuant to section 147.092 shall be closed to the public, except that an alleged victim, a respondent, or the legal representative of an alleged victim or respondent must be provided access to a probable cause hearing held in relation to proceedings in which the alleged victim or respondent are subjects, and except for the notices of hearing made public by operation of section 147.092.

(f) Findings of fact, conclusions, and recommendations issued by the administrative law judge, and transcripts of oral arguments before the board pursuant to a contested case

proceeding in which an administrative law judge found a violation of section 147.091, subdivision 1, paragraph (t), are public data.

(g) The board must post the following information on a physician's profile on the board's public website:

(1) all past and present board disciplinary actions against the physician, including accessible electronic copies of all documents related to any board disciplinary action;

(2) all malpractice settlements to which a physician is a party;

(3) all known disciplinary actions taken against the physician in any other state;

(4) all hospital privileging actions involving the physician; and

(5) all civil and criminal actions against the physician in state or federal courts relating to their practice as a physician.

(h) The board must post the information required under paragraph (g) in a manner that complies with all relevant laws relating to patient confidentiality.

EFFECTIVE DATE. This section is effective January 1, 2024.

Sec. 4. Minnesota Statutes 2022, section 147.02, subdivision 5, is amended to read:

Subd. 5. **Procedures.** The board shall adopt a written statement of internal operating procedures describing procedures for receiving and investigating complaints, reviewing misconduct cases, and imposing disciplinary actions. Any complaint review committee (CRC) established within the board to investigate complaints, review misconduct cases, and impose disciplinary actions must be comprised of four board members. Two members of a CRC must be physician members and two members must be public members. A complainant, respondent, or the legal representative of a complainant or respondent must be provided access to all communications and information received and any hearing held in relation to CRC proceedings in which the complainant or respondent are subjects.

Sec. 5. Minnesota Statutes 2022, section 147.091, subdivision 1, is amended to read:

Subdivision 1. **Grounds listed.** The board may refuse to grant a license, may refuse to grant registration to perform interstate telehealth services, or may impose disciplinary action as described in section 147.141 against any physician. The following conduct is prohibited and is grounds for disciplinary action:

(a) Failure to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the board. The burden of proof shall be upon the applicant to demonstrate such qualifications or satisfaction of such requirements.

(b) Obtaining a license by fraud or cheating, or attempting to subvert the licensing examination process. Conduct which subverts or attempts to subvert the licensing examination process includes, but is not limited to: (1) conduct which violates the security of the examination materials, such as removing examination materials from the examination room or having unauthorized possession of any portion of a future, current, or previously administered licensing examination; (2) conduct which violates the standard of test administration, such as communicating with another examinee during administration of the examination, copying another examinee's answers, permitting another examinee to copy one's answers, or possessing unauthorized materials; or (3) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

(c) Conviction, during the previous five years, of a felony reasonably related to the practice of medicine or osteopathic medicine. Conviction as used in this subdivision shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered thereon.

(d) Revocation, suspension, restriction, limitation, or other disciplinary action against the person's medical license in another state or jurisdiction, failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction, or having been refused a license by any other state or jurisdiction.

(e) Advertising which is false or misleading, which violates any rule of the board, or which claims without substantiation the positive cure of any disease, or professional superiority to or greater skill than that possessed by another physician.

(f) Violating a rule promulgated by the board or an order of the board, a state, or federal law which relates to the practice of medicine, or in part regulates the practice of medicine including without limitation sections 604.201, 609.344, and 609.345, or a state or federal narcotics or controlled substance law.

(g) Engaging in any unethical or improper conduct, including but not limited to:

(1) conduct likely to deceive or defraud the public;

(2) conduct likely to harm the public;

(3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient;

(4) medical practice that is professionally incompetent; and

(5) conduct that may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.

(h) Failure to provide proper supervision, including but not limited to supervision of a:

(1) licensed or unlicensed health care provider; and

(2) physician under any agreement with the board.

(i) Aiding or abetting an unlicensed person in the practice of medicine, except that it is not a violation of this paragraph for a physician to employ, supervise, or delegate functions to a qualified person who may or may not be required to obtain a license or registration to provide health services if that person is practicing within the scope of that person's license or registration or delegated authority.

(j) Adjudication by a court of competent jurisdiction, within or outside this state, as:

(1) mentally incompetent;

(2) mentally ill;

(3) developmentally disabled;

(4) a chemically dependent person;

(5) a person dangerous to the public;

(6) a sexually dangerous person; or

(7) a person who has a sexual psychopathic personality.

Such adjudication shall automatically suspend a license for the duration of the adjudication unless the board orders otherwise.

(k) Conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing medical practice in which case proof of actual injury need not be established.

(l) Inability to practice medicine with reasonable skill and safety to patients by reason of the following, including but not limited to:

(1) illness;

(2) intoxication;

(3) use of drugs, narcotics, chemicals, or any other type of substance;

(4) mental condition;

(5) physical condition;

(6) diminished cognitive ability;

(7) loss of motor skills; or

(8) deterioration through the aging process.

(m) Revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law.

(n) Failure by a doctor of osteopathic medicine to identify the school of healing in the professional use of the doctor's name by one of the following terms: osteopathic physician and surgeon, doctor of osteopathic medicine, or D.O.

(o) Improper management of medical records, including failure to maintain adequate medical records, to comply with a patient's request made pursuant to sections 144.291 to 144.298 or to furnish a medical record or report required by law.

(p) Fee splitting, including without limitation:

(1) paying, offering to pay, receiving, or agreeing to receive, a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of patients or the prescription of drugs or devices;

(2) dividing fees with another physician or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional and the physician has disclosed the terms of the division;

(3) referring a patient to any health care provider as defined in sections 144.291 to 144.298 in which the referring physician has a "financial or economic interest," as defined in section 144.6521, subdivision 3, unless the physician has disclosed the physician's financial or economic interest in accordance with section 144.6521; and

(4) dispensing for profit any drug or device, unless the physician has disclosed the physician's own profit interest.

The physician must make the disclosures required in this clause in advance and in writing to the patient and must include in the disclosure a statement that the patient is free to choose a different health care provider. This clause does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its

partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the physician or under a physician's direct supervision, or to the division or distribution of prepaid or capitated health care premiums, or fee-for-service withhold amounts paid under contracts established under other state law.

(q) Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws.

(r) Becoming addicted or habituated to a drug or intoxicant.

(s) Inappropriate prescribing of or failure to properly prescribe a drug or device, including prescribing a drug or device for other than medically accepted therapeutic or experimental or investigative purposes authorized by a state or federal agency.

(t) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient.

(u) Failure to make reports as required by section 147.111 or to cooperate with an investigation of the board as required by section 147.131.

(v) Knowingly providing false or misleading information that is directly related to the care of that patient unless done for an accepted therapeutic purpose such as the administration of a placebo.

(w) Aiding suicide or aiding attempted suicide in violation of section 609.215 as established by any of the following:

(1) a copy of the record of criminal conviction or plea of guilty for a felony in violation of section 609.215, subdivision 1 or 2;

(2) a copy of the record of a judgment of contempt of court for violating an injunction issued under section 609.215, subdivision 4;

(3) a copy of the record of a judgment assessing damages under section 609.215, subdivision 5; or

(4) a finding by the board that the person violated section 609.215, subdivision 1 or 2. The board shall investigate any complaint of a violation of section 609.215, subdivision 1 or 2.

(x) Practice of a board-regulated profession under lapsed or nonrenewed credentials.

(y) Failure to repay a state or federally secured student loan in accordance with the provisions of the loan.

(z) Providing interstate telehealth services other than according to section 147.032.

(aa) Failure to post the mandatory informational document in the manner required by section 147.371.

Sec. 6. **[147.142] REPORT ON COMPLAINTS.**

(a) The board must collect and analyze data from all complaints filed against all physicians over which the board has jurisdiction, regardless of whether the complaint resulted in disciplinary action.

(b) Beginning January 1, 2026, and every two years thereafter, the board must provide a report on all complaints collected and analyzed under paragraph (a) to the legislative committees with jurisdiction over health finance and policy. The report must include but is not limited to the following information:

(1) the mean and median amount of time for resolution of complaints over the preceding two-year period; and

(2) recommendations for policies, procedures, and legislative action required to improve board complaint response time and accessibility for patients.

(c) The board must complete and present the report under this section in a manner that complies with all relevant laws relating to patient confidentiality.

Sec. 7. **[147.143] LEGISLATIVE AUDITOR.**

(a) Beginning January 1, 2026, and every four years thereafter, the legislative auditor must examine and audit all physician complaints filed with the board in the prior four years, regardless of whether the complaint resulted in disciplinary action. The board must pay the cost of the audit to the state and the cost must be credited to the general fund.

(b) The legislative auditor must complete and present the audit report under this section in a manner that complies with all relevant laws relating to patient confidentiality.

(c) The board must file copies of the audit report with the commissioner of health and the director of the Legislative Reference Library. The Legislative Reference Library must make the audit report accessible to the public.

(d) The legislative auditor must present the audit report to the legislative committees with jurisdiction over health finance and policy at a hearing within 60 days after the legislative auditor releases the audit report.

Sec. 8. **[147.371] INFORMATION PROVISION; PHYSICIAN HISTORY AND COMPLAINTS.**

(a) All physicians must post an informational document provided by the board informing patients where and how a patient can access physician practice history and complaint process information. The informational document must include, at a minimum:

(1) a list of all types of physicians over which the board is responsible and hears complaints regarding;

(2) a mailing address specifically for board receipt of complaints;

(3) a phone number that patients may call for assistance in filing a complaint;

(4) an email address specifically for board receipt of complaints; and

(5) a website address and quick response (QR) code directing patients to online access to physician practice history and additional information regarding the complaint process.

(b) Physicians must post the informational document required under paragraph (a) in a location visible to patients in every physician's office, examination room, hospital room, and other point of patient contact.

(c) The board must make the informational document required under this section available in English, Hmong, Spanish, Somali, Karen, and braille. The board must make the informational document available in any other language or any other format to accommodate a disability as requested by a physician or patient.

(d) The board must provide the informational document required under this section to all physicians free of cost.