

Signed by the governor May 19, 1989, 8:15 p.m.

CHAPTER 194—S.F.No. 723

An act relating to occupations and professions; regulating nursing; proposing the Minnesota nurse practice act; providing penalties; amending Minnesota Statutes 1988, sections 144A.43, subdivision 3; 145A.02, subdivision 18; 148.171; 148.181; 148.191; 148.211; 148.231; 148.241; 148.251; 148.261; 148.271; 148.281; 148.283; and 319A.02, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 148; repealing Minnesota Statutes 1988, sections 145A.06, subdivision 3; 148.191, subdivision 3; 148.221; 148.251, subdivision 2; 148.261, subdivision 3; 148.272; 148.281, subdivision 1a; 148.286; 148.29; 148.291; 148.292; 148.293; 148.294; 148.295; 148.296; 148.297; 148.298; and 148.299.

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

Section 1. Minnesota Statutes 1988, section 144A.43, subdivision 3, is amended to read:

Subd. 3. **HOME CARE SERVICE.** "Home care service" means any of the following services when delivered in a place of residence to a person whose illness, disability, or physical condition creates a need for the service:

- (1) nursing services, including the services of a home health aide;
- (2) personal care services not included under sections 148.171 to ~~148.299~~ 148.285;
- (3) physical therapy;
- (4) speech therapy;
- (5) respiratory therapy;
- (6) occupational therapy;
- (7) nutritional services;
- (8) home management services when provided to a person who is unable to perform these activities due to illness, disability, or physical condition. Home management services include at least two of the following services: housekeeping, meal preparation, laundry, shopping, and other similar services;
- (9) medical social services;
- (10) the provision of medical supplies and equipment when accompanied by the provision of a home care service;
- (11) the provision of a hospice program as specified in section 144A.48; and

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(12) other similar medical services and health-related support services identified by the commissioner in rule.

Sec. 2. Minnesota Statutes 1988, section 145A.02, subdivision 18, is amended to read:

Subd. 18: **PUBLIC HEALTH NURSE.** "Public health nurse" means a person who is licensed as a registered nurse by the Minnesota board of nursing under sections 148.171 to 148.285 and who meets the voluntary certification standards registration requirements established by the commissioner in relation to section 145A.06, subdivision 3 board of nursing.

Sec. 3. Minnesota Statutes 1988, section 148.171, is amended to read:

148.171 DEFINITIONS.

Sections 148.171 to 148.285 shall be referred to as the Minnesota nurse practice act.

As used in sections 148.171 to 148.285:

(1) ~~The term "Board" shall mean~~ means the Minnesota board of nursing.

(2) ~~The term "Registered Nurse," abbreviated R.N., shall mean a natural person~~ means an individual licensed by the ~~Minnesota board of nursing~~ to practice professional nursing.

(3) The practice of professional nursing means the performance for compensation or personal profit of the professional interpersonal service of: (a) providing a nursing assessment of the actual or potential health needs of individuals, families, or communities; (b) providing nursing care supportive to or restorative of life by functions such as skilled ministrations of nursing care, supervising and teaching nursing personnel, health teaching and counseling, case finding and referral to other health resources; and (c) evaluating these actions.

The practice of professional nursing includes both independent nursing functions and delegated medical functions which may be performed in collaboration with other health team members, or may be delegated by the professional nurse to other nursing personnel. Independent nursing function may also be performed autonomously. The practice of professional nursing requires that level of special education, knowledge, and skill ordinarily expected of an individual who has completed an approved professional nursing education program as described in section 148.211, subdivision 1. A registered nurse who has graduated from a program of study designed to prepare registered nurses for advanced practice as nurse-midwives and who is certified through the national professional nursing organization for nurse-midwives may prescribe and administer drugs and therapeutic devices within practice as a nurse-midwife.

(4) "Licensed practical nurse," abbreviated L.P.N., means an individual licensed by the board to practice practical nursing.

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(5) The practice of practical nursing means the performance for compensation or personal profit of any of those services in observing and caring for the ill, injured, or infirm, in applying counsel and procedure to safeguard life and health, in administering medication and treatment prescribed by a licensed health professional, which are commonly performed by licensed practical nurses and which require specialized knowledge and skill such as are taught or acquired in an approved school of practical nursing, but which do not require the specialized education, knowledge, and skill of a registered nurse.

(6) "Nurse" means registered nurse and licensed practical nurse unless the context clearly refers to only one category.

(7) "Nursing assistant" means an individual providing nursing or nursing-related services that do not require the specialized knowledge and skill of a nurse, at the direction of a nurse, but does not include a licensed health professional or an individual who volunteers to provide such services without monetary compensation.

(8) "Public health nurse" means a registered nurse who meets the voluntary registration requirements established by the board by rule.

Sec. 4. Minnesota Statutes 1988, section 148.181, is amended to read:

148.181 BOARD OF NURSING; MEMBERSHIP, APPOINTMENTS, VACANCIES, ~~REMOVALS~~ DISCLOSURE.

Subdivision 1. **MEMBERSHIP.** The board of nursing shall consist of 11 members appointed by the governor, each of whom shall be a resident of this state. Five members shall be registered nurses, each of whom shall have graduated from an approved school of nursing, shall be licensed as a registered nurse in this state, and shall have had at least five years experience in nursing practice, nursing administration, or nursing education immediately preceding appointment. ~~Two~~ One of the five shall have had at least two years executive or teaching experience in a professional nursing education program approved by the board under section 148.251 during the five years immediately preceding appointment, and one of the five shall have had at least two years executive or teaching experience in a practical nursing education program approved by the board under section 148.251 during the five years immediately preceding appointment. Three members shall be licensed practical nurses each of whom shall have graduated from an approved school of nursing, shall be licensed as a licensed practical nurse in this state, and shall have had at least five years experience in nursing practice immediately preceding appointment. The remaining three members shall be public members as defined by section 214.02. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be 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 shall be as provided in sections 148.171 to 148.285 and chapter 214 and Laws 1976, chapter 222,

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~~sections 2 to 7.~~ Each member of the board shall file with the secretary of state the constitutional oath of office before beginning the term of office.

Subd. 2. **VACANCIES.** On expiration of the term of a member who is a registered nurse, the governor may appoint a registered nurse from a list of members submitted by professional nursing groups. Likewise on expiration of the term of a member who is a licensed practical nurse, the governor may appoint a licensed practical nurse from a list of members submitted by licensed practical nursing groups. These lists should contain names of persons in number at least twice the number of places to be filled. Vacancies occurring on the board, when the member is a registered nurse or a licensed practical nurse, may be filled for the unexpired terms by appointments to be made by the governor from nominations submitted by nursing groups in the manner aforesaid or from other recommendations. Members shall hold office until a successor is appointed and qualified.

Subd. 3. DISCLOSURE. All communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction, and all records of any action or proceedings, except a final decision of the board, are private data on individuals as defined in section 13.02, subdivision 12, and any disciplinary hearing shall be closed to the public.

Upon application of a party in a proceeding before the board under section 148.261, 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 rule 34 of the Minnesota rules of civil procedure.

Sec. 5. Minnesota Statutes 1988, section 148.191, is amended to read:

148.191 OFFICERS; RULES; EXECUTIVE DIRECTOR STAFF; POWERS.

Subdivision 1. **OFFICERS; STAFF.** The board shall elect from its members a president, a vice-president and a secretary-treasurer who shall each serve for one year or until a successor is elected and qualifies. The board shall appoint and employ an executive ~~secretary~~ director and may employ such persons as may be necessary to carry on its work. A majority of the board, including one officer, shall constitute a quorum at any meeting.

Subd. 2. **POWERS.** (a) The board is authorized to adopt and, from time to time, revise rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of sections 148.171 to ~~148.299~~ 148.285. The board shall prescribe by rule curricula and standards for schools and courses preparing persons for licensure under sections 148.171 to ~~148.299~~ 148.285. It shall conduct or provide for surveys of such schools and courses at such times as it may deem necessary. It shall approve such schools and courses as meet the requirements of sections 148.171 to ~~148.299~~ 148.285 and board rules. It shall

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examine, license and renew the license of duly qualified applicants. It shall hold examinations at least once in each year at such time and place as it may determine. It shall by rule adopt, evaluate and periodically revise, as necessary, requirements for licensure and for registration and renewal of registration as defined in section 148.231. It shall cause the prosecution of all persons violating sections 148.171 to ~~148.299~~ 148.285 and have power to incur such necessary expense therefor. It shall register public health nurses who meet educational and other requirements established by the board by rule, including payment of a fee. Prior to the adoption of rules the board shall use the same procedures used by the department of health to certify public health nurses. It shall have power to issue subpoenas, and to compel the attendance of witnesses and the production of all necessary documents and other evidentiary material. Any board member may administer oaths to witnesses, or take their affirmation. It shall keep a record of all its proceedings.

(b) The board shall have access to hospital, nursing home, and other medical records of a patient cared for by a nurse under review. If the board does not have a written consent from a patient permitting access to the patient's records, the nurse or facility shall delete any data in the record that identifies the patient before providing it to the board. The board shall have access to such other records as reasonably requested by the board to assist the board in its investigation. Nothing herein may be construed to allow access to any records protected by section 145.64. The board shall maintain any records obtained pursuant to this paragraph as investigative data under chapter 13.

~~Subd. 3. The board may employ such persons as may be necessary to carry on its work.~~

Sec. 6. Minnesota Statutes 1988, section 148.211, is amended to read:

148.211 LICENSING.

Subdivision 1. **LICENSURE BY EXAMINATION.** An applicant for a license to practice as a registered nurse or licensed practical nurse shall apply to the board for a license by examination on forms prescribed by the board and pay a fee in an amount determined by rule. An applicant applying for reexamination shall pay a fee in an amount determined by rule. In no case shall fees be refunded.

Before being scheduled for examination, the applicant shall provide written evidence verified by oath that the applicant ~~(a) is of good moral character, (b) is in good mental health, (c) (1) has not engaged in conduct warranting disciplinary action as set forth in section 148.261; (2) meets secondary education requirements as determined by the board and other preliminary qualification requirements the board may prescribe by rule; and (d) (3) either has completed a course of study in a professional nursing program approved by the board or is enrolled in the final term of study in such program. The board shall annually publish and distribute to secondary school counselors the requirements for licensure for practice in Minnesota. The nursing program must be approved for the preparation of applicants for the type of license for which the application has been submitted.~~

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The applicant shall be required to pass a written examination in the subjects the board may determine. Each written examination may be supplemented by an oral or practical examination. An applicant failing to pass ~~any portion of the examination shall be deemed to have failed the examination and~~ may apply for reexamination ~~in the subjects or sections failed.~~

~~Refusal to supply information necessary to determine the qualifications of an applicant may result in denial of the application.~~

Upon submission by the applicant of an affidavit of graduation from an approved nursing program as well as proof that the applicant has passed the examination, paid the required fees and met all other requirements stated in this subdivision, the board shall issue a license to the applicant. The board may issue a license with conditions and limitations if it considers it necessary to protect the public.

Subd. 2. **LICENSURE BY ENDORSEMENT.** The board ~~may~~ shall issue a license to practice professional nursing ~~as a registered nurse or practical nursing~~ without examination to an applicant who has been duly licensed or registered as a ~~registered professional~~ nurse under the laws of another state, territory, or ~~foreign~~ country, if in the opinion of the board the applicant has the qualifications equivalent to the qualifications required in this state as stated in subdivision 1, all other laws not inconsistent with this section, and rules promulgated by the board.

Subd. 4. **EDUCATION WAIVED.** A person who has been licensed as a licensed practical nurse in another state, who has passed a licensing examination acceptable to the board, and who has had 24 months of experience as a licensed practical nurse in the five years prior to applying for a license is not required to meet any additional educational requirements.

Subd. 5. **DENIAL OF LICENSE.** Refusal of an applicant to supply information necessary to determine the applicant's qualifications, failure to demonstrate qualifications, or failure to satisfy the requirements for a license contained in this section or rules of the board may result in denial of a license. The burden of proof is upon the applicant to demonstrate the qualifications and satisfaction of the requirements.

Sec. 7. [148.212] TEMPORARY PERMIT.

Upon receipt of the applicable fee and in accordance with rules of the board, the board may issue a nonrenewable temporary permit to practice professional or practical nursing to an applicant for licensure who is not the subject of a pending investigation or disciplinary action, nor disqualified for any other reason, under the following circumstances:

(a) The applicant for licensure under section 148.211, subdivision 1, has graduated from an approved nursing program and has applied to write the first examination for licensure given by the board following graduation. The permit

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holder must practice professional or practical nursing under the direct supervision of a registered nurse. The permit is valid from the date of graduation until the date the board takes action on the application.

(b) The applicant for licensure under section 148.211, subdivision 2, has graduated from an approved nursing program in another state or territory and has written the first examination for licensure given by that jurisdiction's board following graduation. The examination must be the same examination required under section 148.211. The permit holder must practice professional or practical nursing under the direct supervision of a registered nurse. The permit shall be valid from the date of graduation or completion of the examination, whichever is later, until the date of board action on the application.

(c) The applicant for licensure under section 148.211, subdivision 2, is currently licensed to practice professional or practical nursing in another state, territory, or Canadian province. The permit shall be valid from submission of a proper request until the date of board action on the application.

(d) The applicant for reregistration under section 148.231, subdivision 5, is currently registered in a formal, structured refresher course for nurses that includes clinical practice.

Sec. 8. Minnesota Statutes 1988, section 148.231, is amended to read:

148.231 TASK FORCE; REGISTRATION; NONPRACTICING LIST FAILURE TO REGISTER; REREGISTRATION; VERIFICATION.

Subdivision 1. **REGISTRATION.** Every person licensed to practice professional or practical nursing must also maintain with the board; a current registration for practice as a registered nurse or licensed practical nurse which must be renewed at regular intervals stipulated ~~established~~ by the board by rule. ~~Upon adoption by the board of rules establishing procedures and minimum requirements for successful completion of specified continuing education as hereinafter provided;~~ No certificate of registration shall be issued by the board to a nurse until the nurse has submitted satisfactory evidence of compliance with the procedures and minimum requirements established by the board.

The fee for periodic registration for practice as a ~~registered~~ nurse shall be determined by the board by rule. A penalty fee shall be added for any application received after the required date as specified by the board by rule. Upon receipt of the application and the required fees, the board shall verify the application and the evidence of completion of continuing education requirements in effect, and thereupon issue to the ~~applicant~~ nurse a certificate of registration for the next renewal period.

Subd. 4. **FAILURE TO REGISTER.** Any person licensed under the provisions of sections 148.171 to 148.285 who fails to ~~reregister~~ register within the required period ~~hereinbefore provided~~ shall not be entitled to practice nursing in this state as a registered nurse or licensed practical nurse.

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Subd. 5. **REREGISTRATION.** ~~When~~ A person ~~on~~ whose registration has lapsed desiring to resume practice ~~the person~~ shall make application for reregistration, ~~and~~ submit satisfactory evidence of compliance with the procedures and ~~minimum~~ requirements established by the board ~~for continuing education~~, and pay the registration fee for the current period to the board. Thereupon, the registration certificate shall be issued to ~~such applicant~~, ~~and such~~ the person who shall immediately be placed on the practicing list as a registered nurse or licensed practical nurse.

Subd. 6. **FEE FOR LICENSE VERIFICATION.** A person licensed under the provisions of sections 148.171 to 148.285 who requests the board to verify a Minnesota license to another ~~jurisdiction~~ state, territory, or country or to an agency, facility, school or institution shall pay a fee to the board for each verification.

Sec. 9. **[148.232] REGISTRATION OF PUBLIC HEALTH NURSES.**

A public health nurse certified for public health duties by the commissioner of health under section 145A.06, subdivision 3, or previous authority must be deemed to be registered as a public health nurse under the provisions of sections 148.171 to 148.285.

Sec. 10. Minnesota Statutes 1988, section 148.241, is amended to read:

148.241 **EXPENSES.**

Subdivision 1. **APPROPRIATION.** The expenses of administering sections 148.171 to ~~148.299~~ 148.285 shall be paid from the appropriation made to the Minnesota board of nursing.

Subd. 2. **EXPENDITURE.** All amounts appropriated to the board shall be held subject to the order of the board to be used only for the purpose of meeting necessary expenses incurred in the performance of the purposes of sections 148.171 to 148.285, and the duties imposed thereby as well as the promotion of nursing education and standards of nursing care in this state.

Sec. 11. Minnesota Statutes 1988, section 148.251, is amended to read:

148.251 **SCHOOL OF NURSING PROGRAM.**

Subdivision 1. **INITIAL APPROVAL.** An institution desiring to conduct a ~~school of nursing program~~ shall apply to the board and submit evidence that:

(1) It is prepared to provide a program of theory and practice in profession-al or practical nursing ~~as prescribed in the curriculum that meets the program approval standards~~ adopted by the board. ~~Such~~ Instruction and required experience may be ~~secured~~ obtained in one or more institutions or agencies ~~approved by the board~~ outside the applying institution as long as the nursing program retains accountability for all clinical and nonclinical teaching.

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(2) It is prepared to meet other standards established by law and by the board.

~~Subd. 2. A survey of the institution or institutions with which the school is to be affiliated shall be made by a qualified representative of the board. Such representative shall submit a written report of the survey to the board. If the board determines that the requirements for an approved school of nursing are met, it shall designate the school as an approved school of nursing.~~

Subd. 3. **CONTINUING APPROVAL.** From time to time as deemed necessary by the board, it shall be the duty of the board, through its representatives, to survey all schools of nursing programs in the state. ~~Written reports of such surveys shall be submitted to the board by the representative. If the results of the survey show that a nursing program meets all board rules, the board shall continue approval of the nursing program.~~

Subd. 4. LOSS OF APPROVAL. If the board determines that ~~any an~~ approved school of nursing program is not maintaining the standards required by the statutes and by the board rules, notice thereof in writing specifying the defect or defects shall be given to the school program. If a school which program fails to correct these conditions to the satisfaction of the board within a reasonable time, approval of the program shall be revoked and the program shall be removed from the list of approved schools of nursing programs.

Subd. 5. REINSTATEMENT OF APPROVAL. The board shall reinstate approval of a nursing program upon submission of satisfactory evidence that its program of theory and practice meets the standards required by statutes and board rules.

Subd. 4. 6. ADVANCED STANDING. Associate degree nursing programs approved or seeking to be approved by the board shall provide for advanced standing for licensed practical nurses in recognition of their nursing education and experience. ~~The board shall adopt rules by July 1, 1982 to implement this section.~~

Sec. 12. Minnesota Statutes 1988, section 148.261, is amended to read:

148.261 REVOCATION OF LICENSE GROUNDS FOR DISCIPLINARY ACTION.

Subdivision 1. **GROUND LISTED.** The board shall have power to deny, ~~suspend~~, revoke, suspend, limit, or restrict condition the license and registration of any person to practice professional or practical nursing pursuant to sections 148.171 to 148.285, or to otherwise discipline a licensee or applicant upon proof that the person: as described in section 13. The following are grounds for disciplinary action:

(1) Failure to demonstrate the qualifications or satisfy the requirements for a license contained in section 148.171 to 148.285 or rules of the board. In the

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case of a person applying for a license, the burden of proof is upon the applicant to demonstrate the qualifications or satisfaction of the requirements.

Has employed (2) Employing fraud or deceit in procuring or attempting to procure a permit, license, or registration certificate to practice nursing as a registered nurse or annual registration for the practice of professional or practical nursing; or attempting to subvert the licensing examination process. Conduct that subverts or attempts to subvert the licensing examination process includes, but is not limited to:

(i) conduct that 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;

(ii) conduct that 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

(iii) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

(2) Has been convicted (3) Conviction during the previous five years of a felony or gross misdemeanor; reasonably related to the practice of professional or practical nursing. Conviction as used in this subdivision shall include a conviction of an offense that if committed in this state would be considered a felony or gross misdemeanor 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.

(3) Is unfit or incompetent by reason of negligence, habits or other causes;

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs; Revocation, suspension, limitation, conditioning, or other disciplinary action against the person's professional or practical nursing license in another state, territory, or country; failure to report to the board that charges regarding the person's nursing license are pending in another state, territory, or country; or having been refused a license by another state, territory, or country.

(5) Has, in a professional capacity, exhibited behavior which creates an undue risk of harm to others; Failure to or inability to perform professional or practical nursing as defined in section 148.171, paragraph (3) or (5), with reasonable skill and safety, including failure of a registered nurse to supervise or a licensed practical nurse to monitor adequately the performance of acts by any person working at the nurse's direction.

(6) Is guilty of unethical practice of nursing; Engaging in unprofessional conduct including, but not limited to, a departure from or failure to conform to

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board rules of professional or practical nursing practice that interpret the statutory definition of professional or practical nursing as well as provide criteria for violations of the statutes, or, if no rule exists, to the minimal standards of acceptable and prevailing professional or practical nursing practice, or any nursing practice that may create unnecessary danger to a patient's life, health, or safety. Actual injury to a patient need not be established under this clause.

(7) Has willfully or repeatedly violated any of the provisions of sections 148.171 to 148.285. Delegating or accepting the delegation of a nursing function or a prescribed health care function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective patient care.

(8) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.

(9) Adjudication as mentally incompetent, mentally ill, a chemically dependent person, or a person dangerous to the public by a court of competent jurisdiction, within or without this state.

(10) Engaging in any unethical conduct including, but not limited to, conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Actual injury need not be established under this clause.

(11) Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient.

(12) Obtaining money, property, or services from a patient, other than reasonable fees for services provided to the patient, through the use of undue influence, harassment, duress, deception, or fraud.

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

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

(15) Improper management of patient records, including failure to maintain adequate patient records, to comply with a patient's request made pursuant to section 144.335, or to furnish a patient record or report required by law.

(16) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of professional or practical nursing.

(17) Violating a rule adopted by the board, an order of the board, or a state or federal law relating to the practice of professional or practical nursing, or a state or federal narcotics or controlled substance law.

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Subd. 3. Any registered nurse whose license or registration has been suspended, restricted or revoked, may have the license reinstated and a new registration issued when in the discretion of the board the action is warranted, provided that such nurse may be required by the board to pay 50 percent of the costs of the proceedings resulting in the suspension or revocation of the license or registration certificate and reinstatement of the license or renewal certificate, and in addition thereto, pay the fee for the current year's registration.

Subd. 4. EVIDENCE. In disciplinary actions alleging a violation of subdivision 1, clause (3) or (4), a copy of the judgment or proceeding under the seal of the clerk of the court or of the administrative agency that entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the violation concerned.

Subd. 5. EXAMINATION; ACCESS TO MEDICAL DATA. The board may take the following actions if it has probable cause to believe that grounds for disciplinary action exist under subdivision 1, clause (8) or (9):

(a) It may direct the applicant or nurse to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, when a nurse licensed under sections 148.171 to 148.285 is directed in writing by the board to submit to a mental or physical examination or chemical dependency evaluation, that person is considered to have consented and to have waived all objections to admissibility on the grounds of privilege. Failure of the applicant or nurse to submit to an examination when directed constitutes an admission of the allegations against the applicant or nurse, unless the failure was due to circumstances beyond the person's control, and the board may enter a default and final order without taking testimony or allowing evidence to be presented. A nurse affected under this paragraph shall, at reasonable intervals, be given an opportunity to demonstrate that the competent practice of professional or practical nursing can be resumed with reasonable skill and safety to patients. Neither the record of proceedings nor the orders entered by the board in a proceeding under this paragraph, may be used against a nurse in any other proceeding.

(b) It may, notwithstanding sections 13.42, 144.651, 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a registered nurse, licensed practical nurse, or applicant for a license without that person's consent. The medical data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision unless the information is false and the provider giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private data on individuals as defined in section 13.02.

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Sec. 13. [148.262] FORMS OF DISCIPLINARY ACTION; AUTOMATIC SUSPENSION; TEMPORARY SUSPENSION; REISSUANCE.

Subdivision 1. FORMS OF DISCIPLINARY ACTION. When the board finds that grounds for disciplinary action exist under section 148.261, subdivision 1, it may take one or more of the following actions:

- (1) deny the license, registration, or registration renewal;
- (2) revoke the license;
- (3) suspend the license;
- (4) impose limitations on the nurse's practice of professional or practical nursing including, but not limited to, limitation of scope of practice or the requirement of practice under supervision;
- (5) impose conditions on the retention of the license including, but not limited to, the imposition of retraining or rehabilitation requirements or the conditioning of continued practice on demonstration of knowledge or skills by appropriate examination, monitoring, or other review;
- (6) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed as to deprive the nurse of any economic advantage gained by reason of the violation charged, to reimburse the board for the cost of counsel, investigation, and proceeding, and to discourage repeated violations;
- (7) order the nurse to provide unremunerated service;
- (8) censure or reprimand the nurse; or
- (9) any other action justified by the facts in the case.

Subd. 2. AUTOMATIC SUSPENSION. Unless the board orders otherwise, a license to practice professional or practical nursing is automatically suspended if:

- (1) a guardian of a nurse is appointed by order of a probate court under sections 525.54 to 525.61;
- (2) the nurse is committed by order of a probate court under chapter 253B or sections 526.09 to 526.11; or
- (3) the nurse is determined to be mentally incompetent, mentally ill, chemically dependent, or a person dangerous to the public by a court of competent jurisdiction within or without this state.

The license remains suspended until the nurse is restored to capacity by a court and, upon petition by the nurse, the suspension is terminated by the board after a hearing or upon agreement between the board and the nurse.

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Subd. 3. TEMPORARY SUSPENSION OF LICENSE. In addition to any other remedy provided by law, the board may, through its designated board member under section 214.10, subdivision 2, temporarily suspend the license of a nurse without a hearing if the board finds that there is probable cause to believe the nurse has violated a statute or rule the board is empowered to enforce and continued practice by the nurse would create a serious risk of harm to others. The suspension shall take effect upon written notice to the nurse, served by first-class mail, specifying the statute or rule violated. The suspension shall remain in effect until the board issues a temporary stay of suspension or a final order in the matter after a hearing or upon agreement between the board and the nurse. At the time it issues the suspension notice, the board shall schedule a disciplinary hearing to be held under the administrative procedure act. The nurse shall be provided with at least 20 days' notice of any hearing held under this subdivision. The hearing shall be scheduled to begin no later than 30 days after the issuance of the suspension order.

Subd. 4. REISSUANCE. The board may reinstate and reissue a license or registration certificate to practice professional or practical nursing, but as a condition may impose any disciplinary or corrective measure that it might originally have imposed. Any person whose license or registration has been revoked, suspended, or limited may have the license reinstated and a new registration issued when, in the discretion of the board, the action is warranted, provided that the person shall be required by the board to pay the costs of the proceedings resulting in the revocation, suspension, or limitation of the license or registration certificate and reinstatement of the license or registration certificate, and to pay the fee for the current registration period. The cost of proceedings shall include, but not be limited to, the cost paid by the board to the office of administration hearings and the office of the attorney general for legal and investigative services, the costs of a court reporter and witnesses, reproduction of records, board staff time, travel, and expenses, and board members' per diem reimbursements, travel costs, and expenses.

Sec. 14. [148.263] REPORTING OBLIGATIONS.

Subdivision 1. PERMISSION TO REPORT. A person who has knowledge of any conduct constituting grounds for discipline under sections 148.171 to 148.285 may report the alleged violation to the board.

Subd. 2. INSTITUTIONS. The chief nursing executive or chief administrative officer of any hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the institution or organization or any of its administrators or committees to revoke, suspend, limit, or condition a nurse's privilege to practice in the institution, or as part of the organization, any denial of privileges, any dismissal from employment, or any other disciplinary action. The institution or organization shall also report the resignation of any nurse before the conclusion of any disciplinary proceeding, or before commencement of formal charges, but after the nurse had knowledge that formal charges were contemplated or in preparation. The reporting described by this subdivision is required only if the action pertains to grounds for disciplinary action under section 148.261.

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Subd. 3. LICENSED PROFESSIONALS. A person licensed by a health-related licensing board as defined in section 214.01, subdivision 2, shall report to the board personal knowledge of any conduct the person reasonably believes constitutes grounds for disciplinary action under sections 148.171 to 148.285 by any nurse including conduct indicating that the nurse may be incompetent, may have engaged in unprofessional or unethical conduct, or may be mentally or physically unable to engage safely in the practice of professional or practical nursing.

Subd. 4. INSURERS. Four times each year, by the first day of February, May, August, and November, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to registered nurses or licensed practical nurses shall submit to the board a report concerning any nurse against whom a malpractice award has been made or who has been a party to a settlement. The report must contain at least the following information:

- (1) the total number of settlements or awards;
- (2) the date settlement or award was made;
- (3) the allegations contained in the claim or complaint leading to the settlement or award;
- (4) the dollar amount of each malpractice settlement or award and whether that amount was paid as a result of a settlement or of an award; and
- (5) the name and address of the practice of the nurse against whom an award was made or with whom a settlement was made.

An insurer shall also report to the board any information it possesses that tends to substantiate a charge that a nurse may have engaged in conduct violating sections 148.171 to 148.285.

Subd. 5. COURTS. The court administrator of district court or another court of competent jurisdiction shall report to the board any judgment or other determination of the court that adjudges or includes a finding that a nurse is mentally ill, mentally incompetent, chemically dependent, a person dangerous to the public, guilty of a felony or gross misdemeanor, guilty of a violation of federal or state narcotics laws or controlled substances act, guilty of operating a motor vehicle while under the influence of alcohol or a controlled substance, or guilty of an abuse or fraud under Medicare or Medicaid, appoints a guardian of the nurse under sections 525.54 to 525.61, or commits a nurse under chapter 253B or section 526.09 to 526.11.

Subd. 6. DEADLINES; FORMS. Reports required by subdivisions 2 to 5 must be submitted no later than 30 days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that the reports be submitted on the forms

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provided, and may adopt rules necessary to assure prompt and accurate reporting. The board shall review all reports, including those submitted after the deadline.

Sec. 15. **[148.264] IMMUNITY.**

Subdivision 1. REPORTING. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report to the board under section 14 or for otherwise reporting in good faith to the board violations or alleged violations of sections 148.171 to 148.285. All such reports are investigative data as defined in chapter 13.

Subd. 2. INVESTIGATION. Members of the board and persons employed by the board or engaged in the investigation of violations and in the preparation and management of charges of violations of sections 148.171 to 148.285 on behalf of the board or persons participating in the investigation or testifying regarding charges of violations are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under sections 148.171 to 148.285.

Sec. 16. **[148.265] NURSE COOPERATION.**

A nurse who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or other records in the nurse's possession, as reasonably requested by the board, to assist the board in its investigation and to appear at conferences and hearings scheduled by the board. The board shall pay for copies requested. If the board does not have a written consent from a patient permitting access to the patient's records, the nurse shall delete any data in the record that identify the patient before providing it to the board. The board shall maintain any records obtained pursuant to this section as investigative data under chapter 13. The nurse shall not be excused from giving testimony or producing any documents, books, records, or correspondence on the grounds of self-incrimination, but the testimony or evidence may not be used against the nurse in any criminal case.

Sec. 17. **[148.266] DISCIPLINARY RECORD ON JUDICIAL REVIEW.**

Upon judicial review of any board disciplinary action taken under sections 148.171 to 148.285, the reviewing court shall seal the administrative record, except for the board's final decision, and shall not make the administrative record available to the public.

Sec. 18. Minnesota Statutes 1988, section 148.271, is amended to read:

148.271 **ALLOWABLE UNLICENSED PRACTICES EXEMPTIONS.**

The provisions of sections 148.171 to 148.285 shall not prohibit:

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(1) The furnishing of nursing assistance in an emergency.

(2) The practice of professional or practical nursing by any legally qualified registered or licensed practical nurse of another state who is employed by the United States government or any bureau, division or agency thereof while in the discharge of official duties.

(3) Under the direct supervision of a registered nurse, the practice of nursing by a graduate of a school of professional nursing approved by the board between the date of graduation and the date of notification to the graduate of the board action upon application for licensure hereunder, provided that the graduate will take the first examination for licensure hereunder following graduation given by the board and will be issued a permit by the board to engage in supervised practice of professional nursing while awaiting notification of the results of such examination. The board is authorized to issue permits to such graduates which shall permit the practice of professional nursing under direct supervision from the date of graduation until the date that the board shall notify the graduates of the results of their applications for registration conditioned upon the graduates making prompt application for registration and taking the first examination given by the board which they are eligible to take following graduation. These permits shall not be renewable.

(4) The practice of any profession or occupation licensed by the state, other than professional or practical nursing, by any person duly licensed to practice the profession or occupation, or the performance by a person of any acts properly coming within the scope of the profession, occupation or license.

(5) The performance of any act in the nursing care of the sick by a nurse's aide under the direction of a registered nurse.

(4) The provision of a nursing or nursing-related service by a nursing assistant who has been delegated the specific function and is supervised by a registered nurse or monitored by a licensed practical nurse.

(6) The practice of nursing by a person licensed as a professional nurse in another jurisdiction and qualified for licensure in the state of Minnesota pursuant to a temporary permit issued by the board of nursing which permit shall be issued by the board pursuant to rules as it may promulgate, for the period between the submission of a proper application for licensure by the person and the date of action upon the application by the board.

(7) The care of the sick, injured or infirm in a private home by any person who does not assume or represent to be a registered or professional nurse.

(8) (5) The care of the sick with or without compensation when done in a nursing home covered by the provisions of section 144A.09, subdivision 1.

(9) The practice of nursing by a graduate of an approved professional nursing program in another jurisdiction provided the graduate has applied for licen-

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sure in the state of Minnesota by interstate endorsement and has written the first examination for licensure following graduation. Practice under this clause is allowable only under a temporary permit issued by the board which shall be issued pursuant to rules as the board may promulgate, and which shall be valid only for the period between submission of a proper application and completion of the examination by the person and the date of action upon the application by the board. The examination must be the same examination required of applicants for licensure by examination in Minnesota. The permit shall authorize the practice of nursing only under the direct supervision of a licensed professional nurse. The permit shall not be renewable.

(6) Professional nursing practice by a registered nurse or practical nursing practice by a licensed practical nurse licensed in another state or territory who is in Minnesota as a student enrolled in a formal, structured course of study, such as a course leading to a higher degree, certification in a nursing specialty, or to enhance skills in a clinical field, while the student is practicing in the course.

(7) Professional or practical nursing practice by a student practicing under the supervision of an instructor while the student is enrolled in a nursing program approved by the board under section 148.251.

Sec. 19. Minnesota Statutes 1988, section 148.281, is amended to read:

148.281 VIOLATIONS; PENALTY.

Subdivision 1. **VIOLATIONS DESCRIBED.** It shall be unlawful for any person, corporation, or association, to:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license or record, or aid or abet therein;

(2) Practice professional or practical nursing or practice as a public health nurse under cover of any diploma, permit, license, registration certificate, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) Practice professional or practical nursing unless the person has been issued a temporary permit under the provisions of section 7 or is duly licensed and currently registered to do so under the provisions of sections 148.171 to 148.285;

(4) Use any abbreviation or other designation tending to imply licensure as a registered nurse or licensed practical nurse unless duly registered and licensed and currently registered so to practice professional or practical nursing under the provisions of sections 148.171 to 148.285 except as authorized by the board by rule;

(5) Use any abbreviation or other designation tending to imply registration as a public health nurse unless duly registered by the board;

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(6) Practice professional or practical nursing in a manner prohibited by the board in any ~~restriction~~ limitation of a license or registration issued under the provisions of sections 148.171 to 148.285;

(~~6~~) (7) Practice professional or practical nursing during the time a license or current registration issued under the provisions of sections 148.171 to 148.285 shall be suspended or revoked;

(~~7~~) (8) Conduct a ~~school~~ of nursing program for the ~~training~~ education of persons to become registered nurses or ~~professional~~ licensed practical nurses unless the ~~school~~ or course program has been approved by the board; and

(9) Knowingly employ persons in the practice of professional or practical nursing who have not been issued a current permit, license, or registration certificate to practice as a nurse in this state.

Subd. 1a. ~~It shall be unlawful to operate any nongovernmental partnership, corporation or unincorporated association which is organized primarily to render professional nursing through its agents, unless the partnership, corporation or unincorporated association is registered pursuant to rules adopted by the board.~~

Subd. 2. PENALTY. Any person, corporation, or association violating any provisions of subdivision 1 shall be guilty of a gross misdemeanor, and shall be punished according to law.

Sec. 20. Minnesota Statutes 1988, section 148.283, is amended to read:

148.283 UNAUTHORIZED PRACTICE OF PROFESSIONAL AND PRACTICAL NURSING.

The practice of professional or practical nursing by any person who has not been licensed to practice professional or practical nursing under the provisions of sections 148.171 to 148.285, or whose license has been suspended or revoked, or whose registration has expired, is hereby declared to be inimical to the public health and welfare and to constitute a public nuisance. Upon complaint being made thereof by the board ~~of nursing~~, or any prosecuting officer, and upon a proper showing of the facts, the district court of the county where such practice occurred may enjoin such acts and practice. Such injunction proceeding shall be in addition to, and not in lieu of, all other penalties and remedies provided by law.

Sec. 21. Minnesota Statutes 1988, section 319A.02, subdivision 2, is amended to read:

Subd. 2. "Professional service" means personal service rendered by a professional pursuant to a license or certificate issued by the state of Minnesota to practice medicine and surgery pursuant to sections 147.01 to 147.29, chiropractic pursuant to sections 148.01 to 148.105, registered nursing pursuant to sections 148.171 to 148.285, optometry pursuant to sections 148.52 to 148.62,

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psychology pursuant to sections 148.88 to 148.98, dentistry pursuant to sections 150A.01 to 150A.12, pharmacy pursuant to sections 151.01 to 151.40, podiatric medicine pursuant to Laws 1987, chapter 108, sections 1 to 16, veterinary medicine pursuant to sections 156.001 to 156.14, architecture, engineering, surveying and landscape architecture pursuant to sections 326.02 to 326.15, accountancy pursuant to sections 326.17 to 326.23, or law pursuant to sections 481.01 to 481.17, or pursuant to a license or certificate issued by another state pursuant to similar laws.

Sec. 22. **REPEALER.**

Minnesota Statutes 1988, sections 145A.06, subdivision 3; 148.191, subdivision 3; 148.221; 148.251, subdivision 2; 148.261, subdivision 3; 148.272; 148.281, subdivision 1a; 148.286; 148.29; 148.291; 148.292; 148.293; 148.294; 148.295; 148.296; 148.297; 148.298; and 148.299, are repealed.

Presented to the governor May 18, 1989

Signed by the governor May 19, 1989, 12:14 a.m.

CHAPTER 195—S.F.No. 1105

An act relating to motor vehicles; providing for suspension of apportioned license plates and fuel tax compact licenses for certain interstate vehicle fleet owners who are delinquent in required filings or payments; providing for installment payments by interstate fleet owners; amending Minnesota Statutes 1988, sections 168.187, by adding a subdivision; and 168.31, subdivision 4, and by adding a subdivision.

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

Section 1. Minnesota Statutes 1988, section 168.187, is amended by adding a subdivision to read:

Subd. 26. DELINQUENT FILING OR PAYMENT. If a fleet owner licensed under this section and section 296.17, subdivision 9a, is delinquent in either the filing or payment of the international fuel tax agreement reports for more than 30 days, or the payment of the international registration plan billing for more than 30 days, the fleet owner, after ten days' written notice, is subject to suspension of the apportioned license plates and the international fuel tax agreement license.

Sec. 2. Minnesota Statutes 1988, section 168.31, subdivision 4, is amended to read:

Subd. 4. **INSTALLMENTS.** If the tax for a vehicle assessed under section 168.013 ~~or 168.187~~ amounts to more than \$400, the owner may pay such tax by installments. The owner shall tender with the application for registration one-

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