

(6) the RB will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Sec. 2. Minnesota Statutes 1994, section 60A.73, subdivision 4, is amended to read:

Subd. 4. **HANDLING OF FUNDS.** All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity in a bank which is a qualified United States financial institution as defined herein and may be invested in direct obligations of, or obligations guaranteed or insured by, the United States, its agencies, or its instrumentalities, excluding mortgage-backed securities. These funds may not be invested in obligations whose maturities exceed 90 days. The RM may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate ~~bank~~ account for each reinsurer that it represents.

Presented to the governor May 12, 1995

Signed by the governor May 15, 1995, 9:58 a.m.

CHAPTER 164—H.F.No. 1442

An act relating to health; occupations and professions; modifying provisions relating to the office of mental health practice; licensing of chemical dependency counselors and hearing instrument dispensers; establishing an advisory council; providing penalties; amending Minnesota Statutes 1994, sections 148B.66, subdivision 1; 148B.68, subdivision 1; 148C.01; 148C.02; 148C.03, subdivision 1, and by adding a subdivision; 148C.04, subdivisions 1, 2, 3, and 4; 148C.05; 148C.06; 148C.07; 148C.08; 148C.09; 148C.10; 148C.11; 153A.13; 153A.14; 153A.15, subdivisions 1 and 2; 153A.17; 153A.18; 153A.19; 214.01, subdivision 2; 214.10, subdivision 8; and 214.103, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 148C; and 153A; repealing Minnesota Statutes 1994, sections 148B.62; 148C.01, subdivision 8; 148C.03, subdivisions 2 and 3; 148C.035; 148C.09, subdivision 3; and 153A.19, subdivision 1; Minnesota Rules, chapters 4692; and 4745.

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

Section 1. Minnesota Statutes 1994, section 148B.66, subdivision 1, is amended to read:

Subdivision 1. **COOPERATION.** An unlicensed mental health practitioner who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the office of mental health practice shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the office relating to the subject of the investigation, whether tape recorded or not, and providing copies of client records, as reasonably requested by the office, to assist the office in its

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investigation, and appearing at conferences or hearings scheduled by the commissioner. If the office does not have a written consent from a client permitting access to the client's records, the unlicensed mental health practitioner shall delete any data in the record that identifies the client before providing it to the board office. The office shall maintain any records obtained pursuant to this section as investigative data pursuant to section 13.41. If an unlicensed mental health practitioner refuses to give testimony or produce any documents, books, records, or correspondence on the basis of the fifth amendment to the Constitution of the United States, the commissioner may compel the unlicensed mental health practitioner to provide the testimony or information; however, the testimony or evidence may not be used against the practitioner in any criminal proceeding. Challenges to requests of the office may be brought before the appropriate agency or court.

Sec. 2. Minnesota Statutes 1994, section 148B.68, subdivision 1, is amended to read:

Subdivision 1. **PROHIBITED CONDUCT.** The commissioner may impose disciplinary action as described in section 148B.69 against any unlicensed mental health practitioner. The following conduct is prohibited and is grounds for disciplinary action:

(a) Conviction of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court in Minnesota or any other jurisdiction in the United States, reasonably related to the provision of mental health services. Conviction, as used in this subdivision, includes a conviction of an offense which, if committed in this state, would be deemed a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered.

(b) Conviction of crimes against persons. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.23; 609.231; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; and 609.595.

(c) Failure to comply with the self-reporting requirements of section 148B.63, subdivision 6 7.

(d) Engaging in sexual contact with a client or former client as defined in section 148A.01, or engaging in contact that may be reasonably interpreted by a client as sexual, or engaging in any verbal behavior that is seductive or sexually demeaning to the patient, or engaging in sexual exploitation of a client or former client.

(e) Advertising that is false, fraudulent, deceptive, or misleading.

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(f) Conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established.

(g) Adjudication as mentally incompetent, or as a person who is dangerous to self, or adjudication pursuant to chapter 253B, as chemically dependent, mentally ill, mentally retarded, mentally ill and dangerous to the public, or as a sexual psychopathic personality or sexually dangerous person.

(h) Inability to provide mental health services with reasonable safety to clients.

(i) The habitual overindulgence in the use of or the dependence on intoxicating liquors.

(j) Improper or unauthorized personal or other use of any legend drugs as defined in chapter 151, any chemicals as defined in chapter 151, or any controlled substance as defined in chapter 152.

(k) Revealing a communication from, or relating to, a client except when otherwise required or permitted by law.

(l) Failure to comply with a client's request made under section 144.335, or to furnish a client record or report required by law.

(m) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client.

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

(o) Failure to make reports as required by section 148B.63, or cooperate with an investigation of the office.

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

(q) Undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.

(r) Failure to provide the client with a copy of the client bill of rights or violation of any provision of the client bill of rights.

(s) Violating any order issued by the commissioner.

(t) Failure to comply with sections 148B.60 to 148B.71, and the rules adopted under those sections.

(u) Failure to comply with any additional disciplinary grounds established by the commissioner by rule.

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(v) Revocation, suspension, restriction, limitation, or other disciplinary action against the mental health practitioner's license, certificate, registration, or right of practice in this or another state or jurisdiction, for offenses that would be subject to disciplinary action in this state, or failure to report to the office of mental health practice that charges regarding the practitioner's license, certificate, registration, or right of practice have been brought in this or another state or jurisdiction.

Sec. 3. Minnesota Statutes 1994, section 148C.01, is amended to read:

148C.01 DEFINITIONS.

Subdivision 1. **APPLICABILITY DEFINITIONS.** For the purposes of sections 148C.01 to 148C.11 and 595.02, subdivision 1, the following terms have the meanings given them.

Subd. 2. **LICENSED CHEMICAL DEPENDENCY ALCOHOL AND DRUG COUNSELOR.** "Licensed chemical dependency alcohol and drug counselor" or "counselor" means a person who:

(1) uses, as a representation to the public, any title or description of services incorporating the words "licensed chemical dependency alcohol and drug counselor";

(2) offers to render professional chemical dependency alcohol and drug counseling services relative to the abuse of or the dependency on alcohol or other drugs to the general public or groups, organizations, corporations, institutions, or government agencies for compensation, implying that the person is licensed and trained, experienced or expert in chemical dependency alcohol and drug counseling; ~~and~~

(3) holds a valid license issued under sections 148C.01 to 148C.11 to engage in the practice of chemical dependency alcohol and drug counseling; or

(4) is an applicant for an alcohol and drug counseling license.

Subd. 3. **OTHER TITLES.** For the purposes of sections 148C.01 to 148C.11 and 595.02, subdivision 1, all individuals, except as provided in section 148C.11, who practice chemical dependency counseling as defined in subdivision 2, regardless of their titles, shall be covered by sections 148C.01 to 148C.11. This includes, but is not limited to, individuals who may refer to themselves as "alcoholism counselor," "drug abuse therapist," "chemical dependency recovery counselor," "chemical dependency relapse prevention planner," "addiction therapist," "chemical dependency intervention specialist," "family chemical dependency counselor," "chemical health specialist," "chemical health coordinator," and "substance abuse counselor."

Subd. 4. **CHEMICAL DEPENDENCY.** "Chemical Dependency" means a condition in which a person pathologically uses alcohol or a controlled substance as defined in chapter 152, accompanied by physical manifestation of increased

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tolerance to the chemical or chemicals being used; or withdrawal syndrome following cessation of chemical use; maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

(a) tolerance, as defined by either of the following:

(1) a need for markedly increased amounts of the substance to achieve intoxication or desired effect; or

(2) a markedly diminished effect with continued use of the same amount of the substance;

(b) withdrawal, as manifested by either of the following:

(1) the characteristic withdrawal syndrome for the substance, as referred to in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders; or

(2) the same or closely related substance is taken to relieve or avoid withdrawal symptoms;

(c) the substance is often taken in larger amounts or over a longer period than was intended;

(d) a persistent desire or unsuccessful efforts to cut down or control substance use;

(e) a great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects;

(f) important social, occupational, or recreational activities are given up or reduced because of the substance use; or

(g) substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by the substance.

Subd. 5. **CHEMICAL ABUSE.** "Chemical Abuse" means a ~~pattern of inappropriate and harmful use of alcohol or a controlled substance governed by chapter 152. Chemical abuse includes inappropriate and harmful patterns of chemical use that are linked to specific situations in an individual's life such as loss of a job, death of a loved one, or a sudden change in life circumstances. Chemical abuse does not involve a pattern of pathological use, but it may progress to pathological use;~~ maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of the following occurring at any time during the same 12-month period:

(1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home;

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(2) recurrent substance use in situations in which it is physically hazardous;

(3) recurrent substance-related legal problems; and

(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

For substance use to be considered abuse, the individual must never have met the criteria for dependence in subdivision 4 for the class of substance in question.

Subd. 6. **COMMISSIONER.** "Commissioner" means the commissioner of health, or a designee.

Subd. 7. **ACCREDITED SCHOOL OR EDUCATIONAL PROGRAM OF CHEMICAL DEPENDENCY COUNSELING.** "~~Accredited school or educational program of chemical dependency counseling~~" means a school of ~~chemical dependency alcohol and drug counseling or other educational program that has been recognized by the commissioner, university, college, or other post-secondary education program that offers no less than the required number of education and practicum hours as described in section 148C.04, subdivision 3, and the core functions as defined in subdivision 9, and that, at the time the student completes the program, is accredited by a regional accrediting association whose standards are substantially equivalent to those of the North Central Association of Colleges and Post-Secondary Education Institutions or an accrediting association that evaluates schools of alcohol and drug counseling for inclusion of the education, practicum, and core function standards in this chapter.~~

Subd. 8. **PRIVATE PRACTICE.** "~~Private practice~~" means ~~chemical dependency counseling practice conducted by an individual who is either self-employed or a member of a partnership or a group practice, rather than being employed by a public agency or an agency licensed under chapter 245A.~~

Subd. 9. **TWELVE CORE FUNCTIONS.** "~~Twelve Core functions~~" means the following services provided in chemical alcohol and drug dependency treatment:

(1) "Screening" means the process by which a client is determined appropriate and eligible for admission to a particular program.

(2) "Intake" means the administrative and initial assessment procedures for admission to a program.

(3) "Orientation" means describing to the client the general nature and goals of the program; rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program; in a nonresidential program, the hours during which services are available; treatment costs to be borne by the client, if any; and client's rights.

(4) "Assessment" means those procedures by which a counselor identifies

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and evaluates an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan.;

(5) "Treatment planning" means the process by which the counselor and the client identify and rank problems needing resolution; establish agreed upon immediate and long-term goals; and decide on a treatment process and the sources to be utilized.;

(6) "Counseling" means the utilization of special skills to assist individuals, families, or groups in achieving objectives through exploration of a problem and its ramifications; examination of attitudes and feelings; consideration of alternative solutions; and decision making.;

(7) "Case management" means activities which bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals.;

(8) "Crisis intervention" means those services which respond to an alcohol or other drug user's needs during acute emotional or physical distress.;

(9) "Client education" means the provision of information to clients who are receiving or seeking counseling concerning alcohol and other drug abuse and the available services and resources.;

(10) "Referral" means identifying the needs of the client which cannot be met by the counselor or agency and assisting the client to utilize the support systems and available community resources.;

(11) "Reports and record keeping" means charting the results of the assessment and treatment plan, writing reports, progress notes, discharge summaries, and other client-related data.; ~~and~~

(12) "Consultation with other professionals regarding client treatment and services" means communicating with other professionals in regard to client treatment and services to assure comprehensive, quality care for the client.

Subd. 10. PRACTICE OF ALCOHOL AND DRUG COUNSELING.
"Practice of alcohol and drug counseling" means the observation, description, evaluation, interpretation, and modification of human behavior as it relates to the harmful or pathological use or abuse of alcohol or other drugs by the application of the core functions. The practice of alcohol and drug counseling includes, but is not limited to, the following activities, regardless of whether the counselor receives compensation for the activities:

(1) assisting clients who use alcohol or drugs, evaluating that use, and recognizing dependency if it exists;

(2) assisting clients with alcohol or other drug problems to gain insight and motivation aimed at resolving those problems;

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(3) providing experienced professional guidance, assistance, and support for the client's efforts to develop and maintain a responsible functional lifestyle;

(4) recognizing problems outside the scope of the counselor's training, skill, or competence and referring the client to other appropriate professional services;

(5) assessing the level of alcohol or other drug use involvement;

(6) individual planning to prevent a return to harmful alcohol or chemical use;

(7) alcohol and other drug abuse education for clients;

(8) consultation with other professionals; and

(9) providing the above services, as needed, to family members or others who are directly affected by someone using alcohol or other drugs.

Subd. 11. SEXUAL CONTACT. "Sexual contact" means contact as defined in section 148A.01 with a client or former client, or engaging in contact that may reasonably be interpreted by a client as sexual, or engaging in any verbal behavior that is seductive or sexually demeaning to the client, or engaging in sexual exploitation of a client or former client.

Subd. 12. SUPERVISED ALCOHOL AND DRUG COUNSELING EXPERIENCE. Except during the transition period, "supervised alcohol and drug counseling experience" means practical experience gained by a student, volunteer, or intern, and supervised by a person licensed under this chapter; either before, during, or after the student completes a program from an accredited school or education program of alcohol and drug counseling.

Subd. 13. ALCOHOL AND DRUG COUNSELING PRACTICUM. "Alcohol and drug counseling practicum" means formal experience gained by a student and supervised by a person licensed under this chapter, in an accredited school or program of alcohol and drug counseling as part of the education requirements of this chapter.

Subd. 14. APPLICANT. "Applicant" means a person seeking a license under this chapter.

Subd. 15. CLIENT. "Client" means an individual who is the recipient of any of the alcohol and drug counseling services described in section 148C.01.

Subd. 16. COMPENSATION. "Compensation" means a fee, salary, reward, payment, or the expectation of payment from a client or a client's agent, insurer, employer, or other representative for providing alcohol and drug counseling services. Compensation does not include bartering for services.

Sec. 4. [148C.015] SCOPE; DEFINITIONS.

Before engaging in the practice of alcohol and drug counseling as defined in section 148C.01, all persons, except as provided in section 148C.11, regardless of their titles, must obtain a license as provided in this chapter.

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Sec. 5. Minnesota Statutes 1994, section 148C.02, is amended to read:

148C.02 CHEMICAL DEPENDENCY COUNSELING ALCOHOL AND DRUG COUNSELORS LICENSING ADVISORY COUNCIL.

Subdivision 1. ~~MEMBERSHIP; STAFF.~~ (a) ~~The chemical dependency counseling alcohol and drug counselors~~ licensing advisory council consists of 13 members. The commissioner shall appoint:

(1) except for those members initially appointed, seven members who must be licensed ~~chemical alcohol and drug~~ dependency counselors;

(2) three members who must be public members as defined by section 214.02;

(3) one member who must be a director or coordinator of an accredited ~~chemical alcohol and drug~~ dependency training program; and

(4) one member who must be a former consumer of ~~chemical alcohol and drug~~ dependency counseling service and who must have received the service more than three years before the person's appointment.

The American Indian advisory committee to the department of human services chemical dependency office shall appoint the remaining member.

~~(b) The provision of staff, administrative services, and office space are as provided in chapter 214.~~

Subd. 2. DUTIES. (a) ~~The commissioner, after consultation with the advisory council, shall:~~

(1) develop rules for the licensure of chemical dependency counselors; and provide advice and recommendations to the commissioner on the development of rules for the licensure of alcohol and drug counselors;

(2) administer or contract for the competency testing, licensing, and ethical review of chemical dependency counselors; provide advice and recommendations to the commissioner on the development of standards and procedures for the competency testing, licensing, and review of alcohol and drug counselors' professional conduct;

(3) provide advice and recommendations to the commissioner in disciplinary cases in the areas of counselor competency issues, counselor practice issues, and counselor impairment issues.

(b) The advisory council shall form an education committee, including a chair, and shall advise the commissioner on the administration of education requirements in section 148C.05, subdivision 2.

Subd. 3. TERMS. The terms, compensation, and removal of members shall be as provided in section 15.059, except that notwithstanding any contrary law, the advisory council shall not expire.

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Sec. 6. Minnesota Statutes 1994, section 148C.03, subdivision 1, is amended to read:

Subdivision 1. **GENERAL.** The commissioner shall, after consultation with the advisory council or a subcommittee or the special licensing criteria committee established under section 148C.11, subdivision 3, paragraph (b):

(a) ~~adopt and enforce rules for licensure of chemical dependency alcohol and drug counselors and for, including establishing standards and methods of determining whether applicants and licensees are qualified under section 148C.04. The rules must provide for examinations and establish standards for the regulation of professional conduct. The rules must be designed to protect the public;~~

~~(b) adopt rules establishing standards and methods of determining whether applicants and licensees are qualified under section 148C.04. The rules must provide for examinations; establish standards for professional conduct, including adoption of a professional code of ethics; and provide for sanctions as described in section 148C.09;~~

~~(c) hold or contract for the administration of examinations at least twice a year to assess applicants' knowledge and skills. The examinations must be written and oral and may be administered by the commissioner or by a nonprofit agency private organization under contract with the commissioner to administer the licensing examinations. Examinations must minimize cultural bias and must be balanced in various theories relative to practice of chemical dependency alcohol and drug counseling;~~

~~(d) (c) issue licenses to individuals qualified under sections 148C.01 to 148C.11;~~

~~(e) (d) issue copies of the rules for licensure to all applicants;~~

~~(f) (e) adopt rules to establish and implement procedures, including a standard disciplinary process and a code of ethics, to ensure that individuals licensed as chemical dependency counselors will comply with the commissioner's rules rules of professional conduct;~~

~~(g) establish, maintain, and publish annually a register of current licensees;~~

~~(f) carry out disciplinary actions against licensees;~~

~~(g) establish, with the advice and recommendations of the advisory council, written internal operating procedures for receiving and investigating complaints and for taking disciplinary actions as appropriate. Establishment of the operating procedures are not subject to rulemaking procedures under chapter 14;~~

~~(h) establish initial and renewal application and examination fees sufficient to cover operating expenses of the commissioner;~~

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(4) educate the public about the existence and content of the rules for chemical dependency counselor licensing to enable consumers to file complaints against licensees who may have violated the rules; ~~and~~

(5) (i) evaluate the rules in order to refine and improve the methods used to enforce the commissioner's standards;

(j) set, collect, and adjust license fees for alcohol and drug counselors so that the total fees collected will as closely as possible equal anticipated expenditures during the biennium, as provided in section 16A.1285; fees for initial and renewal application and examinations; late fees for counselors who submit license renewal applications after the renewal deadline; and a surcharge fee. The surcharge fee must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for the adoption of the rules providing for the licensure of alcohol and drug counselors. All fees received shall be deposited in the state treasury and credited to the special revenue fund; and

(k) prepare reports on activities related to the licensure of alcohol and drug counselors according to this subdivision by October 1 of each even-numbered year. Copies of the reports shall be delivered to the legislature in accordance with section 3.195 and to the governor. The reports shall contain the following information on the commissioner's activities relating to the licensure of chemical dependency counselors, for the two-year period ending the previous June 30:

(1) a general statement of the activities;

(2) the number of staff hours spent on the activities;

(3) the receipts and disbursements of funds;

(4) the names of advisory council members and their addresses, occupations, and dates of appointment and reappointment;

(5) the names and job classifications of employees;

(6) a brief summary of rules proposed or adopted during the reporting period with appropriate citations to the State Register and published rules;

(7) the number of persons having each type of license issued by the commissioner as of June 30 in the year of the report;

(8) the locations and dates of the administration of examinations by the commissioner;

(9) the number of persons examined by the commissioner with the persons subdivided into groups showing age categories, sex, and states of residency;

(10) the number of persons licensed by the commissioner after taking the examinations referred to in clause (8) with the persons subdivided by age categories, sex, and states of residency;

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(11) the number of persons not licensed by the commissioner after taking the examinations referred to in clause (8) with the persons subdivided by age categories, sex, and states of residency;

(12) the number of persons not taking the examinations referred to in clause (8) who were licensed by the commissioner or who were denied licensing, the reasons for the licensing or denial, and the persons subdivided by age categories, sex, and states of residency;

(13) the number of persons previously licensed by the commissioner whose licenses were revoked, suspended, or otherwise altered in status with brief statements of the reasons for the revocation, suspension, or alteration;

(14) the number of written and oral complaints and other communications received by the commissioner which allege or imply a violation of a statute or rule which the commissioner is empowered to enforce;

(15) a summary, by specific category, of the substance of the complaints and communications referred to in clause (14) and, for each specific category, the responses or dispositions; and

(16) any other objective information which the commissioner believes will be useful in reviewing the commissioner's activities.

Sec. 7. Minnesota Statutes 1994, section 148C.03, is amended by adding a subdivision to read:

Subd. 4. PROFESSIONAL ACCOUNTABILITY. The commissioner shall maintain and keep current a file containing the reports and complaints filed against alcohol and drug counselors within the commissioner's jurisdiction.

Sec. 8. [148C.0351] PROCEDURES FOR ADMISSION TO LICENSURE.

Subdivision 1. APPLICATION FORMS. Unless exempted under section 148C.11, a person who practices alcohol and drug counseling in Minnesota must:

(1) apply to the commissioner for a license to practice alcohol and drug counseling on forms provided by the commissioner;

(2) include with the application a statement that the statements in the application are true and correct to the best of the applicant's knowledge and belief;

(3) include with the application a nonrefundable application fee specified by the commissioner;

(4) include with the application information describing the applicant's experience, including the number of years and months the applicant has practiced alcohol and drug counseling as defined in section 148C.01;

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(5) include with the application the applicant's business address and telephone number, or home address and telephone number if the applicant conducts business out of the home, and if applicable, the name of the applicant's supervisor, manager, and employer;

(6) include with the application a written and signed authorization for the commissioner to make inquiries to appropriate state regulatory agencies and private credentialing organizations in this or any other state where the applicant has practiced alcohol and drug counseling; and

(7) complete the application in sufficient detail for the commissioner to determine whether the applicant meets the requirements for filing. The commissioner may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subd. 2. FEE FOR LATE RENEWAL. A licensee must pay a late fee and the renewal fee set by rule.

Subd. 3. REQUIREMENT TO MAINTAIN CURRENT INFORMATION. An alcohol and drug counselor must notify the commissioner with 30 days of the occurrence of any of the following:

(1) a change of name, address, place of employment, and home or business telephone number; and

(2) a settlement or award based on negligent or intentional acts committed in providing alcohol and drug counseling services.

Sec. 9. Minnesota Statutes 1994, section 148C.04, subdivision 1, is amended to read:

Subdivision 1. **GENERAL REQUIREMENTS.** The commissioner shall issue licenses to the individuals qualified under sections 148C.01 to 148C.11 to practice ~~chemical dependency~~ alcohol and drug counseling.

Sec. 10. Minnesota Statutes 1994, section 148C.04, subdivision 2, is amended to read:

Subd. 2. **FEE.** Each applicant shall pay a nonrefundable fee set by the commissioner pursuant to section 148C.03. Fees paid to the commissioner shall be deposited in the special revenue fund.

Sec. 11. Minnesota Statutes 1994, section 148C.04, subdivision 3, is amended to read:

Subd. 3. **LICENSING REQUIREMENTS FOR ~~CHEMICAL DEPENDENCY COUNSELOR~~ ALCOHOL AND DRUG COUNSELORS; EVIDENCE.** (a) ~~To be licensed as a chemical dependency counselor, an applicant must meet~~ For five years after the effective date of the rules authorized in section 148C.03, the applicant, unless qualified for initial licensure under this sub-

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division, must furnish evidence satisfactory to the commissioner that the applicant has met all the requirements in clauses (1) to (3).

(1) Except as provided in subdivision 4, the applicant must have received an associate degree including 270 clock hours of ~~chemical dependency alcohol and drug counseling~~ education from an accredited school or educational program and 880 clock hours of chemical dependency practicum;

(2) The applicant must have completed a written case presentation and satisfactorily passed an oral examination that demonstrates competence in the ~~2~~ core functions; and

(3) The applicant must have satisfactorily passed a written examination as established by the commissioner.

(b) ~~To be licensed as a chemical dependency counselor~~ Unless the applicant qualifies for licensure under this subdivision, an applicant must furnish evidence satisfactory to the commissioner that the applicant has met the requirements of paragraph (a), clauses (1) to (3).

Beginning two years after the effective date of the rules authorized in section 148C.03, subdivision 1, no person may be licensed without meeting the requirements in section 148C.04, subdivision 4, paragraph (a), clauses (2) and (3), or the special licensing criteria established pursuant to section 148C.11, subdivision 4.

Sec. 12. Minnesota Statutes 1994, section 148C.04, subdivision 4, is amended to read:

Subd. 4. **ADDITIONAL LICENSING REQUIREMENTS.** Beginning five years after the effective date of the rules authorized in section 148C.03, subdivision 1, an applicant for licensure must have received a bachelor's degree ~~in a human services area~~ from an accredited school or educational program, and must have completed 480 clock hours of ~~chemical dependency alcohol and drug counseling~~ education from an accredited school or educational program and 880 clock hours of ~~chemical dependency alcohol and drug counseling~~ practicum.

Sec. 13. Minnesota Statutes 1994, section 148C.05, is amended to read:

148C.05 LICENSE RENEWAL REQUIREMENTS; LAPSE.

Subdivision 1. **RENEWAL REQUIREMENTS.** ~~Licenses shall renew licenses at the time and in the manner established by the commissioner. To renew a license, an applicant must:~~

(1) annually complete a renewal application on a form provided by the commissioner and submit the annual renewal fee by the deadline; and

(2) submit additional information if requested by the commissioner to clarify information presented in the renewal application. This information must be submitted within 30 days of the commissioner's request.

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Subd. 2. **CONTINUING EDUCATION.** At the time of renewal, if required, each licensee shall furnish evidence satisfactory to the commissioner that the licensee has completed at least the equivalent of 40 clock hours of continuing professional postdegree education every during the past two years, in programs approved by the commissioner, after consultation with the education committee, and that the licensee continues to be qualified to practice under sections 148C.01 to 148C.11.

Subd. 3. **LATE RENEWALS.** The deadline to renew licensure is the date set by the commissioner. An application submitted after that date but before the renewal deadline shall be a late renewal and must be accompanied by a late fee as required in section 148C.0351, subdivision 2.

Subd. 4. **LAPSE IN LICENSURE.** An applicant's license shall lapse if the renewal application is not received by the date set by the commissioner. An applicant whose license has lapsed less than two years must meet all the requirements of this chapter except the examination requirements of section 148C.04. An applicant whose license has lapsed for two years or more must meet all the requirements of this chapter except the continuing education requirement of subdivision 2. License renewal fees of applicants whose license has lapsed shall not be prorated over the time remaining in the annual licensure period.

Sec. 14. Minnesota Statutes 1994, section 148C.06, is amended to read:

148C.06 TRANSITION PERIOD.

For two years from the effective date of the rules authorized in section 148C.03, subdivision 1, the commissioner shall issue a license ~~without examination~~ to an applicant if the applicant meets one of the following qualifications:

(a) is credentialed as a certified chemical dependency counselor (CCDC) or certified chemical dependency counselor reciprocal (CCDCR) by the Institute for Chemical Dependency Professionals of Minnesota, Inc.;

(b) ~~has three years or~~ 6,000 hours of supervised ~~chemical dependency alcohol and drug~~ counselor experience as defined by the ~~12~~ core functions, 270 clock hours of ~~chemical dependency alcohol and drug~~ training with a minimum of 60 hours of this training occurring within the past five years, 300 hours of ~~chemical dependency alcohol and drug~~ practicum, and has successfully completed the requirements in section 148C.04, subdivision 3, paragraph (a), clauses (2) and (3);

(c) ~~has five years or~~ 10,000 hours of ~~chemical dependency supervised alcohol and drug~~ counselor experience as defined by the ~~12~~ core functions, 270 clock hours of ~~chemical dependency alcohol and drug~~ training with a minimum of 60 hours of this training occurring with the past five years, and has successfully completed the requirements in section 148C.04, subdivision 3, paragraph (a), clause (2) or (3), or is credentialed as a certified chemical dependency practitioner (CCDP) by the Institute for Chemical Dependency Professionals of Minnesota, Inc.; ~~or~~

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(d) has ~~seven years or~~ 14,000 hours of supervised ~~chemical dependency alcohol and drug~~ counselor experience as defined by the ~~42~~ core functions and 270 clock hours of ~~chemical dependency alcohol and drug~~ training with a minimum of 60 hours of this training occurring within the past five years; or

(e) has met the special licensing criteria established pursuant to section 148C.11.

~~Beginning two years after the effective date of the rules authorized in section 148C.03, subdivision 1, no person may be licensed without meeting the requirements in section 148C.04, subdivision 3, paragraph (a), clauses (2) and (3).~~

Sec. 15. Minnesota Statutes 1994, section 148C.07, is amended to read:

148C.07 RECIPROCITY.

The commissioner shall issue an appropriate license to an individual who holds a current license or other credential to engage in alcohol and drug counseling from another jurisdiction if the commissioner finds that the requirements for that credential are substantially similar to the requirements in sections 148C.01 to 148C.11.

Sec. 16. Minnesota Statutes 1994, section 148C.08, is amended to read:

148C.08 NONTRANSFERABILITY OF LICENSES.

A ~~chemical dependency~~ An alcohol and drug counselor license is not transferable.

Sec. 17. Minnesota Statutes 1994, section 148C.09, is amended to read:

148C.09 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

Subdivision 1. **GROUND.** The commissioner may refuse to grant a license to, or may suspend, revoke, or restrict the license of an individual if the commissioner, ~~after a hearing under the contested case provisions of chapter 14,~~ determines that a licensee or applicant:

(1) is incompetent to engage in ~~chemical dependency alcohol and drug~~ counseling practice or is found to be engaged in ~~chemical dependency alcohol and drug~~ counseling practice in a manner harmful or dangerous to a client or the public;

(2) has violated the rules of the commissioner or the statutes the commissioner is empowered to enforce; or any law, rule order, stipulation and consent order, agreement, or settlement;

(3) has obtained or attempted to obtain a license or license renewal by bribery or fraudulent misrepresentation;

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(4) has knowingly made a false statement on the form required ~~by~~ to be submitted to the commissioner for licensing or license renewal; ~~or~~

(5) has failed to obtain continuing education credits required by the commissioner;

(6) has failed to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the commissioner. The burden of proof shall be upon the applicant to demonstrate qualifications or satisfaction of requirements;

(7) has been convicted of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court in Minnesota or any other jurisdiction in the United States, reasonably related to the provision of alcohol and drug counseling services. Conviction, as used in this subdivision, includes conviction of an offense which, if committed in this state, would be deemed a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered;

(8) has been convicted of a crime against another person. For purposes of this chapter, a crime against another person means an offense listed in section 148B.68, subdivision 1, paragraph (b);

(9) has failed to comply with the self-reporting requirements of section 148C.095, subdivision 7;

(10) has engaged in sexual contact with a client, or a former client, as defined in section 148A.01, or has engaged in conduct that may be reasonably interpreted by a client as sexual, or has engaged in any verbal behavior that is seductive or sexually demeaning to the client, or has engaged in sexual exploitation of a client or former client;

(11) has engaged in false, fraudulent, deceptive, or misleading advertising;

(12) has engaged in conduct likely to deceive, defraud, or harm the public; or has demonstrated a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established;

(13) has been adjudicated as mentally incompetent, or as a person who has a psychopathic personality, or who is dangerous to self, or has been adjudicated as chemically dependent, mentally ill, mentally retarded, or mentally ill and dangerous to the public pursuant to chapter 253B;

(14) is unable to provide alcohol and drug counseling services with reasonable safety to clients;

(15) is habitually overindulgent in the use of or the dependence on alcohol;

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(16) has engaged in the improper or unauthorized personal or other use of any legend drugs as defined in section 151.01, any chemicals as defined in section 151.01, or any controlled substance as defined in section 152.01;

(17) reveals a communication from, or relating to, a client except when required or permitted by law;

(18) fails to comply with a client's request for health records made under section 144.335, or to furnish a client record or report required by law;

(19) has engaged in fee splitting or promises to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client;

(20) has engaged in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(21) fails to make reports as required by section 148C.095, or cooperate with an investigation of the commissioner;

(22) obtains money, property, or services from a client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud;

(23) undertakes or continues a professional relationship with a client in which the objectivity of the alcohol and drug counselor may be impaired;

(24) engages in conduct that constitutes grounds for discipline as established by the commissioner in rule; or

(25) engages in bartering for services with a client.

Subd. 2. **APPEAL, RESTORING A LICENSE.** ~~For reasons it finds sufficient, the commissioner may grant a license previously refused, restore a license that has been revoked, or reduce a period of suspension or restriction of a license. If a license is denied, suspended, restricted, or revoked, an applicant or licensee may request a hearing under the contested case provisions of chapter 14. The commissioner may, for good cause demonstrated by the applicant or counselor, grant a license previously refused, restore a license that has been revoked, or reduce a period of suspension or restriction of a license. The commissioner may impose any conditions or limitations as the commissioner deems reasonable.~~

Subd. 3. **ANNUAL REVIEW.** Suspension, revocation, or restriction of a license shall be reviewed by the commissioner at the request of the licensee against whom the disciplinary action was taken.

Subd. 4. **EVIDENCE.** In disciplinary actions alleging violations of subdivision 1, paragraph (7), (8), (13), or (14), a copy of the judgment or proceedings under the seal of the court administrator or of the administrative agency that

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entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

Sec. 18. **[148C.091] DISCIPLINARY ACTIONS.**

Subdivision 1. FORMS OF DISCIPLINARY ACTION. When the commissioner finds that an applicant or a licensed alcohol and drug counselor has violated a provision or provisions of sections 148C.01 to 148C.11, or rules promulgated under this chapter, the commissioner may take one or more of the following actions:

- (1) refuse to grant a license;
- (2) revoke the license;
- (3) suspend the license;
- (4) impose limitations or conditions;

(5) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the counselor of any economic advantage gained by reason of the violation charged or to reimburse the commissioner for all costs of the investigation and proceeding, including, but not limited to, the amount paid by the commissioner for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, advisory council members' per diem compensation, staff time, and expense incurred by advisory council members and staff of the department;

(6) order the counselor to provide uncompensated professional service under supervision at a designated public hospital, clinic, or other health care institution;

(7) censure or reprimand the counselor; or

(8) any other action justified by the case.

Subd. 2. DISCOVERY; SUBPOENAS. In all matters relating to the commissioner's investigation and enforcement activities related to alcohol and drug counselors, the commissioner of health may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary materials. Any person failing or refusing to appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the commissioner or by a subpoena of the commissioner to do so may, upon application by the commissioner to the district court in any district, be ordered to comply with the order or subpoena. The commissioner may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be

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served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 3. TEMPORARY SUSPENSION. In addition to any other remedy provided by law, the commissioner may, without a hearing, temporarily suspend the right of an alcohol and drug counselor to practice if the commissioner finds that the counselor has violated a statute or rule that the commissioner has authority to enforce and that continued practice by the practitioner would create a serious risk of harm to others. The suspension takes effect upon service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the commissioner issues a final order in the matter after a hearing or upon agreement between the commissioner and the counselor. Service of the order is effective if the order is served on the counselor or the counselor's attorney either personally or by first class mail. Within ten days of service of the order, the commissioner shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the commissioner or counselor must be by affidavit only. The counselor or the counselor's attorney of record may appear for oral argument. Within five working days after the hearing, the commissioner shall issue an order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The commissioner shall issue a final order within 30 days after receipt of that report, the hearing record, and any exceptions to the report filed by the parties.

Subd. 4. AUTOMATIC SUSPENSION. The right to practice is automatically suspended if (1) a guardian of an alcohol and drug counselor is appointed by order of a probate court under sections 525.54 to 525.61, or (2) the counselor is committed by order of a probate court under chapter 253B. The right to practice remains suspended until the counselor is restored to capacity by a court and, upon petition by the counselor, the suspension is terminated by the commissioner after a hearing or upon agreement between the commissioner and the counselor.

Sec. 19. [148C.093] ADDITIONAL REMEDIES.

Subdivision 1. CEASE AND DESIST. The commissioner may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the commissioner has issued or has authority to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the commissioner and is not reviewable by a court or agency.

A hearing must be initiated by the commissioner not later than 30 days

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from the date of the commissioner's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, and any written agreement or exceptions filed by the parties, the commissioner shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the commissioner.

When a request for a stay accompanies a timely hearing request, the commissioner may, in the commissioner's discretion, grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the office of administrative hearings within three working days of receipt of the request. Within ten days after receiving the request from the commissioner, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner shall grant or deny the stay within five working days of receiving the administrative law judge's recommendation.

In the event of noncompliance with a cease and desist order, the commissioner may institute a proceeding in district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the commissioner not exceeding \$10,000 for each separate violation.

Subd. 2. INJUNCTIVE RELIEF. In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the commissioner may in the commissioner's own name bring an action in district court for injunctive relief to restrain an alcohol and drug counselor from a violation or threatened violation of any statute, rule, or order which the commissioner has authority to administer, enforce, or issue.

Subd. 3. ADDITIONAL POWERS. The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a counselor from criminal prosecution by a competent authority or from disciplinary action by the commissioner.

Sec. 20. [148C.095] REPORTING OBLIGATIONS.

Subdivision 1. PERMISSION TO REPORT. A person who has knowledge of any conduct constituting grounds for disciplinary action relating to the practice of alcohol and drug counseling under this chapter may report the violation to the commissioner.

Subd. 2. INSTITUTIONS. A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the commissioner any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an alcohol and drug counselor's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the commissioner under this chapter. The institution, organization, or governmental entity shall also report the

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resignation of any alcohol and drug counselors before the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or before the commencement of formal charges but after the practitioner had knowledge that formal charges were contemplated or were being prepared.

Subd. 3. PROFESSIONAL SOCIETIES. A state or local professional society for alcohol and drug counselors shall report to the commissioner any termination, revocation, or suspension of membership or any other disciplinary action taken against an alcohol and drug counselor. If the society has received a complaint that might be grounds for discipline under this chapter against a member on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the commissioner.

Subd. 4. LICENSED PROFESSIONALS. A licensed health professional shall report to the commissioner personal knowledge of any conduct that the licensed health professional reasonably believes constitutes grounds for disciplinary action under this chapter by an alcohol and drug counselor, including conduct indicating that the individual may be medically incompetent, or may be medically or physically unable to engage safely in the provision of services. If the information was obtained in the course of a client relationship, the client is an alcohol and drug counselor, and the treating individual successfully counsels the alcohol and drug counselor to limit or withdraw from practice to the extent required by the impairment, the commissioner may deem this limitation of or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. INSURERS. Each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to alcohol and drug counselors or the medical joint underwriting association under chapter 62F, shall submit to the commissioner quarterly reports concerning the alcohol and drug counselors against whom malpractice settlements and awards have been made. The report must contain at least the following information:

- (1) the total number of malpractice settlements or awards made;
- (2) the date the malpractice settlements or awards were made;
- (3) the allegations contained in the claim or complaint leading to the settlements or awards made;
- (4) the dollar amount of each settlement or award;
- (5) the address of the practice of the alcohol and drug counselor against whom an award was made or with whom a settlement was made; and
- (6) the name of the alcohol and drug counselor against whom an award was made or with whom a settlement was made.

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The insurance company shall, in addition to the above information, submit to the commissioner any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that a licensed alcohol and drug counselor may have engaged in conduct violating this chapter.

Subd. 6. SELF-REPORTING. An alcohol and drug counselor shall report to the commissioner any personal action that would require that a report be filed with the commissioner by any person, health care facility, business, or organization under subdivisions 2 to 5. The alcohol and drug counselor shall also report the revocation, suspension, restriction, limitation, or other disciplinary action in this state and report the filing of charges regarding the practitioner's license or right of practice in another state or jurisdiction.

Subd. 7. DEADLINES; FORMS. Reports required by subdivisions 2 to 6 must be submitted no later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The commissioner may provide forms for the submission of the reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Sec. 21. [148C.099] PROFESSIONAL COOPERATION.

An alcohol and drug counselor who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the commissioner, shall cooperate fully with the investigation. Cooperation includes responding fully to any question raised by or on behalf of the commissioner relating to the subject of the investigation whether tape recorded or not. Challenges to requests of the commissioner may be brought before the appropriate agency or court.

Sec. 22. Minnesota Statutes 1994, section 148C.10, is amended to read:

148C.10 PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES; PENALTY.

Subdivision 1. **PRACTICE.** After the commissioner adopts rules, no individual shall engage in ~~chemical dependency~~ alcohol and drug counseling practice unless that individual holds a valid license as a ~~chemical dependency~~ alcohol and drug counselor.

Subd. 2. **USE OF TITLES.** After the commissioner adopts rules, no individual shall ~~be presented~~ present themselves or any other individual to the public by any title incorporating the words "~~chemical dependency~~ licensed alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed or otherwise qualified to practice alcohol and drug counseling unless that individual holds a valid license. City, county, and state agency ~~chemical dependency~~ alcohol and drug counselors who are not licensed under sections 148C.01 to 148C.11 may use the title "city agency ~~chemical dependency~~ alcohol and drug counselor," "county agency ~~chem-~~

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ical dependency alcohol and drug counselor," or "state agency chemical dependency alcohol and drug counselor." Hospital chemical dependency alcohol and drug counselors who are not licensed under sections 148C.01 to 148C.11 may use the title "hospital chemical dependency alcohol and drug counselor" while acting within the scope of their employment.

Subd. 3. **PENALTY.** A person who violates sections 148C.01 to 148C.11 is guilty of a misdemeanor.

Sec. 23. Minnesota Statutes 1994, section 148C.11, is amended to read:

148C.11 EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. **OTHER PROFESSIONALS.** Nothing in sections 148C.01 to 148C.10 shall prevent members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes, but is not limited to, licensed physicians, registered nurses, licensed practical nurses, psychological practitioners, members of the clergy, attorneys, probation officers, marriage and family therapists, social workers, professional counselors, school counselors, and registered occupational therapists or certified occupational therapist assistants. These persons must not, however, use a title incorporating the words "chemical dependency alcohol and drug counselor" or "licensed chemical dependency alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed to engage in the practice of chemical dependency alcohol and drug counseling.

Subd. 2. **STUDENTS.** Nothing in sections 148C.01 to 148C.10 shall prevent students enrolled in an accredited school of chemical dependency alcohol and drug counseling from engaging in the practice of chemical dependency alcohol and drug counseling under qualified supervision in an accredited school of chemical dependency alcohol and drug counseling.

Subd. 3. **FEDERALLY RECOGNIZED TRIBES AND PRIVATE NON-PROFIT AGENCIES WITH A MINORITY FOCUS.** (a) ~~The licensing of chemical dependency counselors who are employed by federally recognized tribes shall be voluntary. Alcohol and drug counselors licensed to practice alcohol and drug counseling according to standards established by federally recognized tribes, while practicing under tribal jurisdiction, are exempt from the requirements of this chapter. In practicing alcohol and drug counseling under tribal jurisdiction, individuals licensed under that authority shall be afforded the same rights, responsibilities, and recognition as persons licensed pursuant to this chapter.~~

(b) The commissioner shall develop special licensing criteria for issuance of a license to chemical dependency alcohol and drug counselors who: (1) are members of ethnic minority groups; ~~and~~ or (2) are employed by private, nonprofit agencies, including agencies operated by private, nonprofit hospitals, whose primary agency service focus addresses ethnic minority populations. These licens-

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ing criteria may differ from the licensing criteria specified in section 148C.04. To develop these criteria, the commissioner shall establish a committee comprised of but not limited to representatives from the council on hearing impaired, the council on affairs of Spanish-speaking people, the council on Asian-Pacific Minnesotans, the council on Black Minnesotans, and the Indian affairs council.

Subd. 4. **HOSPITAL CHEMICAL DEPENDENCY ALCOHOL AND DRUG COUNSELORS.** ~~Except as provided in subdivision 3, paragraph (b),~~ The licensing of hospital ~~chemical dependency alcohol and drug~~ counselors shall be voluntary, while the counselor is employed by the hospital. Hospitals employing ~~chemical dependency alcohol and drug~~ counselors shall not be required to employ licensed ~~chemical dependency alcohol and drug~~ counselors, nor shall they require their ~~chemical dependency alcohol and drug~~ counselors to be licensed, however, nothing in this chapter will prohibit hospitals from requiring their counselors to be eligible for licensure.

Subd. 5. **CITY, COUNTY, AND STATE AGENCY CHEMICAL DEPENDENCY ALCOHOL AND DRUG COUNSELORS.** The licensing of city, county, and state agency ~~chemical dependency alcohol and drug~~ counselors shall be voluntary, while the counselor is employed by the city, county, or state agency. City, county, and state agencies employing ~~chemical dependency alcohol and drug~~ counselors shall not be required to employ licensed ~~chemical dependency alcohol and drug~~ counselors, nor shall they require their ~~chemical dependency drug and alcohol~~ counselors to be licensed.

Sec. 24. Minnesota Statutes 1994, section 153A.13, is amended to read:

153A.13 **DEFINITIONS.**

Subdivision 1. **APPLICABILITY.** The definitions in this section apply to sections 153A.13 to 153A.18.

Subd. 2. **COMMISSIONER.** "Commissioner" means the commissioner of the department of health or a designee.

Subd. 3. **HEARING INSTRUMENT.** "Hearing instrument" means an instrument, or any of its parts, worn in the ear canal and designed to or represented as being able to aid ~~defective~~ or enhance human hearing. "Hearing instrument" includes the instrument's parts, attachments, ~~and or~~ accessories, including, but not limited to, ear molds and behind the ear (BTE) devices with or without an ear mold. Batteries and cords are not parts, attachments, or accessories of a hearing instrument. Surgically implanted hearing instruments, and assistive listening devices ~~that do not require testing, fitting, or the use of ear molds and~~ are not worn within the ear canal, are not hearing instruments.

Subd. 4. **HEARING INSTRUMENT DISPENSING.** "Hearing instrument dispensing" means fitting and selling hearing instruments making ear mold impressions, prescribing, or recommending a hearing instrument, assisting the

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consumer in instrument selection, selling hearing instruments at retail, or testing human hearing in connection with these activities when the person conducting these activities has a monetary interest in the sale of hearing instruments to the consumer.

Subd. 5. **DISPENSER OF HEARING INSTRUMENTS.** "Dispenser of hearing instruments" means a natural person who engages in hearing instrument dispensing whether or not ~~registered~~ certified by the commissioner of health or licensed by an existing health-related board, except that any person who helps a dispenser of hearing instruments in an administrative or clerical manner and does not engage in hearing instrument dispensing is not a dispenser of hearing instruments. A person who offers to dispense a hearing instrument, or a person who advertises, holds out to the public, or otherwise represents that the person is authorized to dispense hearing instruments must be certified by the commissioner.

Subd. 6. **ADVISORY COUNCIL.** "Advisory council" means the Minnesota hearing instrument dispenser advisory council, or a committee of it, established under section 153A.20.

Subd. 7. **ANSI.** "ANSI" means ANSI S3.6-1989, American National Standard Specification for Audiometers from the American National Standards Institute. This document is available through the Minitex interlibrary loan system.

Subd. 8. **CERTIFICATION NUMBER.** "Certification number" means the number assigned to each certification by the commissioner.

Subd. 9. **SUPERVISION.** "Supervision" means on-site observing and monitoring activities of, and accepting responsibility for, the hearing instrument dispensing activities of a trainee.

Sec. 25. Minnesota Statutes 1994, section 153A.14, is amended to read:

153A.14 **REGULATION.**

Subdivision 1. **APPLICATION FOR CERTIFICATE.** ~~A dispenser of hearing instruments shall~~ An applicant must:

(1) be 18 years of age or older;

(2) apply to the commissioner for a certificate to dispense hearing instruments. The commissioner shall provide applications for certificates. on application forms provided by the commissioner;

(3) at a minimum, the information that an applicant must provide includes the dispenser's applicant's name, social security number, business address and phone number, employer, and information about the dispenser's applicant's education, training, and experience in testing human hearing and fitting hearing instruments. The commissioner may reject an application for a certificate if there is evidence of a violation or failure to comply with this chapter;

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(4) include with the application a statement that the statements in the application are true and correct to the best of the applicant's knowledge and belief;

(5) include with the application a written and signed authorization that authorizes the commissioner to make inquiries to appropriate regulatory agencies in this or any other state where the applicant has sold hearing instruments;

(6) submit certification to the commissioner that the applicant's audiometric equipment has been calibrated to meet current ANSI standards within 12 months of the date of the application;

(7) submit evidence of continuing education credits, if required; and

(8) submit all fees as required under section 153A.17.

Subd. 2. **ISSUANCE OF CERTIFICATE.** The commissioner shall issue a certificate to each dispenser of hearing instruments who applies under subdivision 1 if the commissioner determines that the applicant is in compliance with this chapter, has passed an examination administered by the commissioner, has met the continuing education requirements, if required, and has paid the fee set by the commissioner. ~~A certificate must be renewed by November 1 of each year. The commissioner may reject or deny an application for a certificate if there is evidence of a violation or failure to comply with this chapter.~~

Subd. 2a. **EXEMPTION FROM EXAMINATION REQUIREMENT.** Persons completing the audiology registration requirements of Minnesota Rules, part 4750.0060, after January 1, 1996, are exempt from the examination requirements of subdivision 2. Minnesota registration or American Speech-Language-Hearing Association certification as an audiologist are not required but may be submitted as evidence qualifying for exemption from the examination if the requirements are completed after January 1, 1996.

Subd. 2b. **ACTION ON APPLICATIONS FOR CERTIFICATION.** The commissioner shall act on an application for certification according to paragraphs (a) to (c).

(a) The commissioner shall determine if the applicant meets the requirements for certification. The commissioner or advisory council may investigate information provided by an applicant to determine whether the information is accurate and complete.

(b) The commissioner shall notify each applicant of action taken on the application and of the grounds for denying certification if certification is denied.

(c) Applicants denied certification for failure to meet the requirements may make a written request to the commissioner within 30 days of the commissioner's determination to appear before the advisory council and for the advisory council to review the commissioner's decision to deny the applicant's certification. After reviewing the denial, the advisory council shall make a recommendation to the commissioner as to whether the denial should be affirmed.

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Subd. 2c. REAPPLICATION FOLLOWING DENIAL, REJECTION, REVOCATION, OR SUSPENSION OF CERTIFICATION. After two years, upon application and evidence that the disqualifying behavior has ceased, the commissioner may restore or approve certification previously denied, rejected, revoked, or suspended, provided that the applicant has met all conditions and terms of any orders to which the applicant is a subject.

Subd. 2d. CERTIFICATION RENEWAL NOTICE. Certification must be renewed annually. At least 30 days before the deadline for application to renew certification, the commissioner shall mail a renewal notice to the dispenser's last known address. The notice must include a renewal application and notice of fees required for renewal. A dispenser is not relieved from meeting the applicable deadline for renewal on the basis that the dispenser did not receive the renewal notice. In renewing a certificate, a dispenser shall follow the procedures for applying for a certificate specified in section 153A.14, subdivision 1.

Subd. 2e. RENEWAL REQUIREMENTS. A certificate must be renewed effective November 1 of each year. To renew a certificate, an applicant must:

(1) annually complete a renewal application on a form provided by the commissioner and submit the annual renewal fee by the deadline;

(2) submit certification to the commissioner that the applicant's audiometric equipment has been calibrated to meet current ANSI standards within 12 months of the date of the application, if the applicant tests hearing;

(3) submit evidence of completion of continuing education requirements, if required; and

(4) submit additional information if requested by the commissioner to clarify information presented in the renewal application. The information must be submitted within 30 days of the commissioner's request.

Subd. 2f. LATE RENEWALS. The deadline for application to renew certification is October 1 of each year. An application submitted after October 1 and before November 1 shall be a late renewal and must be accompanied by a late fee as required in section 153A.17.

Subd. 2g. LAPSE IN CERTIFICATION. Certification shall lapse if not renewed before November 1 of each year. An applicant whose certification has lapsed less than two years must meet all the requirements of this chapter except the certification by examination requirements of subdivision 2h. The application fees to renew certification following a lapse of less than two years must include the late fee. An applicant whose certification has lapsed for two years or more must meet all the requirements of this chapter except the continuing education requirement of subdivision 2i. Certification application fees of applicants whose certification has lapsed for any amount of time shall not be prorated over the time remaining in the annual certification period.

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Subd. 2h. CERTIFICATION BY EXAMINATION. An applicant must achieve a passing score, as determined by the commissioner, on an examination according to paragraphs (a) and (b).

(a) The examination must include, but is not limited to:

(1) A written examination approved by the commissioner covering the following areas as they pertain to hearing instrument selling:

- (i) basic physics of sound;
- (ii) the anatomy and physiology of the ear;
- (iii) the function of hearing instruments;
- (iv) the principles of hearing instrument selection; and
- (v) state and federal laws, rules, and regulations.

(2) Practical tests of proficiency in the following techniques as they pertain to hearing instrument selling:

(i) pure tone audiometry, including air conduction testing and bone conduction testing;

(ii) live voice or recorded voice speech audiometry including speech recognition (discrimination) testing, most comfortable loudness level, and uncomfortable loudness measurements of tolerance thresholds;

(iii) masking when indicated;

(iv) recording and evaluation of audiograms and speech audiometry to determine proper selection and fitting of a hearing instrument;

(v) taking ear mold impressions; and

(vi) using an otoscope for the visual observation of the entire ear canal.

(b) The examination shall be administered by the commissioner at least twice a year.

Subd. 2i. CONTINUING EDUCATION REQUIREMENT. On forms provided by the commissioner, each certified dispenser must submit with the application for renewal of certification evidence of completion of ten course hours of continuing education earned within the 12-month period of July 1 to June 30 immediately preceding renewal. Continuing education courses must be directly related to hearing instrument dispensing and approved by the International Hearing Society or qualify for continuing education approved for Minnesota registered audiologists. Evidence of completion of the ten course hours of continuing education must be submitted with renewal applications by October 1 of each year. This requirement does not apply to dispensers certified for less than one year. The first report of evidence of completion of the continuing education credits shall be due October 1, 1997.

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Subd. 2i. REQUIRED USE OF CERTIFICATION NUMBER. The certification holder must use the certification number on all contracts, bills of sale, and receipts used in the sale of hearing instruments.

Subd. 3. **NONTRANSFERABILITY OF CERTIFICATE.** A certificate may not be transferred.

Subd. 4. **DISPENSING OF HEARING INSTRUMENTS WITHOUT CERTIFICATE.** Except as provided in subdivision 4a, it is unlawful for any person not holding a valid certificate to dispense a hearing instrument as defined in section 153A.13, subdivision 3. A person who dispenses a hearing instrument without the certificate required by this section is guilty of a gross misdemeanor. ~~For purposes of this chapter, a person is dispensing a hearing instrument if the person does, or offers to do, any of the activities described in section 153A.13, subdivision 4; or if the person advertises, holds out to the public, or otherwise represents that the person is authorized to dispense hearing instruments.~~

Subd. 4a. **TRAINEES.** (a) A person who is not certified under this section may dispense hearing instruments as a trainee for a period not to exceed ~~nine~~ 12 months if the person:

(1) submits an application on forms provided by the commissioner;

(2) ~~is employed by and~~ under the supervision ~~or sponsorship~~ of a certified dispenser meeting the requirements of this subdivision; and

~~(2) (3) meets all requirements for certification except completion of the person's training and passage of the examination required by this section.~~

(b) A certified hearing instrument dispenser may not ~~employ, sponsor, and~~ supervise more than two trainees at the same time. The certified dispenser is responsible for all actions or omissions of a trainee in connection with the dispensing of hearing instruments. A certified dispenser may not ~~employ, sponsor, or~~ supervise a trainee if there are any commissioner, court, or other orders, currently in effect or issued within the last five years, that were issued with respect to an action or omission of a certified dispenser or a trainee under the certified dispenser's supervision.

Trainees must be supervised in all areas described in section 153A.14, subdivision 4b, and the activities tested by the examination. Two hundred hours of on-site observations must be completed within the trainee period with a minimum of 100 hours involving the supervisor, trainee, and a consumer. In addition, the trainee must complete two monitored activities a week. Monitored activities may be executed by correspondence, telephone, or other telephonic devices, and include, but are not limited to, evaluation of audiograms, written reports, and contracts. The time spent in supervision must be recorded and the record retained by the supervisor.

Subd. 4b. HEARING TESTING PROTOCOL. (a) A dispenser when conducting a hearing test for the purpose of hearing instrument dispensing must:

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(1) comply with the United States Food and Drug Administration warning regarding potential medical conditions required by Code of Federal Regulations, title 21, section 801.420;

(2) complete a case history of the client's hearing;

(3) inspect the client's ears with an otoscope; and

(4) conduct the following tests on both ears of the client and document the results, and if for any reason one of the following tests cannot be performed pursuant to the United States Food and Drug Administration guidelines, an audiologist shall evaluate the hearing and the need for a hearing instrument:

(i) air conduction at 250, 500, 1,000, 2,000, 4,000, and 8,000 Hertz. When a difference of 20 dB or more occurs between adjacent octave frequencies the interoctave frequency must be tested;

(ii) bone conduction at 500, 1,000, 2,000, and 4,000 Hertz for any frequency where the air conduction threshold is greater than 15 dB HL;

(iii) monaural word recognition (discrimination), with a minimum of 25 words presented for each ear; and

(iv) loudness discomfort level, monaural, for setting a hearing instrument's maximum power output; and

(5) include masking in all tests whenever necessary to ensure accurate results.

Subd. 5. **RULEMAKING AUTHORITY.** The commissioner shall adopt rules under chapter 14 to implement this chapter. ~~The rules must prescribe the form and content of the examination required by this section and must establish and prescribe the duties of a hearing instrument dispenser advisory council. The commissioner may adopt rules requiring continuing education of certified hearing instrument dispensers.~~ may include procedures and standards relating to the certification requirement, the scope of authorized practice, fees, supervision required, continuing education, career progression, disciplinary matters, and examination procedures.

Subd. 6. **HEARING INSTRUMENTS TO COMPLY WITH FEDERAL AND STATE REQUIREMENTS.** The commissioner shall ensure that hearing instruments are dispensed in compliance with state requirements and the requirements of the United States Food and Drug Administration. Failure to comply with state or federal regulations may be grounds for enforcement actions under section 153A.15, subdivision 2.

Subd. 7. **CONTESTED CASES.** The commissioner shall comply with the contested case procedures in chapter 14 when suspending, revoking, or refusing to issue a certificate under this section.

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Subd. 8. **CONTENT OF CONTRACTS.** Oral statements made by a hearing instrument dispenser regarding the provision of warranties, refunds, and service on the hearing instrument or instruments dispensed must be written on, and become part of, the contract of sale, specify the item or items covered, and indicate the person or business entity obligated to provide the warranty, refund, or service.

Subd. 9. **CONSUMER RIGHTS INFORMATION.** A hearing instrument dispenser shall, at the time of the recommendation or prescription, give a consumer rights brochure, prepared by the commissioner and containing information about legal requirements pertaining to sales of hearing instruments, to each potential buyer of a hearing instrument. A sales contract for a hearing instrument must note the receipt of the brochure by the buyer.

Subd. 10. **LIABILITY FOR CONTRACTS.** Owners of entities in the business of dispensing hearing instruments, employers of persons who dispense hearing instruments, and ~~sponsors and~~ supervisors of trainees are liable for satisfying all terms of contracts, written or oral, made by their agents, employees, assignees, affiliates, or trainees, including terms relating to products, repairs, warranties, service, and refunds. The commissioner may enforce the terms of hearing instrument sales contracts against the principal, employer, ~~sponsor,~~ or supervisor of an agent, employee, or trainee and may impose any remedy provided for in this chapter.

Subd. 11. **REQUIREMENT TO MAINTAIN CURRENT INFORMATION.** A dispenser must notify the commissioner in writing within 30 days of the occurrence of any of the following:

(1) a change of address, home, or business telephone number, or business name;

(2) the occurrence of conduct prohibited by section 153A.15;

(3) a settlement, conciliation court judgment, or award based on negligence, intentional acts, or contractual violations committed in the dispensing of hearing instruments by the dispenser; and

(4) the cessation of hearing instrument dispensing activities as an individual or a business.

Sec. 26. Minnesota Statutes 1994, section 153A.15, subdivision 1, is amended to read:

Subdivision 1. **PROHIBITED ACTS.** The commissioner may reject an application for a certificate or may act under subdivision 2 against a dispenser of hearing instruments for failure to comply with this chapter. Failure to apply to the commissioner for a certificate, or supplying false or misleading information on the application for a certificate, is a ground for action under subdivision 2. The following acts and conduct are also grounds for action under subdivision 2:

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(1) prescribing or otherwise recommending to a consumer or potential consumer the use of a hearing instrument, unless the prescription from a physician or recommendation from a hearing instrument dispenser or audiologist is in writing, is based on an audiogram that is delivered to the consumer or potential consumer, when the prescription or recommendation is made, and bears the following information in all capital letters of 12-point or larger bold-face type: "THIS PRESCRIPTION OR RECOMMENDATION MAY BE FILLED BY, AND HEARING INSTRUMENTS MAY BE PURCHASED FROM, THE CERTIFIED DISPENSER, AUDIOLOGIST, OR PHYSICIAN OF YOUR CHOICE" ~~and unless the prescription or written recommendation includes, upon the authorization of the consumer or potential consumer, the audiogram upon which the prescription or recommendation is based if there has been a charge for the audiogram;~~

(2) ~~representing through any advertising or communication to a consumer or potential consumer that a person's certification to dispense hearing instruments indicates state approval or endorsement~~ failing to give a copy of the audiogram, upon which the prescription or recommendation is based, to the consumer when there has been a charge for the audiogram and the consumer requests a copy;

(3) failing to provide the consumer rights brochure required by section 153A.14, subdivision 9;

(4) ~~being disciplined through a revocation, suspension, restriction, or limitation by another state for conduct subject to action under this chapter;~~

(4) ~~(5)~~ presenting advertising that is false or misleading;

~~(5)~~ (6) providing the commissioner with false or misleading statements of credentials, training, or experience;

~~(6)~~ (7) engaging in conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a consumer;

~~(7)~~ (8) splitting fees or promising to pay a portion of a fee to any other professional other than a fee for services rendered by the other professional to the client;

~~(8)~~ (9) engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws, Food and Drug Administration regulations, or state medical assistance laws;

~~(9)~~ (10) obtaining money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud;

~~(10)~~ (11) failing to comply with restrictions on sales of hearing aids in ~~section~~ sections 153A.14, subdivision 9, and 153A.19;

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~~(11)~~ (12) performing the services of a certified hearing instrument dispenser in an incompetent or negligent manner; or

(12) (13) failing to comply with the requirements of this chapter as an employer, supervisor, ~~sponsor~~, or trainee;

(14) failing to provide information in a timely manner in response to a request by the commissioner, commissioner's designee, or the advisory council;

(15) being convicted within the past five years of violating any laws of the United States, or any state or territory of the United States, and the violation is a felony, gross misdemeanor, or misdemeanor, an essential element of which relates to hearing instrument dispensing, except as provided in chapter 364;

(16) failing to cooperate in good faith with the commissioner, the commissioner's designee, or the advisory council in any investigation;

(17) failing to perform hearing instrument dispensing with reasonable judgment, skill, or safety due to the use of alcohol or drugs, or other physical or mental impairment;

(18) failing to fully disclose actions taken against the applicant or the applicant's legal authorization to dispense hearing instruments in this or another state;

(19) violating a state or federal court order or judgment, including a conciliation court judgment, relating to the activities of the applicant in hearing instrument dispensing;

(20) having been or being disciplined by the commissioner of the department of health, or other authority, in this or another jurisdiction, if any of the grounds for the discipline are the same or substantially equivalent to those in sections 153A.13 to 153A.19;

(21) misrepresenting the purpose of hearing tests, or in any way communicating that the hearing test or hearing test protocol required by section 153A.14, subdivision 4b, is a medical evaluation, a diagnostic hearing evaluation conducted by an audiologist, or is other than a test to select a hearing instrument, except that the hearing instrument dispenser can determine the need for or recommend the consumer obtain a medical evaluation consistent with requirements of the United States Food and Drug Administration;

(22) violating any of the provisions of sections 153A.13 to 153A.19; and

(23) aiding or abetting another person in violating any of the provisions of sections 153A.13 to 153A.19.

Sec. 27. Minnesota Statutes 1994, section 153A.15, subdivision 2, is amended to read:

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Subd. 2. **ENFORCEMENT ACTIONS.** When the commissioner finds that a dispenser of hearing instruments has violated one or more provisions of this chapter, the commissioner may do one or more of the following:

- (1) deny or reject the application for a certificate;
- (2) revoke the certificate;
- (3) suspend the certificate;

(4) impose, for each violation, a civil penalty that deprives the dispenser of any economic advantage gained by the violation and that reimburses the department of health for costs of the investigation and proceeding resulting in disciplinary action, including the amount paid for services of the office of administrative hearings, the amount paid for services of the office of the attorney general, attorney fees, court reporters, witnesses, reproduction of records, advisory council members' per diem compensation, department staff time, and expenses incurred by advisory council members and department staff;

- (5) censure or reprimand the dispenser;
- (6) revoke or suspend the right to ~~sponsor~~ supervise trainees;
- (7) revoke or suspend the right to be a trainee;
- (8) impose a civil penalty not to exceed \$10,000 for each separate violation;

or

- ~~(8)~~ (9) any other action reasonably justified by the individual case.

Sec. 28. Minnesota Statutes 1994, section 153A.17, is amended to read:

153A.17 **EXPENSES; FEES.**

The expenses for administering the certification requirements including the complaint handling system for hearing aid dispensers in sections 153A.14 and 153A.15 and the consumer information center under section 153A.18 must be paid from initial application and examination fees, renewal fees, penalties, and fines. All fees are nonrefundable. The certificate application fee is \$280, the examination fee is \$200, and the trainee application fee is \$100, except that the certification application fee for a registered audiologist is \$280 minus the audiologist registration fee of \$101. In addition, both certification and examination fees are subject to a surcharge of \$60 to recover, over a five-year period, the commissioner's accumulated direct expenditures for administering the requirements of this chapter, but not registration of hearing instrument dispensers under section 214.13, before November 1, 1994. The penalty fee for late submission of a renewal application is \$70. All fees, penalties, and fines received must be deposited in the state government special revenue fund. The commissioner may prorate the certification fee for new applicants based on the number of quarters remaining in the annual certification period.

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Sec. 29. Minnesota Statutes 1994, section 153A.18, is amended to read:

153A.18 CONSUMER INFORMATION CENTER.

The commissioner shall establish a consumer information center to assist actual and potential purchasers of hearing aids by providing them with information regarding hearing instrument sales. The consumer information center shall disseminate information about consumers' legal rights related to hearing instrument sales, provide information relating to complaints about ~~sellers~~ dispensers of hearing instruments, and provide information about outreach and advocacy services for consumers of hearing instruments. In establishing the center and developing the information, the commissioner shall consult with representatives of hearing instrument ~~sellers~~ dispensers, audiologists, physicians, and consumers.

Sec. 30. Minnesota Statutes 1994, section 153A.19, is amended to read:

153A.19 HEARING AIDS; RESTRICTIONS ON SALES.

~~Subdivision 1. DEFINITION. "Hearing aid" means any instrument or device designed for or represented as aiding defective human hearing, and any parts, attachments, or accessories of the instrument or device, including but not limited to ear molds. Batteries and cords shall not be considered parts, attachments, or accessories of a hearing aid.~~

Subd. 2. **[30-DAY GUARANTEE AND BUYER RIGHT TO CANCEL.]**
No person shall sell a hearing aid in this state unless:

(a) The ~~seller~~ dispenser provides the buyer with a 30-day written money-back guarantee. The guarantee must permit the buyer to cancel the purchase for any reason within 30 days after receiving the hearing aid by giving or mailing written notice of cancellation to the ~~seller~~ dispenser. If the hearing aid must be repaired, remade, or adjusted during the 30-day money-back guarantee period, the running of the 30-day period is suspended one day for each 24-hour period that the hearing aid is not in the buyer's possession. A repaired, remade, or adjusted hearing aid must be claimed by the buyer within three working days after notification of availability, after which time the running of the 30-day period resumes. The guarantee must entitle the buyer, upon cancellation, to receive a full refund of payment within 30 days of return of the hearing aid to the ~~seller~~ dispenser. The ~~seller~~ dispenser may retain as a cancellation fee ten percent of the buyer's total purchase price of the hearing aid.

(b) The ~~seller~~ dispenser shall provide the buyer with a contract written in plain English, that contains uniform language and provisions that meet the requirements ~~and are certified by the attorney general~~ under the Plain Language Contract Act, sections 325G.29 to 325G.36. The contract must include, but is not limited to, the following: in immediate proximity to the space reserved for the signature of the buyer, or on the first page if there is no space reserved for the signature of the buyer, a clear and conspicuous disclosure of the following

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specific statement in all capital letters of no less than 12-point boldface type: MINNESOTA STATE LAW GIVES THE BUYER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO MIDNIGHT OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID(S). THIS CANCELLATION MUST BE IN WRITING AND MUST BE GIVEN OR MAILED TO THE SELLER. IF THE BUYER DECIDES TO RETURN THE HEARING AID(S) WITHIN THIS 30-DAY PERIOD, THE BUYER WILL RECEIVE A REFUND OF \$..... (State the dollar amount of refund.)

Subd. 3. **ITEMIZED REPAIR BILL.** ~~(a)~~ Any person or company who agrees to repair a hearing aid must provide the owner of the hearing aid, or the owner's representative, with a bill that ~~specifically itemizes all parts and labor charges for~~ describes the repair and services rendered. The bill must also include the repairing person's or company's name, address, and phone number.

~~(b)~~ This subdivision does not apply to:

~~(1)~~ a person or company that repairs a hearing aid pursuant to an express warranty covering the entire hearing aid and the warranty covers the entire costs, both parts and labor, of the repair; ~~and,~~

~~(2)~~ a person or company that repairs a hearing aid and the entire hearing aid, after being repaired, is expressly warranted for a period of at least six months; the warranty covers the entire costs, both parts and labor, of the repair; and a copy of the express warranty is given to the owner or the owner's representative. The owner of the hearing aid or the owner's representative must be given a written express warranty that includes the name, address, and phone number of the repairing person or company; the make, model, and serial number of the hearing aid repaired; the exact date of the last day of the warranty period; and the terms of the warranty.

Subd. 4. **REPAIR WARRANTY.** Any guarantee of hearing aid repairs must be in writing and delivered to the owner of the hearing aid, or the owner's representative, stating the ~~repairer's~~ repairing person's or company's name, address, telephone number, length of guarantee, model, and serial number of the hearing aid and all other terms and conditions of the guarantee.

Subd. 5. **MISDEMEANOR.** Any person who is found to have violated this section is guilty of a misdemeanor.

Subd. 6. **ADDITIONAL.** In addition to the penalties provided in subdivision 5, any person who is found to have violated this section is subject to the penalties and remedies provided in section 325F.69, subdivision 1.

Subd. 7. **ESTIMATES.** Upon the request of the owner of a hearing aid or the owner's representative for a written estimate and prior to the commencement of repairs, a repairing person or company shall provide the customer with a written estimate of the price of repairs. If a repairing person or company pro-

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vides a written estimate of the price of repairs, it shall not charge more than the total price stated in the estimate for the repairs. If the repairing person or company after commencing repairs determines that additional work is necessary to accomplish repairs that are the subject of a written estimate and if the repairing person or company did not unreasonably fail to disclose the possible need for the additional work when the estimate was made, the repairing person or company may charge more than the estimate for the repairs if the repairing person or company immediately provides the owner or owner's representative a revised written estimate pursuant to this section and receives authorization to continue with the repairs. If continuation of the repairs is not authorized, the repairing person or company shall return the hearing aid as close as possible to its former condition and shall release the hearing aid to the owner or owner's representative upon payment of charges for repairs actually performed and not in excess of the original estimate.

Sec. 31. [153A.20] HEARING INSTRUMENT DISPENSER ADVISORY COUNCIL.

Subdivision 1. MEMBERSHIP. The commissioner shall appoint nine persons to a hearing instrument dispenser advisory council.

(a) The nine persons must include:

(1) three public members, as defined in section 214.02. At least one of the public members shall be a hearing instrument user and one of the public members shall be either a hearing instrument user or an advocate of one; and

(2) three hearing instrument dispensers certified under sections 153A.14 to 153A.20, each of whom is currently, and has been for the five years immediately preceding their appointment, engaged in hearing instrument dispensing in Minnesota and who represent the occupation of hearing instrument dispensing and who are not audiologists; and

(3) three audiologists who are certified hearing instrument dispensers, are registered as audiologists under Minnesota Rules, chapter 4750, or if no rules are in effect, audiologists who hold current certificates of clinical competence in audiology from the American Speech-Language-Hearing Association and who represent the occupation of audiology.

(b) The factors the commissioner may consider when appointing advisory council members include, but are not limited to, professional affiliation, geographical location, and type of practice.

(c) No two members of the advisory council shall be employees of, or have binding contracts requiring sales exclusively for, the same hearing instrument manufacturer or the same employer.

Subd. 2. ORGANIZATION. The advisory council shall be organized and administered according to section 15.059, except that, notwithstanding any

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other law to the contrary, the advisory council shall not expire. The council may form committees to carry out its duties.

Subd. 3. DUTIES. At the commissioner's request, the advisory council shall:

(1) advise the commissioner regarding hearing instrument dispenser certification standards;

(2) advise the commissioner on enforcement of sections 153A.13 to 153A.20;

(3) provide for distribution of information regarding hearing instrument dispenser certification standards;

(4) review applications and make recommendations to the commissioner on granting or denying certification or certification renewal;

(5) review reports of investigations relating to individuals and make recommendations to the commissioner as to whether certification should be denied or disciplinary action taken against the individual; and

(6) perform other duties authorized for advisory councils by chapter 214, or as directed by the commissioner.

Sec. 32. Minnesota Statutes 1994, section 214.01, subdivision 2, is amended to read:

Subd. 2. **HEALTH-RELATED LICENSING BOARD.** "Health-related licensing board" means the board of examiners of nursing home administrators established pursuant to section 144A.19, the board of medical practice created pursuant to section 147.01, the board of nursing created pursuant to section 148.181, the board of chiropractic examiners established pursuant to section 148.02, the board of optometry established pursuant to section 148.52, the board of psychology established pursuant to section 148.90, the social work licensing board pursuant to section 148B.19, the board of marriage and family therapy pursuant to section 148B.30, the office of mental health practitioner advisory council practice established pursuant to section ~~148B.62~~ 148B.61, the chemical dependency counseling licensing advisory council established pursuant to section 148C.02, the board of dietetics and nutrition practice established under section 148.622, the board of dentistry established pursuant to section 150A.02, the board of pharmacy established pursuant to section 151.02, the board of podiatric medicine established pursuant to section 153.02, and the board of veterinary medicine, established pursuant to section 156.01.

Sec. 33. Minnesota Statutes 1994, section 214.10, subdivision 8, is amended to read:

Subd. 8. **SPECIAL REQUIREMENTS FOR HEALTH-RELATED LICENSING BOARDS.** In addition to the provisions of this section that apply

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to all examining and licensing boards, the requirements in this subdivision apply to all health-related licensing boards, except the board of veterinary medicine.

(a) If the executive director or consulted board member determines that a communication received alleges a violation of statute or rule that involves sexual contact with a patient or client, the communication shall be forwarded to the designee of the attorney general for an investigation of the facts alleged in the communication. If, after an investigation it is the opinion of the executive director or consulted board member that there is sufficient evidence to justify disciplinary action, the board shall conduct a disciplinary conference or hearing. If, after a hearing or disciplinary conference the board determines that misconduct involving sexual contact with a patient or client occurred, the board shall take disciplinary action. Notwithstanding subdivision 2, a board may not attempt to correct improper activities or redress grievances through education, conciliation, and persuasion, unless in the opinion of the executive director or consulted board member there is insufficient evidence to justify disciplinary action. The board may settle a case by stipulation prior to, or during, a hearing if the stipulation provides for disciplinary action.

(b) In addition to the information required under section 214.07, subdivision 1, each board shall include in its reports to the legislature summaries of each individual case that involved possible sexual contact with a patient or client. The summary must include a description of the alleged misconduct; the general results of the investigation; the nature of board activities relating to that case; the disposition of the case; and the reasons for board decisions concerning the disposition of the case. The information disclosed under this section must not include the name or specific identifying information about any person, agency, or organization.

(c) A board member who has a direct current or former financial connection or professional relationship to a person who is the subject of board disciplinary activities must not participate in board activities relating to that case.

(d) Each health-related licensing board shall establish procedures for exchanging information with other Minnesota state boards, agencies, and departments responsible for ~~licensing~~ regulating health-related occupations, facilities, and programs, and for coordinating investigations involving matters within the jurisdiction of more than one ~~licensing~~ regulatory body. The procedures must provide for the forwarding to other ~~licensing~~ regulatory bodies of all information and evidence, including the results of investigations, that are relevant to matters within that licensing body's regulatory jurisdiction. Each health-related licensing board shall have access to any data of the department of human services relating to a person subject to the jurisdiction of the licensing board. The data shall have the same classification under sections 13.01 to 13.88, the Minnesota government data practices act, in the hands of the agency receiving the data as it had in the hands of the department of human services.

(e) Each health-related licensing board shall establish procedures for .

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exchanging information with other states regarding disciplinary actions against licensees. The procedures must provide for the collection of information from other states about disciplinary actions taken against persons who are licensed to practice in Minnesota or who have applied to be licensed in this state and the dissemination of information to other states regarding disciplinary actions taken in Minnesota. In addition to any authority in chapter 13 permitting the dissemination of data, the board may, in its discretion, disseminate data to other states regardless of its classification under chapter 13. Before transferring any data that is not public, the board shall obtain reasonable assurances from the receiving state that the data will not be made public.

Sec. 34. Minnesota Statutes 1994, section 214.103, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION.** For purposes of this section, "board" means "health-related licensing board" and does not include the alcohol and drug counselors licensing advisory council established pursuant to section 148C.02, or the non-health-related licensing boards. Nothing in this section supersedes section 214.10, subdivisions 2a, 3, 8, and 9, as they apply to the health-related licensing boards.

Sec. 35. **REPEALER.**

Minnesota Statutes 1994, sections 148B.62; 148C.01, subdivision 8; 148C.03, subdivisions 2 and 3; 148C.035; 148C.09, subdivision 3; and 153A.19, subdivision 1, are repealed.

Minnesota Rules, chapters 4692; and 4745, are repealed.

Sec. 36. **EFFECTIVE DATE.**

Sections 1 to 34 are effective the day following final enactment.

Presented to the governor May 12, 1995

Signed by the governor May 15, 1995, 10:10 a.m.

CHAPTER 165—H.F.No. 1037

An act relating to health; providing rulemaking authority; modifying enforcement and fee provisions; modifying the hearing instrument dispenser trainee period; providing penalties; amending Minnesota Statutes 1994, sections 144.414, subdivision 3; 144.417, subdivision 1; 144.98, subdivision 3; 144.99, subdivisions 1, 4, 6, 8, and 10; 144.991, subdivision 5; 326.71, subdivision 4; 326.75, subdivision 3a; and 326.78, subdivisions 2 and 9; proposing coding for new law in Minnesota Statutes, chapters 144; and 157; repealing Minnesota Statutes 1994, sections 144.877, subdivision 5; and 144.8781, subdivision 4; Laws 1993, chapter 286, section 11; Minnesota Rules, part 4620.1500.

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