

regular or special council meeting for the remainder of the unexpired term, or until the person is again able to resume duties and attend council meetings, whichever is earlier. When the person is again able to resume duties and attend council meetings, the council shall by resolution remove the temporary officeholder and restore the original officeholder.

Presented to the governor March 30, 1996

Signed by the governor April 2, 1996, 12:53 p.m.

CHAPTER 423—H.F.No. 66

VETOED

CHAPTER 424—S.F.No. 842

An act relating to occupations and professions; board of psychology; modifying board duties; changing types of licensure; changing licensure provisions; providing for discipline; providing penalties; amending Minnesota Statutes 1994, sections 148.88; 148.881; 148.89, subdivisions 2a and 5; 148.90, subdivisions 1 and 2; 148.905, subdivision 1; 148.911; 148.925; 148.941, subdivisions 2, 4, and by adding subdivisions; 148.96; 148.975; 148.98; 253B.02, subdivision 11; Minnesota Statutes 1995 Supplement, section 147.09; proposing coding for new law in Minnesota Statutes, chapter 148; repealing Minnesota Statutes 1994, sections 148.89, subdivisions 6, 7, and 8; 148.91; 148.93; 148.951; and 148.97; Minnesota Statutes 1995 Supplement, section 148.921.

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

Section 1. Minnesota Statutes 1995 Supplement, section 147.09, is amended to read:

147.09 EXEMPTIONS.

Section 147.081 does not apply to, control, prevent or restrict the practice, service, or activities of:

(1) A person who is a commissioned medical officer of, a member of, or employed by, the armed forces of the United States, the United States Public Health Service, the Veterans Administration, any federal institution or any federal agency while engaged in the performance of official duties within this state, if the person is licensed elsewhere.

(2) A licensed physician from a state or country who is in actual consultation here.

(3) A licensed or registered physician who treats the physician's home state patients or other participating patients while the physicians and those patients are participating together in outdoor recreation in this state as defined by section 86A.03, subdivision 3. A physician shall first register with the board on a form developed by the board for that purpose. The board shall not be required to promulgate the contents of that form by rule. No fee shall be charged for this registration.

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(4) A student practicing under the direct supervision of a preceptor while the student is enrolled in and regularly attending a recognized medical school.

(5) A student who is in continuing training and performing the duties of an intern or resident or engaged in postgraduate work considered by the board to be the equivalent of an internship or residency in any hospital or institution approved for training by the board, provided the student has a residency permit issued by the board under section 147.0391.

(6) A person employed in a scientific, sanitary, or teaching capacity by the state university, the department of children, families, and learning, or by any public or private school, college, or other bona fide educational institution, or the state department of health, whose duties are entirely of a public health or educational character, while engaged in such duties.

(7) Physician's assistants registered in this state.

(8) A doctor of osteopathy duly licensed by the state board of osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16, prior to May 1, 1963, who has not been granted a license to practice medicine in accordance with this chapter provided that the doctor confines activities within the scope of the license.

(9) Any person licensed by a health related licensing board, as defined in section 214.01, subdivision 2, or registered by the commissioner of health pursuant to section 214.13, including psychological practitioners with respect to the use of hypnosis; provided that the person confines activities within the scope of the license.

(10) A person who practices ritual circumcision pursuant to the requirements or tenets of any established religion.

(11) A Christian Scientist or other person who endeavors to prevent or cure disease or suffering exclusively by mental or spiritual means or by prayer.

(12) A physician licensed to practice medicine in another state who is in this state for the sole purpose of providing medical services at a competitive athletic event. The physician may practice medicine only on participants in the athletic event. A physician shall first register with the board on a form developed by the board for that purpose. The board shall not be required to adopt the contents of the form by rule. The physician shall provide evidence satisfactory to the board of a current unrestricted license in another state. The board shall charge a fee of \$50 for the registration.

(13) A psychologist licensed under section ~~148.91~~ 148.907 or a social worker licensed under section 148B.21 who uses or supervises the use of a penile or vaginal plethysmograph in assessing and treating individuals suspected of engaging in aberrant sexual behavior and sex offenders.

Sec. 2. Minnesota Statutes 1994, section 148.88, is amended to read:

148.88 **CITATION.**

Sections 148.88 to 148.98 and the rules adopted under them, shall be cited as the Minnesota licensing law for psychologists psychology practice act.

Sec. 3. Minnesota Statutes 1994, section 148.881, is amended to read:

New language is indicated by underline, deletions by strikeout.

148.881 DECLARATION OF POLICY.

The practice of psychology in Minnesota affects the public health, safety, and welfare. The regulations in sections 148.88 to 148.98 protect the public from the practice of psychology by unqualified persons and from unethical or unprofessional conduct by persons licensed to practice psychology.

Sec. 4. Minnesota Statutes 1994, section 148.89, subdivision 2a, is amended to read:

Subd. 2a. **CLIENT.** "Client" means a each person or legal, religious, academic, organizational, business, governmental, or other entity that receives, received, or should have received, or arranged for another entity to receive services from a person regulated under sections 148.88 to 148.98. For the purposes of sections 148.88 to 148.98, "client" includes may include patient and, resident, counselee, evaluatee, and, as limited in the rules of conduct, student, supervisee, or research subject. In the case of dual clients, the psychologist must be aware of the responsibilities to each client, and of the potential for divergent interests of each client.

Sec. 5. Minnesota Statutes 1994, section 148.89, subdivision 5, is amended to read:

Subd. 5. **PRACTICE OF PSYCHOLOGY.** "Practice of psychology" means the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures, to prevent or eliminate symptomatic, maladaptive, or undesired behavior and to enhance interpersonal relationships, work and life adjustment, personal and organizational effectiveness, behavioral health, and mental health. The practice of psychology includes, but is not limited to, the following services, regardless of whether the provider receives payment for the services:

(1) psychological research, psychological testing, teaching of psychology, and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;

(2) counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and diagnosis and treatment of:

(i) mental and emotional disorder or disability;

(ii) alcoholism and substance abuse;

(iii) disorders of habit or conduct; and

(iv) the psychological aspects of physical illness or condition, accident, injury, or disability; and

(v) bereavement issues;

(vi) family or relationship issues; and

(vii) work-related issues; and

(3) psychoeducational evaluation, therapy, remediation, and consultation. Recipients of psychological services include individuals, families, groups, organizations, and the public.

Sec. 6. Minnesota Statutes 1994, section 148.90, subdivision 1, is amended to read:

New language is indicated by underline, deletions by strikeout.

Subdivision 1. **BOARD OF PSYCHOLOGY.** (a) The board of psychology is created with the powers and duties described in this section. The board has 11 members who consist of:

(1) three persons licensed as licensed psychologists who have a doctoral degree in psychology;

(2) two persons licensed as licensed psychologists who have a master's degree in psychology;

(3) two psychologists, not necessarily licensed, one with a doctoral degree in psychology who represents a doctoral training program in psychology, and one who represents a master's degree training program in psychology;

(4) one person licensed or qualified to be licensed as a psychological practitioner; and

(5) three public members.

(b) After the date on which fewer than 30 percent of the persons licensed by the board as licensed psychologists qualify for licensure under section ~~148.921, subdivision 2~~ 148.907, subdivision 3, paragraph (b), the first vacancy filled under paragraph (a), clause (2), must shall be filled by a person licensed or qualified to be licensed as a licensed psychological practitioner. From this date on, this position when vacant ~~must shall~~ be filled by a person licensed or qualified to be licensed as a licensed psychological practitioner.

(c) After the date on which fewer than 15 percent of the persons licensed by the board as licensed psychologists qualify for licensure under section ~~148.921, subdivision 2~~ 148.907, subdivision 3, paragraph (b), the first vacancy under paragraph (a), clause (2), for a person licensed as a licensed psychologist with a master's degree in psychology must shall be filled by a person licensed as a licensed psychologist who has a doctoral degree in psychology. From this date on, this position when vacant ~~must shall~~ be filled by a person licensed as a licensed psychologist who has a doctoral degree in psychology.

~~(d) Following the filling of the first vacancy under paragraph (c), no further appointments shall be made pursuant to paragraph (a), clause (2).~~

Sec. 7. Minnesota Statutes 1994, section 148.90, subdivision 2, is amended to read:

Subd. 2. **MEMBERS.** (a) The members of the board shall:

(1) be appointed by the governor;

(2) be residents of the state;

(3) serve for not more than two consecutive terms;

(4) designate the officers of the board; and

(5) administer oaths pertaining to the business of the board.

(b) A public member of the board shall ~~broadly~~ represent the public interest and shall not:

(1) be a psychologist, psychological practitioner, or ~~engage~~ have engaged in the practice of psychology ~~before retirement;~~

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- (2) be an applicant or former applicant for licensure;
- (3) be a member of another health profession;
- (4) be a member of a household that includes a psychologist or psychological practitioner; or
- (5) have conflicts of interest or the appearance of conflicts with duties as a board member.

Sec. 8. Minnesota Statutes 1994, section 148.905, subdivision 1, is amended to read:

Subdivision 1. **GENERAL.** The board shall:

(1) adopt and enforce rules for licensing psychologists and psychological practitioners and for regulating their professional conduct. The rules must include, but are not limited to, standards for training, supervision, the practice of psychology, and any other areas covered by sections 148.88 to 148.98;

(2) adopt rules that provide for examinations and establish a code of professional ethics and requirements for continuing education and enforce rules of conduct governing the practice of psychology;

(3) hold examinations adopt and implement rules for examinations which shall be held at least once a year to assess applicants' knowledge and skills. The examinations may be written or oral or both, and may be administered by the board or by institutions or individuals designated by the board;

(4) issue licenses to individuals qualified under section 148.91 sections 148.907 and 148.908, according to the procedures for licensing in Minnesota Rules;

(5) issue copies of the rules for licensing to all applicants;

(6) establish and maintain annually a register of current licenses;

(7) establish reasonable and collect fees for the issuance and renewal of licenses and other services by the board. Fees must shall be set to defray the cost of administering the provisions of sections 148.88 to 148.98 including costs for applications, examinations, enforcement, materials, and the cost of maintaining the operations of the board;

(8) educate the public about the requirements for licensing of psychologists and of psychological practitioners and about the code of professional ethics rules of conduct, to allow consumers enable the public to file complaints against applicants or licensees who may have violated licensing requirements or professional ethics the psychology practice act; and

(9) adopt and implement requirements for continuing education and establish or approve programs that qualify for professional psychology continuing educational credit. The board may hire consultants, agencies, or professional psychological associations to establish and approve continuing education courses.

Sec. 9. [148.906] **LEVELS OF PRACTICE.**

The board may grant licenses for levels of psychological practice to be known as (1) licensed psychologist and (2) licensed psychological practitioner.

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Sec. 10. [148.907] LICENSED PSYCHOLOGIST.

Subdivision 1. EFFECTIVE DATE. After August 1, 1991, no person shall engage in the independent practice of psychology unless that person is licensed as a licensed psychologist.

Subd. 2. REQUIREMENTS FOR LICENSURE AS A LICENSED PSYCHOLOGIST. To become licensed by the board as a licensed psychologist, an applicant shall comply with the following requirements:

- (1) pass an examination in psychology;
- (2) pass a professional responsibility examination on the practice of psychology;
- (3) pass any other examinations as required by board rules;
- (4) pay nonrefundable fees to the board for applications, processing, testing, renewals, and materials;
- (5) have attained the age of majority, be of good moral character, and have no unresolved disciplinary action or complaints pending in the state of Minnesota or any other jurisdiction;
- (6) have a doctoral degree with a major in psychology from a regionally accredited educational institution meeting the standards the board has established by rule; and
- (7) have completed at least two full years or the equivalent of postdoctoral supervised psychological employment.

Subd. 3. MASTER'S LEVEL LICENSURE AS A LICENSED PSYCHOLOGIST AFTER AUGUST 1, 1991. (a) A person licensed in this state as a licensed consulting psychologist or a licensed psychologist before August 1, 1991, qualifies for licensure as a licensed psychologist, as described in subdivision 2, at the time of license renewal.

(b) Providing all other licensure requirements have been satisfactorily met, the board shall grant licensure as a licensed psychologist to a person who:

(1) before November 1, 1991, entered a graduate program at a regionally accredited educational institution granting a master's or doctoral degree with a major in psychology which meets the standards the board has established by rule;

(2) before December 31, 1997, earned a master's degree or a master's equivalent in a doctoral program at a regionally accredited educational institution and complied with requirements of subdivision 2, clauses (1) to (5), except that the nonrefundable fees for licensure are payable at the time an application for licensure is submitted; and

(3) before December 31, 1998, completed at least two full years or the equivalent of post-master's supervised psychological employment, which may include a predoctoral internship.

(c) Notwithstanding paragraph (b), the board shall not grant licensure as a licensed psychologist under this subdivision unless the applicant demonstrates that the applicant was a resident of Minnesota on October 31, 1992, and meets all the requirements for licensure under this subdivision.

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Subd. 4. **CONVERTING FROM MASTER'S TO DOCTORAL LEVEL LICENSURE.** To convert from licensure as a licensed psychologist at the master's or master's equivalent level to licensure at the doctoral level, a licensed psychologist shall have:

- (1) completed an application provided by the board;
- (2) had an official transcript documenting the conferral of the doctoral degree sent directly from the educational institution to the board;
- (3) paid a nonrefundable fee;
- (4) successfully completed two full years or the equivalent of supervised psychological employment, which shall not include a predoctoral internship, after earning a master's degree or a master's equivalent in a doctoral program;
- (5) successfully completed a predoctoral internship meeting the standards the board has established by rule; and
- (6) received a doctoral degree with a major in psychology from a regionally accredited educational institution meeting the standards the board has established by rule.

Sec. 11. **[148.908] LICENSED PSYCHOLOGICAL PRACTITIONER.**

Subdivision 1. **SCOPE OF PRACTICE.** A licensed psychological practitioner shall practice only under supervision that satisfies the requirements of section 148.925 and while employed by either a licensed psychologist or a health care or social service agency which employs or contracts with a supervising licensed psychologist who shares clinical responsibility for the care provided by the licensed psychological practitioner.

Subd. 2. **REQUIREMENTS FOR LICENSURE AS A LICENSED PSYCHOLOGICAL PRACTITIONER.** To become licensed by the board as a licensed psychological practitioner, an applicant shall comply with the following requirements:

- (1) pass an examination in psychology;
- (2) pass a professional responsibility examination on the practice of psychology;
- (3) pass any other examinations as required by board rules;
- (4) pay nonrefundable fees to the board for applications, processing, testing, renewals, and materials;
- (5) attained the age of majority, be of good moral character, and have no unresolved disciplinary action or complaints pending in the state of Minnesota or any other jurisdiction; and
- (6) have received a doctoral or master's degree or the equivalent of a master's degree in a doctoral program with a major in psychology from a regionally accredited educational institution meeting the standards the board has established by rule.

Sec. 12. Minnesota Statutes 1994, section 148.911, is amended to read:

148.911 CONTINUING EDUCATION.

When the licensee renews the license, the licensee must provide the board with satisfactory evidence that the licensee has completed continuing education requirements es-

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established by the board. Continuing education programs must be approved under section 148.905, subdivision 1, clause (9). The board shall establish by rule the number of continuing education training hours required each year and may specify subject or skills areas that the licensee must address. In specifying subject or skills areas, the board shall consider the need for continuing education requirements in the areas of ethics, forensic practice, and supervision.

Upon application for license renewal, a licensee shall provide the board with satisfactory evidence that the licensee has completed continuing education requirements established by the board. Continuing education programs shall be approved under section 148.905, subdivision 1, clause (9). The board shall establish by rule the number of continuing education training hours required each year and may specify subject or skills areas that the licensee shall address.

Sec. 13. **[148.915] RECIPROCITY.**

The board may grant a license to a diplomate of the American Board of Professional Psychology or to any person who at the time of application is licensed, certified, or registered to practice psychology by a board of another state and who meets the licensure requirements under section 148.907, subdivision 2. The board, at its discretion, may elect not to require the examination in psychology under section 148.907, subdivision 2, clause (1), if the person was licensed in another state before the examination was required for licensure in that state. The board, at its discretion, may grant a license as a licensed psychologist to a person who at the time of application is licensed, certified, or registered at the doctoral level for at least 15 years to practice psychology in another jurisdiction, and has had no disciplinary action taken against the license, certificate, or registration during the person's entire period of licensure, certification, or registration, but who has completed fewer than two years of postdegree supervised employment. An applicant seeking licensure under this section shall pass a professional responsibility examination on the practice of psychology and any other examinations as required by the board.

Sec. 14. **[148.916] GUEST LICENSURE.**

Subdivision 1. **GENERALLY.** If a nonresident of the state of Minnesota, who is not seeking licensure in this state, and who has been issued a license, certificate, or registration by another jurisdiction to practice psychology at the doctoral level, wishes to practice in Minnesota for more than seven calendar days, the person shall apply to the board for guest licensure, provided that the psychologist's practice in Minnesota is limited to no more than 30 days per calendar year. Application under this section shall be made no less than 30 days prior to the expected date of practice in Minnesota and shall be subject to approval by the board or its designee. The board shall charge a nonrefundable fee for guest licensure. The board shall adopt rules to implement this section.

Subd. 2. **PSYCHOLOGICAL CONSULTATIONS.** Notwithstanding subdivision 1, a nonresident of the state of Minnesota, who is not seeking licensure in this state, may serve as an expert witness, presenter, or educator without obtaining guest licensure, provided the person is appropriately trained, educated, or has been issued a license, certificate, or registration by another jurisdiction.

Subd. 3. **DISASTER OR EMERGENCY RELIEF WORKERS.** The requirements of subdivision 1 do not apply to psychologists sent to this state for the sole purpose of responding to a disaster or emergency relief effort of this state government, the federal

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government, the American Red Cross, or other disaster or emergency relief organization as long as the psychologist is not practicing in Minnesota for longer than 30 days and the American Red Cross, disaster or emergency relief organization, or government can certify the psychologist's assignment in this state. The board or its designee, at its discretion, may grant an extension to the 30-day time limitation of this subdivision.

Subd. 4. PROHIBITIONS AND SANCTIONS. A person's privilege to practice under this section is subject to the prohibitions and sanctions for unprofessional or unethical conduct contained in Minnesota laws and rules.

Sec. 15. Minnesota Statutes 1994, section 148.925, is amended to read:

148.925 SUPERVISION.

Subdivision 1. SUPERVISION. For the purpose of meeting the requirements of this section, supervision means documented in-person consultation between either: (1) a supervising licensed psychologist and a licensed psychological practitioner; or (2) a supervising licensed psychologist or a mental health professional designated by the supervising licensed psychologist and an applicant for licensure as a licensed psychologist. The supervision shall be adequate to assure the quality and competence of the activities supervised. Supervisory consultation shall include discussions on the nature and content of the practice of the supervisee, including, but not limited to, a review of a representative sample of psychological services in the supervisee's practice.

Subd. 2. SUPERVISED PSYCHOLOGICAL EMPLOYMENT. Supervised psychological employment means paid or volunteer work experience and postdegree training of a person seeking to be licensed as a licensed psychologist that involves the professional oversight by a licensed psychologist and satisfies the supervision requirements in subdivision 5.

Subd. 3. PERSONS QUALIFIED TO PROVIDE SUPERVISION. (a) Only the following persons are qualified to provide supervision for master's degree level applicants for licensure as a licensed psychologist. Supervision of a master's level applicant for licensure as a licensed psychologist shall be provided by a person:

(1) who is a licensed psychologist with a competency competencies both in supervision in professional the practice of psychology and in the area of practice activities being supervised; and

(2) a person who either is eligible for licensure as a licensed psychologist under section 148.91 or is eligible for licensure by reciprocity, and who, in the judgment of the board, is competent or experienced in supervising professional psychology and in the area of practice being supervised, who has a doctoral degree with a major in psychology, who is employed by a regionally accredited educational institution or employed by a federal, state, county, or local government institution, agency, or research facility, and who has competencies both in supervision in the practice of psychology and in the activities being supervised, provided the supervision is being provided and the activities being supervised occur within that regionally accredited educational institution or federal, state, county, or local government institution, agency, or research facility; or

(3) who is eligible for licensure as a licensed psychologist by reciprocity with competencies both in supervision in the practice of psychology and in the activities being supervised.

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(b) Professional Supervision of a doctoral level applicant for licensure as a licensed psychologist must shall be provided by a person:

(1) who meets the requirements of paragraph (a), clause (1) or (2), and is a licensed psychologist with a doctoral degree and with competencies both in supervision in the practice of psychology and in the activities being supervised;

(2)(i) who has a doctorate degree with a major in psychology, or

(ii) who has a doctoral degree with a major in psychology, who is employed by a regionally accredited educational institution or is employed by a federal, state, county, or local government institution, agency, or research facility, and who has competencies both in supervision in the practice of psychology and in the activities being supervised, provided the supervision is being provided and the activities being supervised occur within that regionally accredited educational institution or federal, state, county, or local government institution, agency, or research facility;

(3) who is eligible for licensure by reciprocity with competencies both in supervision in the practice of psychology and in the activities being supervised; or

(4) who is a licensed psychologist who was licensed by the board as a psychologist before August 1, 1991, and is certified by the board as competent in with competencies both in supervision of applicants for licensure in the practice of psychology and in the activities being supervised.

Subd. 2. 4. SUPERVISORY CONSULTATION FOR A LICENSED PSYCHOLOGICAL PRACTITIONER. (a) Supervisory consultation between a supervising licensed psychologist and a supervised licensed psychological practitioner must shall be at least one hour in duration and shall occur on a one-to-one individual, in-person basis at a ratio of at least. A minimum of one hour of supervision per month is required for the initial 20 or fewer hours of psychological services delivered per month and no less than one hour a month. The consultation must be at least one hour in duration. For each additional 20 hours of psychological services delivered per month, an additional hour of supervision must occur per month is required. However, if When more than 20 hours of psychological services are provided in a week, no time period more than one hour of supervision beyond one hour is required per week is required, but supervision must be adequate to assure the quality and competence of the services. Supervisory consultation must include discussions on the nature and content of the practice of the psychological practitioner, including but not limited to a review of a representative sample of psychological services in the supervisee's practice.

(b) Subd. 5. SUPERVISORY CONSULTATION FOR AN APPLICANT FOR LICENSURE AS A LICENSED PSYCHOLOGIST. Supervision of an applicant for licensure as a licensed psychologist must shall include at least two hours of regularly scheduled face-to-face in-person consultations a per week for full-time employment, one hour of which must shall be with the supervisor on a one-to-one individual basis. The remaining hour may be with other master's or doctoral prepared mental health professionals designated by the supervisor. The board may approve an exception to the weekly supervision requirement for a week when the supervisor was ill or otherwise unable to provide supervision. The board may prorate the two hours per week of supervision for persons preparing for licensure on a part-time basis. Supervised psychological em-

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ployment does not qualify for licensure when the supervisory consultation is not adequate as described in subdivision 1, or in the board rules.

Subd. 6. SUPERVISEE DUTIES. Persons preparing for licensure as a licensed psychologist during their postdegree supervised employment may perform as part of their training any functions specified in section 148.89, but only under qualified supervision.

Subd. 3. 7. WAIVER OF SUPERVISION REQUIREMENTS. (a) An applicant for licensure as a licensed psychologist who entered supervised employment before August 1, 1991, may request a waiver from the board of the supervision requirements in this section in order to continue supervision under the board rules in effect before August 1, 1991.

(b) The board shall grant a waiver from the supervision requirements of subdivision 4 to a licensed psychological practitioner who presents evidence of:

(1) completion of two full years or the equivalent of supervised post-master's degree employment, meeting the requirements of subdivision 5 as it relates to preparation for licensure as a licensed psychologist;

(2) endorsement for specific areas of competency by the licensed psychologist who provided the two years of supervision;

(3) employment by a hospital or by a community mental health center or nonprofit mental health clinic or social service agency providing services as a part of the mental health service plan required by the comprehensive mental health act;

(4) the employer's acceptance of clinical responsibility for the care provided by the licensed psychological practitioner; and

(5) a plan which is satisfactory to the board for supervising the work of the licensed psychological practitioner.

(c) After December 31, 1993, the supervision requirements must be deemed waived for a person who previously received a waiver under paragraph (b) and is seeking a new waiver because of a change of employment to a different employer or employment setting. The deemed waiver continues until the board either grants or denies the waiver. A person who has been denied a waiver is entitled to appeal the decision using a contested case hearing. The person must request a hearing within 30 days after receiving notice from the board that the request for a waiver has been denied. A deemed waiver under this paragraph continues until the appeal has been resolved.

Sec. 16. Minnesota Statutes 1994, section 148.941, subdivision 2, is amended to read:

Subd. 2. GROUNDS FOR DISCIPLINARY ACTION; FORMS OF DISCIPLINARY ACTION. (a) The board may impose disciplinary action as described in paragraph (b) against an applicant or licensee whom the board, by a preponderance of the evidence, determines:

(1) has violated a statute, rule, or order that the board issued or is empowered to enforce;

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(2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of psychology, that adversely affects the person's ability or fitness to practice psychology;

(3) has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established;

(4) has been convicted of or has pled guilty or nolo contendere to a felony or other crime, an element of which is dishonesty or fraud, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in the practice of psychology;

(5) has employed fraud or deception in obtaining or renewing a license, or in passing the an examination;

(6) has had a psychology license, certificate, ~~right registration, privilege to examine~~ take an examination, or other similar authority denied, revoked, suspended, canceled, limited, or not renewed for cause in any state, commonwealth, or territory of the United States, the District of Columbia, or any foreign country jurisdiction;

(7) has failed to meet any requirement for the issuance or renewal of the person's license. The burden of proof is on the applicant or licensee to demonstrate the qualifications or satisfy the requirements for a license under the psychology practice act;

(8) has failed to cooperate with an investigation of the board as required under subdivision 4; ~~or~~

(9) ~~has violated the code of ethics adopted by the board.~~

For the purposes of clause (7), the burden of proof is on the applicant to demonstrate the qualifications or satisfy the requirements for a license under sections 148.88 to 148.98.

has demonstrated an inability to practice psychology with reasonable skill and safety to clients due to any mental or physical illness or condition; or

(10) has engaged in fee splitting. This clause does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the licensee or under a licensee's administrative authority. Fee splitting includes, but is not limited to:

(i) paying, offering to pay, receiving, or agreeing to receive a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of clients;

(ii) dividing fees with another person or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional;

(iii) referring a client to any health care provider as defined in section 144.335 in which the referring licensee has a significant financial interest unless the licensee has disclosed in advance to the client the licensee's own financial interest; and

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(iv) dispensing for profit any instrument, test, procedure, or device, unless the licensee has disclosed in advance to the client the licensee's own profit interest.

(b) If grounds for disciplinary action exist under paragraph (a), the board may take one or more of the following actions:

- (1) refuse to grant or renew a license;
- (2) revoke a license;
- (3) suspend a license;

(4) impose limitations or conditions on a licensee's practice of psychology, including, but not limited to, limiting the scope of practice to designated competencies, imposing retraining or rehabilitation requirements, requiring the licensee to practice under supervision, or conditioning continued practice on the demonstration of knowledge or skill by appropriate examination or other review of skill and competence;

(5) censure or reprimand the licensee; or

(6) refuse to permit an applicant to take the licensure examination or refuse to release an applicant's examination grade if the board finds that it is in the public interest; or

(7) impose a civil penalty not exceeding \$5,000 for each separate violation. The amount of the penalty shall be fixed so as to deprive the applicant or licensee of any economic advantage gained by reason of the violation charged, or to discourage repeated violations.

(c) In lieu of or in addition to paragraph (b), the board may require, as a condition of continued licensure, termination of suspension, reinstatement of license, examination, or release of examination grades, that the applicant or licensee:

(1) submit to a quality review, as specified by the board, of the applicant's or licensee's ability, skills, or quality of work; and

(2) complete to the satisfaction of the board educational courses specified by the board.

(d) Service of the order is effective if the order is served on the applicant, licensee, or counsel of record personally or by mail to the most recent address provided to the board for the licensee, applicant, or counsel of record. The order shall state the reasons for the entry of the order.

Sec. 17. Minnesota Statutes 1994, section 148.941, subdivision 4, is amended to read:

Subd. 4. **COOPERATION OF APPLICANT APPLICANTS OR LICENSEE FOR LICENSEES WITH INVESTIGATIONS.** (a) An applicant or licensee of the board who is the subject of an investigation or who is questioned in connection with an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation, executing all releases requested by the board, providing copies of client records, as reasonably requested by the board to assist it in its investigation, and appearing at conferences or hearings scheduled by the board or its staff. ~~The board shall pay reasonable costs for copies requested.~~

New language is indicated by underline, deletions by ~~strikeout~~.

(b) If the board does not have a written consent from a client permitting access to the client's records, the licensee may delete any data in the record which identifies identify the client before providing it to the board. The board shall maintain any records obtained pursuant to this section as investigative data pursuant to chapter 13.

Sec. 18. Minnesota Statutes 1994, section 148.941, is amended by adding a subdivision to read:

Subd. 5. EVIDENCE OF PAST SEXUAL CONDUCT. In a proceeding for the suspension or revocation of a license or other disciplinary action for unethical or unprofessional conduct involving sexual contact with a client or former client, the board or administrative law judge shall not consider evidence of the client's previous sexual conduct nor shall any reference to this conduct be made during the proceedings or in the findings, except by motion of the client, unless the evidence would be admissible under applicable provisions of section 609.347, subdivision 3.

Sec. 19. Minnesota Statutes 1994, section 148.941, is amended by adding a subdivision to read:

Subd. 6. VIOLATION. Persons who engage in the unlicensed practice of psychology or who misrepresent themselves as psychologists or psychological practitioners are guilty of a misdemeanor.

Sec. 20. Minnesota Statutes 1994, section 148.96, is amended to read:

148.96 PRESENTATION TO PUBLIC.

Subdivision 1. REQUIREMENTS FOR ADVERTISING PROFESSIONAL IDENTIFICATION. All psychologists and psychological practitioners licensees, when representing themselves to the public through in activities relating to the practice of psychology, including in written materials or advertising, must use their shall identify the academic degree upon which their licensure is based, as well as their license status in the advertising or written materials level of licensure.

Subd. 2. DISCLOSURE OF EDUCATION. At the initial meeting, a psychologist licensee shall display or make available to each new client accurate information about the qualifications and competencies of the psychologist licensee, in accordance with regulations of the board.

Subd. 3. REQUIREMENTS FOR REPRESENTATIONS TO THE PUBLIC. Individuals (a) Unless licensed under sections 148.88 to 148.98, except as provided in paragraphs (b) through (d), persons shall not present themselves or permit themselves to be presented to the public as psychologists unless they are licensed under sections 148.88 to 148.98, except as provided in paragraphs (a) to (e) by:

(1) using any title or description of services incorporating the words "psychology," "psychological," or "psychologist;" or

(2) representing that the person has expert qualifications in an area of psychology.

(a) (b) Psychologically trained individuals who are employed by an educational institution recognized by a regional accrediting organization, by a federal, state, county, or local government institution, agencies, or research facilities, may represent themselves by the title designated by that organization.

New language is indicated by underline, deletions by strikeout.

(b) (c) A psychologically trained individual from an institution described in paragraph (a) ~~(b)~~ may offer lecture services and be is exempt from the provisions of this section.

(e) (d) A person who is preparing for the profession practice of psychologist psychology under qualified supervision in recognized training institutions or facilities in accordance with board statutes and rules may be designated as a "psychological intern," "psychological trainee," or by other terms clearly describing the person's training status.

(d) (e) Nothing in this section shall be construed to prohibit the practice of school psychology by a person licensed in accordance with chapter 125.

Subd. 4. **PERSONS OR TECHNIQUES NOT REGULATED BY THIS BOARD.** (a) Nothing in sections 148.88 to 148.98 shall be construed to limit the occupational pursuits consistent with their training and codes of ethics of professionals such as teachers in recognized public and private schools, members of the clergy, physicians, social workers, school psychologists, alcohol or drug counselors, optometrists, or attorneys. However, in such performance any title used shall be in accordance with section 148.96.

(b) Use of psychological techniques by business and industrial organizations for their own personnel purposes or by employment agencies or state vocational rehabilitation agencies for the evaluation of their own clients prior to recommendation for employment is also specifically allowed. However, no representative of an industrial or business firm or corporation may sell, offer, or provide any psychological services as specified in section 148.89 unless such services are performed or supervised by individuals licensed under sections 148.88 to 148.98.

Subd. 5. **OTHER PROFESSIONS NOT AUTHORIZED.** Nothing in sections 148.88 to 148.98 shall be construed to authorize a person licensed under sections 148.88 to 148.98 to engage in the practice of any profession regulated under Minnesota law unless the person is duly licensed or registered in that profession.

Sec. 21. Minnesota Statutes 1994, section 148.975, is amended to read:

148.975 DUTY TO WARN; LIMITATION ON LIABILITY; VIOLENT BEHAVIOR OF PATIENT.

Subdivision 1. **DEFINITIONS.** (a) The definitions in this subdivision apply to this section and section 148.976.

(b) "Other person" means an immediate family member or someone who personally knows the patient client and has reason to believe the patient client is capable of and will carry out the serious, specific threat of harm to a specific, clearly identified or identifiable victim.

(c) "Practitioner" means a psychologist, school psychologist, nurse, chemical dependency counselor, or social worker who is licensed by the state or who performs psychotherapy within a program or facility licensed by the state or established pursuant to rules adopted under section 245.69, subdivision 2.

(d) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

New language is indicated by underline, deletions by strikeout.

(e) "Reasonable efforts" means communicating the serious, specific threat to the potential victim and if unable to make contact with the potential victim, communicating the serious, specific threat to the law enforcement agency closest to the potential victim or the patient client.

Subd. 2. **LIABILITY STANDARD.** ~~No monetary liability and no cause of action may arise against a practitioner for failure to predict, warn of, or take reasonable precautions to provide protection from, a patient's violent behavior, unless the patient or other person has communicated to the practitioner a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim.~~

Subd. 3. **DUTY TO WARN.** ~~The duty to predict, warn of, or take reasonable precautions to provide protection from, violent behavior arises only under the limited circumstances specified in subdivision 2 when a client or other person has communicated to the licensee a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim. If a duty to warn arises, the duty is discharged by the practitioner licensee if reasonable efforts, as defined in subdivision 1, paragraph (c), are made to communicate the threat to the potential victim.~~

Subd. 3. **LIABILITY STANDARD.** If no duty to warn exists under subdivision 2, then no monetary liability and no cause of action may arise against a licensee for failure to predict, warn of, or take reasonable precautions to provide protection from, a client's violent behavior.

Subd. 4. **DISCLOSURE OF CONFIDENCES.** ~~No monetary liability and no cause of action, or disciplinary action by the state board of psychology or board of nursing may arise against a practitioner for disclosing confidences to third parties in a good-faith effort to discharge a duty arising under this section. Good faith compliance with the duty to warn shall not constitute a breach of confidence and shall not result in monetary liability or a cause of action against the licensee.~~

Subd. 5. **CONTINUITY OF CARE.** ~~Nothing in subdivision 3 2 shall be construed to authorize a practitioner licensee to terminate treatment of a patient client as a direct result of a patient's client's violent behavior or threat of physical violence unless the patient client is referred to another practitioner or appropriate health care facility.~~

Subd. 6. **EXCEPTION.** ~~This section does not apply to a threat to commit suicide or other threats by a patient client to harm the patient client, or to a threat by a patient client who is adjudicated mentally ill and dangerous under chapter 253B.~~

Subd. 7. **OPTIONAL DISCLOSURE.** Nothing in section 148.975 shall be construed to prohibit a licensee from disclosing confidences to third parties in a good-faith effort to warn against or take precautions against a client's violent behavior or threat to commit suicide for which a duty to warn does not arise.

Subd. 8. **LIMITATION ON LIABILITY.** No monetary liability and no cause of action, or disciplinary action by the board may arise against a licensee for disclosure of confidences to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure of confidences to third parties in a good-faith effort to warn against or take precautions against a client's violent behavior or threat of suicide for which a duty to warn does not arise.

Sec. 22. Minnesota Statutes 1994, section 148.98, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

148.98 **CODE OF ETHICS RULES OF CONDUCT.**

The board shall adopt a code of ethics rules of conduct to govern an applicant's or licensee's practices or behavior. The board shall publish the code rules in the State Register and file the code rules with the secretary of state at least 30 days prior to the effective date of the code rules. The code of ethics rules of conduct shall include, but is not limited to, the principles in paragraphs (a) to through (c).

(a) ~~The psychologist~~ Applicants or licensees shall recognize the boundaries of the psychologist's ~~their~~ competence and the ~~limitation~~ limitations of the psychologist's ~~their~~ techniques and shall not offer services or use techniques that fail to meet usual and customary professional standards.

(b) ~~The psychologist~~ An applicant or licensee who engages in practice shall assist clients in obtaining professional help for all important aspects of their the client's problems that fall outside the boundaries of the psychologist's applicant's or licensee's competence.

(c) ~~A psychologist~~ Applicants or licensees shall not claim either directly or by implication professional qualifications that differ from the psychologist's ~~their~~ actual qualifications, nor shall the psychologist they misrepresent the psychologist's affiliation their affiliations with any institution, organization, or individual, nor lead others to assume an affiliation affiliations that does do not exist.

Sec. 23. Minnesota Statutes 1994, section 253B.02, subdivision 11, is amended to read:

Subd. 11. **LICENSED PSYCHOLOGIST.** "Licensed psychologist" means a person as defined by section 148.91, subdivision 4 licensed by the board of psychology and possessing the qualifications for licensure provided in section 148.907.

Sec. 24. **REPEALER.**

Minnesota Statutes 1994, sections 148.89, subdivisions 6, 7, and 8; 148.91; 148.93; 148.951; and 148.97; and Minnesota Statutes 1995 Supplement, section 148.921, are repealed.

Presented to the governor March 30, 1996

Signed by the governor April 2, 1996, 12:56 p.m.

CHAPTER 425—S.F.No. 2457

An act relating to public employees; regulating the salaries of certain higher education officers; establishing a vacation donation sick leave account; prescribing the form and use of uniform collective bargaining settlement forms; allowing certain students to work for department of transportation for 48 months; ratifying certain labor agreements and compensation plans; appropriating money; amending Minnesota Statutes 1994, sections 3.855, subdivision 4; 43A.08, subdivision 4; 43A.17, subdivision 1; 179A.03, subdivision 4; and 179A.07, by adding a subdivision; Minnesota

New language is indicated by underline, deletions by ~~strikeout~~.