

CHAPTER 56--S.F.No. 482

An act relating to health licensing; clarifying title protection and grounds for disciplinary action; making technical changes; amending Minnesota Statutes 2016, sections 147.081; 147.091, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 147.

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

Section 1. Minnesota Statutes 2016, section 147.081, is amended to read:

147.081 PRACTICING WITHOUT LICENSE; PENALTY.

Subdivision 1. **Unlawful practice of medicine.** It is unlawful for any person to practice medicine as defined in subdivision 3 in this state unless:

- (1) the person holds a valid license issued according to this chapter; or
- (2) the person is registered to provide interstate telemedicine services according to section 147.032.

Subd. 2. **Penalty.** Any person violating the provisions of subdivision 1 or section 147.082 is guilty of a gross misdemeanor.

Subd. 3. **Practice of medicine defined.** For purposes of this chapter, a person not exempted under section 147.09 is "practicing medicine" or engaged in the "practice of medicine" if the person does any of the following:

- (1) advertises, holds out to the public, or represents in any manner that the person is authorized to practice medicine in this state;
- (2) offers or undertakes to prescribe, give, or administer any drug or medicine for the use of another;
- (3) offers or undertakes to prevent or to diagnose, correct, or treat in any manner or by any means, methods, devices, or instrumentalities, any disease, illness, pain, wound, fracture, infirmity, deformity or defect of any person;
- (4) offers or undertakes to perform any surgical operation including any invasive or noninvasive procedures involving the use of a laser or laser assisted device, upon any person; or
- (5) offers to undertake to use hypnosis for the treatment or relief of any wound, fracture, or bodily injury, infirmity, or disease; or
- ~~(6) uses in the conduct of any occupation or profession pertaining to the diagnosis of human disease or conditions, the designation "doctor of medicine," "medical doctor," "doctor of osteopathic medicine," "osteopathic physician," "physician," "surgeon," "M.D.," "D.O.," or any combination of these designations.~~

Sec. 2. **[147.082] TITLE PROTECTION.**

(a) A person not licensed under this chapter is prohibited from using the title "doctor of medicine," "medical doctor," "doctor of osteopathic medicine," "osteopathic physician," "physician," "surgeon," "M.D.," or "D.O." in the conduct of any occupation or profession pertaining to the diagnosis of human disease or conditions.

(b) Nothing in this section shall be construed to prohibit a health care professional from using a title incorporating any of the words specified in paragraph (a), or from using a title or designation that is not

specifically protected in paragraph (a), if the title or designation used is permitted under the health care professional's practice act.

Sec. 3. Minnesota Statutes 2016, section 147.091, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

(1) conduct likely to deceive; or defraud; or harm the public; or demonstrating a willful or careless disregard for the health, welfare or safety of a patient; or medical practice which is professionally incompetent; in that it;

(2) conduct likely to harm the public;

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

(4) medical practice that is professionally incompetent; and

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

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

- (1) physician assistant or failure to supervise a;
- (2) licensed or unlicensed health care provider; and
- (3) physician under any agreement with the board.

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

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

- (1) mentally incompetent;
- (2) mentally ill or;
- (3) developmentally disabled, or as;
- (4) a chemically dependent person;
- (5) a person dangerous to the public;
- (6) a sexually dangerous person; or
- (7) a person who has a sexual psychopathic personality by a court of competent jurisdiction, within or without this state.

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

(k) ~~Engaging in unprofessional conduct. Unprofessional Conduct shall include any departure that departs from or the failure fails to conform to the minimal standards of acceptable and prevailing medical practice in which proceeding case proof of actual injury to a patient need not be established.~~

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

- (1) illness, drunkenness;
- (2) intoxication;
- (3) use of drugs, narcotics, chemicals, or any other type of material or as a result of any substance;
- (4) mental or condition;
- (5) physical condition, including;
- (6) diminished cognitive ability;
- (7) loss of motor skills; or
- (8) deterioration through the aging process or loss of motor skills.

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

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

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

(p) Fee splitting, including without limitation:

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

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

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

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

The physician must make the disclosures required in this clause in advance and in writing to the patient and must include in the disclosure a statement that the patient is free to choose a different health care provider. This clause does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the physician or under a physician's direct supervision, or to the division or distribution of prepaid or capitated health care premiums, or fee-for-service withhold amounts paid under contracts established under other state law.

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

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

(s) ~~Inappropriate prescribing of or failure to properly prescribe a drug or device, including prescribing a drug or device for other than medically accepted therapeutic or experimental or investigative purposes authorized by a state or federal agency or referring a patient to any health care provider as defined in sections 144.291 to 144.298 for services or tests not medically indicated at the time of referral.~~

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

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

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

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

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

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

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

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

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

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

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

Presented to the governor May 15, 2017

Signed by the governor May 17, 2017, 3:48 p.m.