

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1898

02/25/2014 Authored by Liebling and Davids

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

03/13/2014 Adoption of Report: Amended and re-referred to the Committee on State Government Finance and Veterans Affairs

03/21/2014 Adoption of Report: Amended and Placed on the General Register

Read Second Time

1.1 A bill for an act
 1.2 relating to health; changing requirements for health-related licensing boards;
 1.3 barring credentials for an individual with a felony-level criminal sexual
 1.4 conduct offense; temporary suspension for imminent risk of harm; amending
 1.5 Minnesota Statutes 2012, sections 214.103, subdivisions 2, 3; 214.12, by adding
 1.6 a subdivision; 214.29; 214.31; 214.32; 214.33, subdivision 3; proposing coding
 1.7 for new law in Minnesota Statutes, chapter 214; repealing Minnesota Statutes
 1.8 2012, sections 214.28; 214.36; 214.37.

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

1.10 Section 1. [214.076] CONVICTION OF FELONY-LEVEL CRIMINAL SEXUAL
 1.11 CONDUCT OFFENSE.

1.12 Subdivision 1. **Applicability.** This section applies to the health-related licensing
 1.13 boards as defined in section 214.01, subdivision 2, except the Board of Medical Practice
 1.14 and the Board of Chiropractic Examiners, and also applies to the Board of Barber
 1.15 Examiners, the Board of Cosmetologist Examiners, and professions credentialed by the
 1.16 Minnesota Department of Health, including:

- 1.17 (1) speech-language pathologists and audiologists;
 1.18 (2) hearing instrument dispensers; and
 1.19 (3) occupational therapists and occupational therapy assistants.

1.20 Subd. 2. **Issuing and renewing credential to practice.** (a) Except as provided in
 1.21 paragraph (e), a credentialing authority listed in subdivision 1 shall not issue or renew a
 1.22 credential to practice to any person who has been convicted on or after August 1, 2014, of
 1.23 any of the provisions of section 609.342, subdivision 1; 609.343, subdivision 1; 609.344,
 1.24 subdivision 1, clauses (c) to (o); or 609.345, subdivision 1, clauses (b) to (o).

1.25 (b) A credentialing authority listed in subdivision 1 shall not issue or renew a
 1.26 credential to practice to any person who has been convicted in any other state or country on

2.1 or after August 1, 2014, of an offense where the elements of the offense are substantially
2.2 similar to any of the offenses listed in paragraph (a).

2.3 (c) A credential to practice is automatically revoked if the credentialed person is
2.4 convicted of an offense listed in paragraph (a).

2.5 (d) For purposes of this section, "conviction" means a plea of guilty, a verdict of guilty
2.6 by a jury, or a finding of guilty by the court, unless the court stays imposition or execution
2.7 of the sentence and final disposition of the case is accomplished at a nonfelony level.

2.8 (e) A credentialing authority listed in subdivision 1 may establish criteria whereby
2.9 an individual convicted of an offense listed in paragraph (a) may become credentialed
2.10 provided that the criteria:

2.11 (1) utilize a rebuttable presumption that the applicant is not suitable for credentialing;

2.12 (2) provide a standard for overcoming the presumption; and

2.13 (3) require that a minimum of ten years has elapsed since the applicant was released
2.14 from any incarceration or supervisory jurisdiction related to the offense.

2.15 A credentialing authority listed in subdivision 1 shall not consider an application under
2.16 this paragraph if the board determines that the victim involved in the offense was a patient
2.17 or a client of the applicant at the time of the offense.

2.18 **EFFECTIVE DATE.** This section is effective for credentials issued or renewed on
2.19 or after August 1, 2014.

2.20 **Sec. 2. [214.077] TEMPORARY LICENSE SUSPENSION; IMMINENT RISK**
2.21 **OF HARM.**

2.22 (a) Notwithstanding any provision of a health-related professional practice act,
2.23 when a health-related licensing board or the commissioner of health receives a complaint
2.24 regarding a regulated person and has probable cause to believe continued practice by the
2.25 regulated person presents an imminent risk of harm, the licensing board or commissioner
2.26 shall temporarily suspend the regulated person's professional license. The suspension
2.27 shall take effect upon written notice to the regulated person and shall specify the reason
2.28 for the suspension.

2.29 (b) The suspension shall remain in effect until the appropriate licensing board or
2.30 the commissioner completes an investigation and issues a final order in the matter after
2.31 a hearing.

2.32 (c) At the time it issues the suspension notice, the appropriate licensing board
2.33 or commissioner shall schedule a disciplinary hearing to be held pursuant to the
2.34 Administrative Procedure Act. The regulated person shall be provided with at least

3.1 20 days notice of any hearing held pursuant to this subdivision. The hearing shall be
3.2 scheduled to being no later than 60 days after issuance of the suspension order.

3.3 Sec. 3. Minnesota Statutes 2012, section 214.103, subdivision 2, is amended to read:

3.4 Subd. 2. **Receipt of complaint.** The boards shall receive and resolve complaints
3.5 or other communications, whether oral or written, against regulated persons. Before
3.6 resolving an oral complaint, the executive director or a board member designated by the
3.7 board to review complaints shall require the complainant to state the complaint in writing
3.8 or authorize transcribing the complaint. The executive director or the designated board
3.9 member shall determine whether the complaint alleges or implies a violation of a statute
3.10 or rule which the board is empowered to enforce. The executive director or the designated
3.11 board member may consult with the designee of the attorney general as to a board's
3.12 jurisdiction over a complaint. If the executive director or the designated board member
3.13 determines that it is necessary, the executive director may seek additional information to
3.14 determine whether the complaint is jurisdictional or to clarify the nature of the allegations
3.15 by obtaining records or other written material, obtaining a handwriting sample from the
3.16 regulated person, clarifying the alleged facts with the complainant, and requesting a written
3.17 response from the subject of the complaint. The executive director may authorize a field
3.18 investigation to clarify the nature of the allegations and the facts that led to the complaint.

3.19 Sec. 4. Minnesota Statutes 2012, section 214.103, subdivision 3, is amended to read:

3.20 Subd. 3. **Referral to other agencies.** The executive director shall forward to
3.21 another governmental agency any complaints received by the board which do not relate
3.22 to the board's jurisdiction but which relate to matters within the jurisdiction of another
3.23 governmental agency. The agency shall advise the executive director of the disposition
3.24 of the complaint. A complaint or other information received by another governmental
3.25 agency relating to a statute or rule which a board is empowered to enforce must be
3.26 forwarded to the executive director of the board to be processed in accordance with this
3.27 section. Governmental agencies ~~may~~ shall coordinate and conduct joint investigations of
3.28 complaints that involve more than one governmental agency.

3.29 Sec. 5. Minnesota Statutes 2012, section 214.12, is amended by adding a subdivision
3.30 to read:

3.31 Subd. 5. **Health professional services program.** The health-related licensing
3.32 boards shall include information regarding the health professional services program on
3.33 their Web sites.

4.1 Sec. 6. Minnesota Statutes 2012, section 214.29, is amended to read:

4.2 **214.29 PROGRAM REQUIRED.**

4.3 Each health-related licensing board, including the Emergency Medical Services
4.4 Regulatory Board under chapter 144E, shall ~~either conduct a contract with the health~~
4.5 ~~professionals service program under sections 214.31 to 214.37 or contract for a diversion~~
4.6 ~~program under section 214.28~~ for a diversion program for regulated professionals who are
4.7 unable to practice with reasonable skill and safety by reason of illness, use of alcohol,
4.8 drugs, chemicals, or any other materials, or as a result of any mental, physical, or
4.9 psychological condition.

4.10 Sec. 7. Minnesota Statutes 2012, section 214.31, is amended to read:

4.11 **214.31 AUTHORITY.**

4.12 ~~Two or more of the health-related licensing boards listed in section 214.01,~~
4.13 ~~subdivision 2, may jointly~~ The health professionals services program shall contract with
4.14 the health-related licensing boards to conduct a health professionals services program to
4.15 protect the public from persons regulated by the boards who are unable to practice with
4.16 reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any
4.17 other materials, or as a result of any mental, physical, or psychological condition. The
4.18 program does not affect a board's authority to discipline violations of a board's practice act.
4.19 For purposes of sections 214.31 to 214.37, the emergency medical services regulatory board
4.20 shall be included in the definition of a health-related licensing board under chapter 144E.

4.21 Sec. 8. Minnesota Statutes 2012, section 214.32, is amended to read:

4.22 **214.32 PROGRAM OPERATIONS AND RESPONSIBILITIES.**

4.23 Subdivision 1. **Management.** (a) A Health Professionals Services Program
4.24 Committee is established, consisting of ~~one person appointed by each participating board,~~
4.25 ~~with each participating board having one vote.~~ no fewer than three, or more than six,
4.26 executive directors of health-related licensing boards or their designees, and two members
4.27 of the advisory committee established in paragraph (c). Program committee members
4.28 from the health-related licensing boards shall be appointed by a means agreeable to the
4.29 executive directors of the health-related licensing boards in July of odd-numbered years.
4.30 Members from the advisory committee shall be appointed by a means agreeable to advisory
4.31 committee members in July of odd-numbered years. The program committee shall
4.32 designate one board to provide administrative management of the program, set the program
4.33 budget and the pro rata share of program expenses to be borne by each participating

5.1 board, provide guidance on the general operation of the program, including hiring of
5.2 program personnel, and ensure that the program's direction is in accord with its authority.
5.3 The program committee shall establish uniform criteria and procedures governing
5.4 termination and discharge for all health professionals served by the health professionals
5.5 services program. If the participating boards change which board is designated to
5.6 provide administrative management of the program, any appropriation remaining for the
5.7 program shall transfer to the newly designated board on the effective date of the change.
5.8 The participating boards must inform the appropriate legislative committees and the
5.9 commissioner of management and budget of any change in the administrative management
5.10 of the program, and the amount of any appropriation transferred under this provision.

5.11 (b) The designated board, upon recommendation of the Health Professional Services
5.12 Program Committee, shall hire the program manager and employees and pay expenses
5.13 of the program from funds appropriated for that purpose. The designated board may
5.14 apply for grants to pay program expenses and may enter into contracts on behalf of the
5.15 program to carry out the purposes of the program. The participating boards shall enter into
5.16 written agreements with the designated board.

5.17 (c) An advisory committee is established to advise the program committee consisting
5.18 of:

5.19 (1) ~~one member appointed by each of the following: the Minnesota Academy of~~
5.20 ~~Physician Assistants, the Minnesota Dental Association, the Minnesota Chiropractic~~
5.21 ~~Association, the Minnesota Licensed Practical Nurse Association, the Minnesota Medical~~
5.22 ~~Association, the Minnesota Nurses Association, and the Minnesota Podiatric Medicine~~
5.23 ~~Association~~ of the professional associations whose members are eligible for health
5.24 professionals services program services; and

5.25 (2) ~~one member appointed by each of the professional associations of the other~~
5.26 ~~professions regulated by a participating board not specified in clause (1); and~~

5.27 (3) ~~two public members, as defined by section 214.02.~~

5.28 Members of the advisory committee shall be appointed for two years and members
5.29 may be reappointed.

5.30 Subd. 2. **Services.** (a) The program shall provide the following services to program
5.31 participants:

5.32 (1) referral of eligible regulated persons to qualified professionals for evaluation,
5.33 treatment, and a written plan for continuing care consistent with the regulated person's
5.34 illness. The referral shall take into consideration the regulated person's financial resources
5.35 as well as specific needs;

6.1 (2) development of individualized program participation agreements between
6.2 participants and the program to meet the needs of participants and protect the public. An
6.3 agreement may include, but need not be limited to, recommendations from the continuing
6.4 care plan, practice monitoring, health monitoring, practice restrictions, random drug
6.5 screening, support group participation, filing of reports necessary to document compliance,
6.6 and terms for successful completion of the regulated person's program; and

6.7 (3) monitoring of compliance by participants with individualized program
6.8 participation agreements or board orders.

6.9 (b) The program may develop services related to sections 214.31 to 214.37 for
6.10 employers and colleagues of regulated persons from participating boards.

6.11 Subd. 3. **Participant costs.** Each program participant shall be responsible for
6.12 paying for the costs of physical, psychosocial, or other related evaluation, treatment,
6.13 laboratory monitoring, and random drug screens.

6.14 Subd. 4. **Eligibility.** Admission to the health professional services program is
6.15 available to a person regulated by a participating board who is unable to practice with
6.16 reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or
6.17 any other materials, or as a result of any mental, physical, or psychological condition.
6.18 Admission in the health professional services program shall be denied to persons:

6.19 (1) who have diverted controlled substances for other than self-administration;

6.20 (2) who have been terminated from this or any other state professional services
6.21 program for noncompliance in the program, unless referred by a participating board or the
6.22 commissioner of health;

6.23 (3) currently under a board disciplinary order or corrective action agreement, unless
6.24 referred by a board;

6.25 (4) ~~regulated under sections 214.17 to 214.25, unless referred by a board or by the~~
6.26 ~~commissioner of health;~~

6.27 (5) accused of sexual misconduct; or

6.28 (6) (5) whose continued practice would create a serious risk of harm to the public.

6.29 Subd. 5. **Completion; voluntary termination; discharge.** (a) A regulated person
6.30 completes the program when the terms of the program participation agreement are fulfilled.

6.31 (b) A regulated person may voluntarily terminate participation in the health
6.32 professionals service program at any time ~~by reporting to the person's board~~ which shall
6.33 result in the program manager making a report to the regulated person's board under
6.34 section 214.33, subdivision 3.

6.35 (c) The program manager may choose to discharge a regulated person from the
6.36 program and make a referral to the person's board at any time for reasons including but not

7.1 limited to: the degree of cooperation and compliance by the regulated person, the inability
 7.2 to secure information or the medical records of the regulated person, or indication of other
 7.3 possible violations of the regulated person's practice act. The regulated person shall be
 7.4 notified in writing by the program manager of any change in the person's program status.
 7.5 A regulated person who has been terminated or discharged from the program may be
 7.6 referred back to the program for monitoring.

7.7 Subd. 6. Duties of a health-related licensing board. (a) Upon receiving
 7.8 notice from the program manager that a regulated person has been discharged due to
 7.9 noncompliance or voluntary withdrawal, when the appropriate licensing board has
 7.10 probable cause to believe continued practice by the regulated person presents an imminent
 7.11 risk of harm, the licensing board shall temporarily suspend the regulated person's
 7.12 professional license. The suspension shall take effect upon written notice to the regulated
 7.13 person and shall specify the reason for the suspension.

7.14 (b) The suspension shall remain in effect until the appropriate licensing board
 7.15 completes an investigation and issues a final order in the matter after a hearing.

7.16 (c) At the time it issues the suspension notice, the appropriate licensing board shall
 7.17 schedule a disciplinary hearing to be held pursuant to the Administrative Procedure Act.
 7.18 The regulated person shall be provided with at least 20 days' notice of any hearing held
 7.19 pursuant to this subdivision. The hearing shall be scheduled no later than 60 days after
 7.20 issuance of the suspension order.

7.21 Sec. 9. Minnesota Statutes 2012, section 214.33, subdivision 3, is amended to read:

7.22 Subd. 3. **Program manager.** (a) The program manager shall report to the
 7.23 appropriate participating board a regulated person who:

7.24 (1) does not meet program admission criteria;

7.25 (2) violates the terms of the program participation agreement;~~or;~~

7.26 (3) leaves the program except upon fulfilling the terms for successful completion of
 7.27 the program as set forth in the participation agreement;

7.28 (4) is subject to the provisions of sections 214.17 to 214.25;

7.29 (5) caused identifiable patient harm;

7.30 (6) substituted or adulterated medications;

7.31 (7) wrote a prescription or caused a prescription to be filled by a pharmacy in the
 7.32 name of a person or veterinary patient for personal use; or

7.33 ~~The program manager shall report to the appropriate participating board a regulated~~
 7.34 ~~person who~~ (8) is alleged to have committed violations of the person's practice act that

8.1 are outside the authority of the health professionals services program as described in
8.2 sections 214.31 to 214.37.

8.3 (b) The program manager shall inform any reporting person of the disposition of the
8.4 person's report to the program.

8.5 Sec. 10. **[214.355] GROUNDS FOR DISCIPLINARY ACTION.**

8.6 Each health-related licensing board, including the Emergency Medical Services
8.7 Regulatory Board under chapter 144E, shall consider it grounds for disciplinary action
8.8 if a regulated person violates the terms of the health professionals services program
8.9 participation agreement or leaves the program except upon fulfilling the terms for
8.10 successful completion of the program as set forth in the participation agreement.

8.11 Sec. 11. **REVISOR'S INSTRUCTION.**

8.12 The revisor shall remove cross-references to the sections repealed in section 12
8.13 wherever they appear in Minnesota Statutes and Minnesota Rules and make changes
8.14 necessary to correct the punctuation, grammar, or structure of the remaining text and
8.15 preserve its meaning.

8.16 Sec. 12. **REPEALER.**

8.17 Minnesota Statutes 2012, sections 214.28; 214.36; and 214.37, are repealed.

8.18 Sec. 13. **EFFECTIVE DATE.**

8.19 Sections 1 to 12 are effective July 1, 2014.

214.28 DIVERSION PROGRAM.

A health-related licensing board may establish performance criteria and contract for a diversion program for regulated professionals who are unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition.

214.36 BOARD PARTICIPATION.

Participating boards may, by mutual agreement, implement the program upon enactment. Thereafter, health-related licensing boards desiring to enter into or discontinue an agreement to participate in the health professionals services program shall provide a written resolution indicating the board's intent to the designated board by January 1 preceding the start of a biennium.

214.37 RULEMAKING.

By July 1, 1996, the participating boards shall adopt joint rules relating to the provisions of sections 214.31 to 214.36 in consultation with the advisory committee and other appropriate individuals. The required rule writing does not prevent the implementation of sections 214.31 to 214.37 and Laws 1994, chapter 556, section 9, upon enactment.