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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **2442**

02/27/2014 Authored by Abeler

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

1.1 A bill for an act
1.2 relating to health occupations; requiring license revocation for health
1.3 professionals convicted of a felony-level sexual conduct offense; clarifying
1.4 disciplinary authority of health-related licensing boards; requiring joint
1.5 investigations of complaints; authorizing field investigations; amending
1.6 Minnesota Statutes 2012, sections 148.104; 214.103, subdivisions 2, 3; 214.12,
1.7 by adding a subdivision; 214.33, subdivision 3; Minnesota Statutes 2013
1.8 Supplement, section 364.09; proposing coding for new law in Minnesota
1.9 Statutes, chapter 214.

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

1.11 Section 1. Minnesota Statutes 2012, section 148.104, is amended to read:

1.12 **148.104 COOPERATION DURING INVESTIGATIONS.**

1.13 A doctor of chiropractic who is the subject of an investigation by or on behalf of
1.14 the board shall cooperate fully with the investigation. Cooperation includes appearing
1.15 at conferences, meetings, or hearings scheduled by the board and for which the board
1.16 provided notice in accordance with chapter 14; responding fully and promptly to any
1.17 question raised by or on behalf of the board relating to the subject of the investigation;
1.18 and providing copies of patient health records, as reasonably requested by the board, to
1.19 assist the board in its investigation. ~~If the board does not have written consent from a~~
1.20 ~~patient allowing the board access to the patient's health records, a doctor of chiropractic~~
1.21 ~~shall delete any data in the record which identifies the patient before providing the records~~
1.22 ~~to the board.~~ The board shall maintain the confidentiality of the patient health records in
1.23 accordance with applicable state and federal laws.

1.24 Sec. 2. [214.076] CONVICTION OF FELONY-LEVEL CRIMINAL SEXUAL
1.25 CONDUCT OFFENSE.

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

- 2.6 (1) speech-language pathologists and audiologists;
- 2.7 (2) hearing instrument dispensers; and
- 2.8 (3) occupational therapists and occupational therapy assistants.

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

2.14 (b) A credentialing authority listed in subdivision 1 shall not issue or renew a
2.15 credential to practice to any person who has been convicted in any other state or country on
2.16 or after August 1, 2011, of an offense where the elements of the offense are substantially
2.17 similar to any of the offenses listed in paragraph (a).

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

2.20 (d) A credential to practice that has been denied or revoked under this section is
2.21 not subject to chapter 364.

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

2.25 (f) A credentialing authority listed in subdivision 1 may establish criteria whereby
2.26 an individual convicted of an offense listed in paragraph (a) may become credentialed
2.27 provided that the criteria:

- 2.28 (1) utilize a rebuttable presumption that the applicant is not suitable for credentialing;
- 2.29 (2) provide a standard for overcoming the presumption; and
- 2.30 (3) require that a minimum of ten years has elapsed since the applicant was released
2.31 from any incarceration or supervisory jurisdiction related to the offense.

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

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

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 educational materials regarding the health professional services
3.33 program when mailing renewal notices to licensees.

Sec. 6. Minnesota Statutes 2012, section 214.33, subdivision 3, is amended to read:

Subd. 3. **Program manager.** (a) The program manager shall report to the appropriate participating board a regulated person who does not meet program admission criteria, violates the terms of the program participation agreement, or leaves the program except upon fulfilling the terms for successful completion of the program as set forth in the participation agreement.

(b) The program manager shall report to the appropriate participating board a regulated person monitored by the health professional services program, who self-referred or was referred by a third party, if that person:

(1) commits identifiable patient harm;

(2) substitutes medication; or

(3) writes a prescription in the name of an actual person or veterinary patient and diverts the prescribed drug for:

(i) uses other than the drug's medically intended use; or

(ii) the personal use of the regulated person.

(c) The program manager shall report to the appropriate participating board a regulated person who is alleged to have committed violations of the person's practice act that are outside the authority of the health professionals services program as described in sections 214.31 to 214.37.

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

Sec. 7. **[214.331] DISCIPLINARY ACTION.**

A regulated person who is terminated from the health professional services program due to noncompliance with monitoring or program requirements or leaves the program, except upon fulfilling the terms for successful completion of the program, shall be subject to the responsible health-related licensing board's disciplinary process.

Sec. 8. Minnesota Statutes 2013 Supplement, section 364.09, is amended to read:

364.09 EXCEPTIONS.

(a) This chapter does not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapters 245A and 245C; to eligibility for school bus driver endorsements; to eligibility for special transportation service endorsements; to eligibility for a commercial driver training instructor license, which is

governed by section 171.35 and rules adopted under that section; to emergency medical services personnel, or to the licensing by political subdivisions of taxicab drivers, if the applicant for the license has been discharged from sentence for a conviction within the ten years immediately preceding application of a violation of any of the following:

(1) sections 609.185 to 609.21, 609.221 to 609.223, 609.342 to 609.3451, or 617.23, subdivision 2 or 3;

(2) any provision of chapter 152 that is punishable by a maximum sentence of 15 years or more; or

(3) a violation of chapter 169 or 169A involving driving under the influence, leaving the scene of an accident, or reckless or careless driving.

This chapter also shall not apply to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) This chapter does not apply to a school district or to eligibility for a license issued or renewed by the Board of Teaching or the commissioner of education.

(c) Nothing in this section precludes the Minnesota Police and Peace Officers Training Board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

(d) This chapter does not apply to a license to practice medicine that has been denied or revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.

(e) This chapter does not apply to any person who has been denied a license to practice chiropractic or whose license to practice chiropractic has been revoked by the board in accordance with section 148.10, subdivision 7.

(f) This chapter does not supersede a requirement under law to conduct a criminal history background investigation or consider criminal history records in hiring for particular types of employment.

(g) This chapter does not apply to any person who has been denied a credential to practice or whose credential to practice has been revoked by a credentialing authority according to section 214.076, subdivision 2.

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