

CHAPTER 148

OCCUPATIONS IN PROTECTION OF PUBLIC
HEALTH

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148.06 APPLICATION; EXAMINATION; LICENSE; FEE.

Subdivision 1. **License required; qualifications.** No person shall practice chiropractic in this state without first being licensed by the state board of chiropractic examiners. The applicant shall have earned at least one-half of all academic credits required for awarding of a baccalaureate degree from the University of Minnesota, or other university, college or community college of equal standing, in subject matter determined by the board, and taken a four-year resident course of at least eight months each in a school or college of chiropractic that is fully accredited by the council on chiropractic education or fully accredited by an agency approved by the United States office of education or their successors. The board may recommend a two-year prechiropractic course of instruction to any university, college or community college which in its judgment would satisfy the academic prerequisite for licensure as established by this section.

An examination for a license shall be in writing and shall include testing in:

- (a) The basic sciences including but not limited to anatomy, physiology, bacteriology, pathology, hygiene, and chemistry as related to the human body or mind;
- (b) The clinical sciences including but not limited to the science and art of chiropractic, chiropractic physiotherapy, diagnosis, roentgenology and nutrition; and
- (c) Professional ethics and any other subjects that the board may deem advisable.

The board may consider a valid certificate of examination from the National Board of Chiropractic Examiners as evidence of compliance with the written examination requirements of this subdivision. The applicant shall be required to give practical demonstration in vertebral palpation, neurology, adjusting and any other subject that the board may deem advisable. A license, countersigned by the members of the board and authenticated by the seal thereof, shall be granted to each applicant who correctly answers 75 percent of the questions propounded in each of the subjects required by this subdivision and meets the standards of practical demonstration established by the board. Each application shall be accompanied by a fee set by the board. The fee shall not be returned but the applicant may, within one year, apply for examination without the payment of an additional fee. The board may grant a license to an applicant who holds a valid license to practice chiropractic issued by the appropriate licensing board of another state or country, provided the applicant meets the other requirements of this section and satisfactorily passes the practical examination before the board. The burden of proof is on the applicant to demonstrate these qualifications or satisfaction of these requirements.

History: 1987 c 345 s 1

148.07 RENEWAL FEES; EXPENSES.

[For text of subd 1, see M.S.1986]

Subd. 2. **Expenses.** The expenses of administering sections 148.01 to 148.105 shall be paid from the appropriation made to the state board of chiropractic examiners. Expenditures and revenues must be managed in accordance with the statewide accounting principles and requirements of the commissioner of finance.

History: 1987 c 345 s 2

148.08 RULES.*[For text of subd 2, see M.S.1986]*

Subd. 3. Rules. The board of chiropractic examiners shall promulgate rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic and defining any terms, whether or not used in sections 148.01 to 148.105, if the definitions are not inconsistent with the provisions of sections 148.01 to 148.105.

History: 1987 c 345 s 3

148.10 LICENSES REVOKED; NEW LICENSES.

Subdivision 1. Grounds. The state board of chiropractic examiners may refuse to grant, or may revoke, suspend, condition, limit, restrict or qualify a license to practice chiropractic, or may cause the name of a person licensed to be removed from the records in the office of the court administrator of the district court for:

(1) Advertising that is false or misleading; that violates a rule of the board; or that claims the cure of any condition or disease.

(2) The employment of fraud or deception in applying for a license or in passing the examination provided for in section 148.06 or conduct which subverts or attempts to subvert the licensing examination process.

(3) The practice of chiropractic under a false or assumed name or the impersonation of another practitioner of like or different name.

(4) The conviction of a crime involving moral turpitude.

(5) The conviction, during the previous five years, of a felony reasonably related to the practice of chiropractic.

(6) Habitual intemperance in the use of alcohol or drugs.

(7) Failure to pay the annual renewal license fee.

(8) Advanced physical or mental disability.

(9) The revocation or suspension of a license to practice chiropractic; or other disciplinary action against the licensee; or the denial of an application for a license by the proper licensing authority of another state, territory or country; or failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction.

(10) The violation of, or failure to comply with, the provisions of sections 148.01 to 148.105, the rules of the state board of chiropractic examiners, or a lawful order of the board.

(11) Unprofessional conduct.

(12) Being unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, professional incompetence, senility, drunkenness, use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills. If the board has probable cause to believe that a person comes within this clause, it shall direct the person to submit to a mental or physical examination. For the purpose of this clause, every person licensed under this chapter shall be deemed to have given consent to submit to a mental or physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that the same constitute a privileged communication. Failure of a person to submit to such examination when directed shall constitute an admission of the allegations, unless the failure was due to circumstances beyond the person's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A person affected under this clause shall at reasonable intervals be afforded an opportunity to demonstrate that the person can resume the competent practice of chiropractic with reasonable skill and safety to patients.

In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.42, 144.651, or any other law limiting access to health data, obtain health data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that a doctor of chiropractic comes under this clause. The health data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision, unless the information is false and the provider or entity giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private under sections 13.01 to 13.87.

In any proceeding under this clause, neither the record of proceedings nor the orders entered by the board shall be used against a person in any other proceeding.

(13) Aiding or abetting an unlicensed person in the practice of chiropractic, except that it is not a violation of this clause for a doctor of chiropractic 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 the license or registration or delegated authority.

(14) Improper management of health records, including failure to maintain adequate health records as described in clause (18), to comply with a patient's request made under section 144.335 or to furnish a health record or report required by law.

(15) Failure to make reports required by section 148.102, subdivisions 2 and 5, or to cooperate with an investigation of the board as required by section 148.104, or the submission of a knowingly false report against another doctor of chiropractic under section 148.10, subdivision 3.

(16) Splitting fees, or promising to pay a portion of a fee or a commission, or accepting a rebate.

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

(18) Failing to keep written chiropractic records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, test results, and X-rays. Unless otherwise required by law, written records need not be retained for more than seven years and X-rays need not be retained for more than four years.

(19) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, or appliances.

(20) Gross or repeated malpractice or the failure to practice chiropractic at a level of care, skill, and treatment which is recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(21) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that the person is not qualified by training, experience, or licensure to perform them.

For the purposes of clause (2), conduct that subverts or attempts to subvert the licensing examination process includes, but is not limited to: (a) conduct that 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; (b) conduct that 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 (c) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

For the purposes of clauses (4) and (5), conviction as used in these subdivisions includes a conviction of an offense that 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.

For the purposes of clauses (4), (5), and (6), a copy of the judgment or proceeding under seal of the administrator of the court or of the administrative agency which entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of its contents.

For the purposes of clause (11), unprofessional conduct means any unethical, deceptive or deleterious conduct or practice harmful to the public, any departure from or the failure to conform to the minimal standards of acceptable chiropractic practice, or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:

- (a) Gross ignorance of, or incompetence in, the practice of chiropractic;
- (b) Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient;
- (c) Performing unnecessary services;
- (d) Charging a patient an unconscionable fee or charging for services not rendered;
- (e) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;
- (f) Perpetrating fraud upon patients, third party payers, or others, relating to the practice of chiropractic, including violations of the Medicare or Medicaid laws or state medical assistance laws;
- (g) Advertising that the licensee will accept for services rendered assigned payments from any third-party payor as payment in full, if the effect is to give the impression of eliminating the need of payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan; or advertising a fee or charge for a service or treatment different from the fee or charge the licensee submits to a third-party payor for that service or treatment. As used in this clause, "advertise" means solicitation by the licensee by means of handbills, posters, circulars, motion pictures, radio, newspapers, television, or in any other manner. In addition to the board's power to punish for violations of this clause, violation of this clause is also a misdemeanor;
- (h) Accepting for services rendered assigned payments from any third-party payor as payment in full, if the effect is to eliminate the need of payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan, except as hereinafter provided; or collecting a fee or charge for a service or treatment different from the fee or charge the licensee submits to a third-party payor for that service or treatment, except as hereinafter provided. This clause is intended to prohibit offerings to the public of the above listed practices and those actual practices as well, except that in instances where the intent is not to collect an excessive remuneration from the third-party payor but rather to provide services at a reduced rate to a patient unable to afford the deductible or copayment, the services may be performed for a lesser charge or fee. The burden of proof for establishing that this is the case shall be on the licensee; and
- (i) Any other act that the board by rule may define.

[For text of subd 2, see M.S.1986]

Subd. 3. Reprimand; penalties; probation. In addition to the other powers granted to the board under this chapter, the board may, in connection with any person whom the board, after a hearing, adjudges unqualified or whom the board, after a hearing, finds to have performed one or more of the acts described in subdivision 1:

- (a) Publicly reprimand or censure the person;
- (b) Place the person on probation for the period and upon the terms and conditions that the board may prescribe; and
- (c) Require payment of all costs of proceedings resulting in the disciplinary action; and
- (d) Impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the doctor of chiropractic of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding.

[For text of subds 4 and 5, see M.S.1986]

Subd. 6. Effect of appeal. A suspension, revocation, condition, limitation, qualification, or restriction of a license shall be in effect pending determination of an appeal unless the court, upon petition and for good cause shown, shall otherwise order.

A license to practice chiropractic is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a probate court under sections 525.54 to 525.61, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a probate court under chapter 253B or sections 526.09 to 526.11. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

History: 1987 c 345 s 4-6

148.101 [Repealed, 1987 c 345 s 14]

148.102 REPORTS OF STATE OR LOCAL SOCIETIES.

Subdivision 1. Requirement. If a state or local chiropractic society receives a complaint which might be grounds for discipline under section 148.10 against a member doctor of chiropractic, the society shall report the complaint or shall direct the complainant to the board of chiropractic examiners.

Subd. 2. Licensed professionals. A licensed health professional shall report to the board personal knowledge of any conduct which the professional reasonably believes constitutes grounds for disciplinary action under section 148.10 by any doctor of chiropractic including any conduct indicating that the doctor of chiropractic may be incompetent, or may have engaged in unprofessional conduct, or may be physically unable to engage safely in the practice of chiropractic. No report shall be required if the information was obtained in the course of a patient relationship if the patient is a doctor of chiropractic and the treating health professional successfully counsels the doctor of chiropractic to limit or withdraw from practice to the extent required by the impairment; or (2) is a patient or former patient of the doctor of chiropractic and the treating professional is a psychologist from whom the patient is receiving psychotherapeutic services.

Subd. 3. Insurers. Two times each year each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to chiropractors shall submit to the board a report concerning the chiropractors against whom malpractice settlements or awards have been made to the plaintiff. The report must contain at least the following information:

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

(6) the name of the doctor of chiropractic against whom an award was made or with whom a settlement was made.

The insurance company shall, in addition to the above information, report to the board any information it possesses which tends to substantiate a charge that a doctor of chiropractic may have engaged in conduct violating section 148.10 and this section.

Subd. 4. **Courts.** The clerk of district court or any other court of competent jurisdiction shall report to the board any judgment or other determination of the court which adjudges or includes a finding that a doctor of chiropractic is mentally ill, mentally incompetent, guilty of a felony, guilty of an abuse or fraud, appoints a guardian of the doctor of chiropractic under sections 525.54 to 525.61 or commits a doctor of chiropractic under chapter 253B or sections 526.09 to 526.11.

Subd. 5. **Self-reporting.** A doctor of chiropractic shall report to the board any action concerning that doctor which would require that a report be filed with the board by any person, health care facility, business, or organization under subdivision 4.

Subd. 6. **Deadlines; forms.** Reports required by subdivisions 1 to 5 must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Subd. 7. **Subpoenas.** The board may issue subpoenas for the production of any reports required by subdivisions 1 to 5 or any related documents.

History: 1987 c 345 s 7

148.103 IMMUNITY FOR REPORTING OR INVESTIGATING.

Subdivision 1. **Reporting.** Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report to the board under section 148.102 or for otherwise reporting to the board violations or alleged violations of section 148.10. The reports are private.

Subd. 2. **Investigation.** Members of the board and persons employed by the board or engaged in the investigation or prosecution of violations and in the preparation and management of charges of violations of sections 148.01 to 148.105 on behalf of the board are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under sections 148.01 to 148.105.

History: 1987 c 345 s 8

148.104 COOPERATION DURING INVESTIGATIONS.

A doctor of chiropractic who is the subject of 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 and providing copies of patient health records, as reasonably requested by the board, to assist the board in its investigation.

History: 1987 c 345 s 9

148.105 VIOLATION.

Subdivision 1. **Generally.** Any person who practices, or attempts to practice, chiropractic or who uses any of the terms or letters "Doctors of Chiropractic," "Chiropractor," "D.C.," or any other title or letters under any circumstances as to lead the public to believe that the person who so uses the terms is engaged in the practice of chiropractic, without having complied with the provisions of sections 148.01 to 148.104, is guilty of a gross misdemeanor; and, upon conviction, fined not less than \$1,000 nor more than \$10,000 or be imprisoned in the county jail for not less than 30 days nor more than six months or punished by both fine and imprisonment, in the discretion of the court. It is the duty of the county attorney of the county in which the person

practices to prosecute. Nothing in sections 148.01 to 148.105 shall be considered as interfering with any person:

- (a) licensed by a health related licensing board, as defined in section 214.01, subdivision 2, including licensed psychologists with respect to the use of hypnosis;
- (b) registered by the commissioner of health under section 214.13; or
- (c) engaged in other methods of healing regulated by law in the state of Minnesota; provided that the person confines activities within the scope of the license or other regulation and does not practice or attempt to practice chiropractic.

Subd. 2. **Exceptions.** The following persons shall not be in violation of subdivision 1:

- (1) a student practicing under the direct supervision of a preceptor while the student is enrolled in and regularly attending a recognized chiropractic college; and
- (2) 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 institution approved for training by the board.

History: 1987 c 345 s 10

148.106 PEER REVIEW OF SERVICES AND FEES.

Subdivision 1. **Definitions.** As used in this section, the term:

(a) "Accepted standards" for peer review of a licensed chiropractor means those standards of care, skill, and treatment which are recognized by a reasonably prudent similar health care provider as being acceptable under similar conditions and circumstances.

(b) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed, which by virtue of a substantiated and properly diagnosed condition, appears to be of a type consistent with that diagnosis as reviewed by the peer review committee.

(c) "Unconscionable fees" means charges submitted for services performed that are unnecessary or unreasonable charges in the judgment of the peer review committee. In determining the unconscionability of costs, the committee may consider, among other appropriate factors, charges by health care providers other than chiropractors for the same or similar services.

(d) "Bill for treatment" means all services provided to a consumer, regardless of the monetary consideration paid to the health care provider.

(e) "Patient" means an individual who receives chiropractic treatment from a chiropractor.

(f) "Peer review" means an evaluation, based on accepted standards, by a peer review committee of the appropriateness, quality, utilization, and cost of health care and health services provided to a patient.

(g) "Peer review committee" means a committee of seven individuals, five of whom are chiropractors licensed under this chapter, two of whom are consumers, and none of whom is in a direct business relationship with the provider, insurer, or patient whose case is being reviewed. The committee shall be appointed by the executive director of the board or provided for by a contractual arrangement with the board, and may consist of different individuals for review of different cases.

(h) "Properly utilized services" means appropriate treatment services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports of the provider or any other facts or evidence pertinent to the controversy as reviewed by the peer review committee.

Subd. 2. **Purpose.** The board shall review directly or by contract information relating to certain chiropractic providers for the purposes identified in section 145.61.

It is the intention of the legislature that the peer review system and activities established under this chapter, including the board and the peer review committee and

their officers, members, employees and agents, shall be exempt from challenge under federal or state antitrust laws or other similar laws in regulation of trade or commerce.

Subd. 3. Duties. The peer review committee shall advise the board as to its findings under subdivision 2. The peer review committee may hear, without qualification or threshold, any submission regarding the appropriateness, quality, or utilization of chiropractic services. The board may establish additional criteria for screening requests for peer review. The screening shall occur upon submission by a patient, the patient's representative, insurer, or chiropractor of an inquiry about a bill for treatment rendered to a patient by a health care provider.

Subd. 4. Fees for review. Any third party provider or chiropractor making a peer review request may be charged a fee to assist in defraying the administrative costs of performing the review.

Subd. 5. Conduct of review. Peer review occurs upon submission by a patient, the patient's representative, insurer, or chiropractor, in accordance with the procedures approved by the board, of an inquiry about a bill for treatment rendered to a patient by a chiropractor. The peer review committee shall examine each inquiry submitted to it and shall report its findings to the executive director of the board and furnish copies of the findings to the patient, chiropractor, and third-party payor. The findings of the peer review committee on each inquiry reviewed shall include a determination of whether or not the chiropractor properly utilized services and rendered or ordered appropriate treatment or services and whether or not the cost of the treatment was unconscionable.

Subd. 6. Annual report. An annual summary of the findings of the peer review committee shall be prepared by the committee and submitted to the board. The report may be made available to interested persons upon request and upon payment of necessary administrative costs to defray the expenses of reproduction. No report or summary submitted to the public by the board may disclose the name or identifier of any patient without the patient's consent.

Subd. 7. Treatment records. The acceptance of, or the request for, payment for treatment rendered to a patient by a doctor of chiropractic constitutes the consent of the doctor of chiropractic to the submission of all necessary records and other information concerning the treatment to the peer review committee.

Subd. 8. Rules. (a) The board may adopt rules it considers necessary and appropriate to implement the peer review system and activities established under this chapter.

(b) The decision by the board to refer the matter to a peer review committee, the establishment by the board of the procedures by which a peer review committee reviews the rendering of health care services, and the proceedings and findings of a peer review committee are not subject to the rulemaking provisions of chapter 14.

Subd. 9. Application of other law. (a) The provisions of section 145.62, apply to any person, firm, corporation, or other entity providing information to the board or the peer review committee.

(b) The provisions of section 145.63, apply to an officer, member, employee, or agent of the board and to an officer, member, employee, or agent of an entity with which the board has contracted under this section.

Subd. 10. Confidentiality of peer review records. All data and information acquired by the board or the peer review committee, in the exercise of its duties and functions, shall be subject to the same disclosure and confidentiality protections as provided for data and information of other review organizations under section 145.64. This subdivision does not limit or restrict the board or the peer review committee from fully performing their prescribed peer review duties and functions, nor does it apply to disciplinary and enforcement proceedings under sections 14.57 to 14.62, 148.10, 148.105, 214.10, and 214.11. The peer review committee shall file with the board a complaint against a health care provider if it determines that reasonable cause exists to believe the health care provider has violated any portion of this chapter or rules adopted under it, for which a licensed chiropractor may be disciplined. The peer

review committee shall transmit all complaint information it possesses to the board. The data, information, and records are classified as private data on individuals for purposes of chapter 13. The patient records obtained by the board pursuant to this section must be used solely for the purposes of the board relating to peer review or the disciplinary process.

History: 1987 c 345 s 11

148.56 OPTOMETRISTS.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. **Unregulated sales.** Nothing in sections 148.52 to 148.62 shall be construed to apply to the sale of toy glasses, goggles consisting of plano-white or plano-colored lenses or ordinary colored glasses or to the replacement of duplications of broken lenses, nor to sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor, nor shall it apply to regularly licensed physicians and surgeons. Sections 148.52 to 148.62 also do not apply to the sale of spectacles, used for reading and containing only simple lenses having a plus power of up to and including 3.25, if no attempt is made to test the eyes. The term "simple lenses" does not include bifocals. The seller shall prominently display a sign on the counter or rack or other display device where the spectacles are offered for sale that reads as follows: "If you have experienced a vision loss, the selection of these glasses should not take the place of an eye exam."

[For text of subd 4, see M.S.1986]

History: 1987 c 125 s 1