

CHAPTER 147

PHYSICIANS AND SURGEONS, OSTEOPATHS

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147.01 BOARD OF MEDICAL EXAMINERS.

Subdivision 1. Creation; terms. The board of medical examiners consists of 16 residents of the state of Minnesota appointed by the governor. Ten board members must hold a degree of doctor of medicine and be licensed to practice medicine under this chapter. One board member must hold a degree of doctor of osteopathy and either be licensed to practice osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16; prior to May 1, 1963, or be licensed to practice medicine under this chapter. Five board members must be public members as defined by section 214.02. The governor is encouraged to make appointments to the board which reflect the geography of the state and a broad mix of expertise of the members. A member may be reappointed but shall not serve more than eight years consecutively. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements are as provided in sections 214.07 to 214.09. The provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations are as provided in chapter 214 and Laws 1976, chapter 222, sections 2 to 7.

Subd. 2. Recommendations for appointment. Prior to the end of the term of a doctor of medicine or public member on the board, or within 60 days after a doctor of medicine or public member position on the board becomes vacant, the state medical association, the mental health association of Minnesota, and other interested persons and organizations may recommend to the governor doctors of medicine and public members qualified to serve on the board. Prior to the end of the term of a doctor of osteopathy, or within 60 days after a doctor of osteopathy membership becomes vacant, the Minnesota osteopathic medical society may recommend to the governor three doctors of osteopathy qualified to serve on the board. The governor may appoint members to the board from the list of persons recommended or from among other qualified candidates.

Subd. 3. Board administration. The board shall elect from among its number a president, a vice-president, and a secretary-treasurer, who shall each serve for one year, or until a successor is elected and qualifies. The board shall have authority to adopt rules as may be found necessary to carry out the purposes of this chapter. The members of the board shall have authority to administer oaths and the board, in session, to take testimony as to matters pertaining to the duties of the board. Nine members of the board shall constitute a quorum for the transaction of business. The board shall have a common seal, which shall be kept by the executive director, whose duty it shall be to keep a record of all proceedings of the board, including a register of all applicants for license under this chapter, giving their names, addresses, ages, educational qualifications, and the result of their examination. These books and registers shall be prima facie evidence of all the matters therein recorded.

Subd. 4. **Disclosure.** Subject to the exceptions listed in this subdivision, all communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction are confidential and privileged and any disciplinary hearing shall be closed to the public.

(a) Upon application of a party in a proceeding before the board under section 147.091, the board shall produce and permit the inspection and copying, by or on behalf of the moving party, of any designated documents or papers relevant to the proceedings, in accordance with the provisions of rule 34, Minnesota rules of civil procedure.

(b) If the board imposes disciplinary measures of any kind, whether by contested case or by settlement agreement, the name and business address of the licensee, the nature of the misconduct, and the action taken by the board are public data. If disciplinary action is taken by settlement agreement, the entire agreement is public data.

(c) The board shall exchange information with other licensing boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (d), and may release information in the reports required under sections 147.02, subdivision 6, and 214.10, subdivision 8, paragraph (b).

(d) The board shall furnish to a person who made a complaint a summary of the results of an investigation of that complaint, a description of the activities and actions of the board relating to that complaint, and the reasons for actions taken by the board.

Subd. 5. The board of medical examiners shall provide blanks, books, certificates, and such stationery and assistance as is necessary for the transaction of the business pertaining to the duties of such board. The expenses of administering sections 147.01 to 147.29 shall be paid from the appropriations made to the board of medical examiners. The board shall employ an executive director.

History: (5706) *RL s 2295; 1921 c 68 s 1; 1927 c 188 s 1; 1963 c 45 s 1; 1967 c 416 s 1; 1969 c 927 s 1; 1973 c 638 s 6; 1975 c 136 s 5; 1976 c 2 s 65; 1976 c 222 s 32; 1976 c 239 s 53; 1984 c 588 s 1; 1985 c 247 s 1-3,25; 1986 c 444; 1Sp1986 c 3 art 1 s 22; 1987 c 86 s 1; 1990 c 576 s 1-3*

147.02 EXAMINATION; LICENSING.

Subdivision 1. **United States or Canadian medical school graduates.** The board shall, with the consent of six of its members, issue a license to practice medicine to a person who meets the following requirements:

(a) An applicant for a license shall file a written application on forms provided by the board, showing to the board's satisfaction that the applicant is of good moral character and satisfies the requirements of this section.

(b) The applicant shall present evidence satisfactory to the board of being a graduate of a medical or osteopathic school located in the United States, its territories or Canada, and approved by the board based upon its faculty, curriculum, facilities, accreditation by a recognized national accrediting organization approved by the board, and other relevant data, or is currently enrolled in the final year of study at the school.

(c) The applicant must have passed a comprehensive examination for initial licensure prepared and graded by the national board of medical examiners or the federation of state medical boards. The board shall by rule determine what constitutes a passing score in the examination.

(d) The applicant shall present evidence satisfactory to the board of the completion of one year of graduate, clinical medical training in a program accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization.

(e) The applicant shall make arrangements with the executive director to appear in person before the board or its designated representative to show that the applicant satisfies the requirements of this section. The board may establish as internal operating procedures the procedures or requirements for the applicant's personal presentation.

(f) The applicant shall pay a fee established by the board by rule. The fee may not be refunded.

(g) The applicant must not have engaged in conduct warranting disciplinary action against a licensee. If the applicant does not satisfy the requirements of this paragraph, the board may refuse to issue a license unless it determines that the public will be protected through issuance of a license with conditions and limitations the board considers appropriate.

Subd. 2. [Repealed, 1985 c 247 s 26]

Subd. 3. [Repealed, 1971 c 485 s 6]

Subd. 4. [Repealed, 1984 c 432 art 2 s 55]

Subd. 5. **Procedures.** The board shall adopt a written statement of internal operating procedures describing procedures for receiving and investigating complaints, reviewing misconduct cases, and imposing disciplinary actions.

Subd. 6. **Disciplinary actions must be published.** At least annually, the board shall publish and release to the public a description of all disciplinary measures taken by the board. The publication must include, for each disciplinary measure taken, the name and business address of the licensee, the nature of the misconduct, and the disciplinary measure taken by the board.

Subd. 6a. **Exception to publication requirement.** The publication requirement does not apply to disciplinary measures by the board which are based exclusively upon grounds listed in section 147.091, subdivision 1, clause (l) or (r).

History: (5707) *RL s 2296; 1909 c 474 s 1; 1927 c 188 s 2; 1937 c 203 s 1; 1953 c 290 s 1; 1959 c 346 s 1; 1963 c 45 s 2; 1967 c 416 s 2; 1969 c 6 s 25; 1969 c 927 s 2; 1971 c 485 s 2; 1973 c 638 s 7; 1974 c 42 s 1; 1975 c 93 s 1,2; 1976 c 222 s 33; 1983 c 290 s 17; 1985 c 247 s 4-6; 1986 c 444; 1988 c 557 s 1,6; 1989 c 282 art 2 s 39; 1990 c 576 s 6*

147.021 [Renumbered 147.091]

147.025 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 patient or former patient, the board or administrative law judge shall not consider evidence of the patient'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 complainant, unless the evidence would be admissible under the applicable provisions of section 609.347, subdivision 3.

History: 1984 c 556 s 1; 1984 c 640 s 32

147.03 LICENSURE BY ENDORSEMENT; RECIPROCITY.

The board, with the consent of six of its members, may issue a license to practice medicine to any person who satisfies the following requirements:

(a) The applicant shall satisfy all the requirements established in section 147.02, subdivision 1, paragraphs (a), (b), (d), (e), and (f).

(b) The applicant shall present evidence satisfactory to the board that the applicant has a valid license to practice medicine issued by the proper agency in another state or by a province of Canada; or is a diplomate of the national board of medical examiners, the national board of examiners for osteopathic physicians and surgeons, or the licensure medical council of Canada.

(c) The applicant shall present evidence satisfactory to the board that the applicant passed an examination as determined by the endorsing examining board or licensing agency. The board, at its discretion, may establish by rule passing grade levels higher than those determined by an examining board or agency or may require the applicant to be examined in subjects not previously covered in an examination.

(d) The applicant shall pay a fee established by the board by rule. The fee may not be refunded.

(e) The applicant must not have engaged in conduct warranting disciplinary action against a licensee, or have been subject to disciplinary action in another state. If an applicant does not satisfy the requirements stated in this clause, the board may refuse to issue a license unless it determines that the public will be protected through issuance of a license with conditions or limitations the board considers appropriate.

The board may issue a temporary permit to practice medicine to a physician eligible for licensure under this section upon payment of a fee set by the board. The permit remains valid only until the next meeting of the board.

History: (5709) 1905 c 236 s 1; 1913 c 139 s 1; 1919 c 251 s 1; 1927 c 188 s 3; 1953 c 290 s 2; 1963 c 45 s 3; 1975 c 92 s 1; 1977 c 7 s 1; 1985 c 247 s 8; 1986 c 444

147.031 EXAMINATIONS AND LICENSES OF OSTEOPATHS.

Subdivision 1. Any doctor of osteopathy licensed by the state board of osteopathy under Minnesota Statutes 1961, Sections 148.11 to 148.16, desiring to obtain a license to practice medicine shall apply to the secretary of the board and pay a fee of \$50 for the use of the board, which in no case shall be refunded. The applicant shall be examined in the subjects that the board then examines applicants under section 147.02 in which the applicant was not examined by the state board of osteopathy prior to the issuance of a license under Minnesota Statutes 1961, sections 148.11 to 148.16, prior to May 1, 1963. All applicants shall be known to the board members or examiners only by number, without names, or other methods of identification on examination papers by which board members or examiners may be able to identify such applicants, until the final grades of all the examination papers have been determined, and the licenses granted or refused. After such examination, the board, if eight members thereof consent, shall grant such doctor of osteopathy a license to practice medicine. The board may refuse to grant such a license to any person guilty of immoral, dishonorable, or unprofessional conduct, as defined in Minnesota Statutes 1961, chapter 147, but subject to the right of the applicant to appeal to the district court in the county in which the principal office of the board is located on the questions of law and fact.

Subd. 2. Any such doctor of osteopathy may, until so granted a license to practice medicine, continue to practice osteopathy as taught in reputable colleges of osteopathy, including the use and administration, in connection with the practice of obstetrics, minor surgery, and toxicology only, of anesthetics, narcotics, antidotes, and antiseptics subject to the same state and federal restrictions and limitations as are by law applicable to physicians licensed to practice medicine and shall have the same rights and powers and be subject to the same duties as physicians licensed to practice medicine with reference to matters pertaining to the public health, including the reporting of births and deaths. The board shall by rule determine what constitutes minor surgery, anesthetics, narcotics, antidotes, and antiseptics.

Subd. 3. No person who is not on May 1, 1963, licensed by the state board of osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16, shall engage in the practice of osteopathy or by use of titles or initials indicating degrees, or in any other way, hold out as being so engaged.

Subd. 4. Every person who shall violate any provisions of this section shall be guilty of a gross misdemeanor.

Subd. 5. The board shall investigate suspected violations of this section and institute proceedings thereunder.

History: 1963 c 45 s 4; 1973 c 638 s 8; 1985 c 248 s 70; 1986 c 444

147.035 MALPRACTICE HISTORY.

Subdivision 1. **Submission.** A person desiring to practice medicine in this state who has previously practiced in another state shall submit the following additional information with the license application for the five-year period of active practice preceding the date of filing such application:

(a) The name and address of the person's professional liability insurer in the other state.

(b) The number, date, and disposition of any medical malpractice settlement or award made to the plaintiff relating to the quality of medical treatment.

Subd. 2. Board action. The board shall give due consideration to the information submitted pursuant to section 147.03 and this section. An applicant who willfully submits incorrect information shall be subject to disciplinary action pursuant to section 147.091.

History: 1976 c 222 s 35; 1985 c 247 s 25; 1986 c 444

147.037 LICENSING OF FOREIGN MEDICAL SCHOOL GRADUATES.

Subdivision 1. Requirements. The board shall, with the consent of six of its members, issue a license to practice medicine to any person who satisfies the following requirements:

(a) The applicant shall satisfy all the requirements established in section 147.02, subdivision 1, paragraphs (a), (e), (f), and (g).

(b) The applicant shall present evidence satisfactory to the board that the applicant is a graduate of a medical or osteopathic school approved by the board as equivalent to accredited United States or Canadian schools based upon its faculty, curriculum, facilities, accreditation, or other relevant data.

(c) The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates, and the applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.

(d) The applicant shall present evidence satisfactory to the board of the completion of two years of graduate, clinical medical training in a program located in the United States, its territories, or Canada and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. This requirement shall not apply to an applicant who is admitted as a permanent immigrant to the United States as a person of exceptional ability in the sciences pursuant to rules of the United States Department of Labor and who has completed one year of the graduate, clinical medical training required by this paragraph.

(e) The applicant must have passed an examination prepared and graded by the federation of state medical boards, the licensure medical council of Canada, or shall establish eligibility through reciprocity with another state using an examination equivalent to Minnesota's at the time the applicant was licensed in that state.

Subd. 2. Medical school review. The board may contract with any qualified person or organization for the performance of a review or investigation, including site visits if necessary, of any medical or osteopathic school prior to approving the school under section 147.02, subdivision 1, paragraph (b), or subdivision 1, paragraph (b), of this section. To the extent possible, the board shall require the school being reviewed to pay the costs of the review or investigation.

History: 1985 c 247 s 9; 1986 c 444

147.04 RETALIATORY PROVISIONS.

If by the laws of any state or the rulings or decisions of the appropriate officers or boards thereof, any burden, obligation, requirement, disqualification, or disability is put upon physicians registered in this state or holding diplomas from medical colleges in this state which are in good standing therein, affecting the right of these physicians to be registered or admitted to practice in that state, then the same or like burdens, obligations, requirements, disqualification, or disability may be put upon the registration in this state of physicians registered in that state or holding diplomas from medical colleges situated therein.

History: (5710) 1905 c 236; 1913 c 139 s 2; 1959 c 346 s 2

- 147.05 [Renumbered 147.01, subd 5]
- 147.06 [Repealed, 1985 c 247 s 26]
- 147.07 [Repealed, 1985 c 247 s 26]
- 147.072 [Repealed, 1985 c 247 s 26]
- 147.073 [Renumbered 147.161]
- 147.074 [Renumbered 147.162]
- 147.075 [Repealed, 1981 c 323 s 4; 1983 c 312 art 1 s 27]
- 147.08 [Repealed, 1974 c 61 s 2]

147.081 PRACTICING WITHOUT LICENSE; PENALTY.

Subdivision 1. **Unlawful practice of medicine.** It is unlawful for any person not holding a valid license issued in accordance with this chapter to practice medicine as defined in subdivision 3 in this state.

Subd. 2. **Penalty.** Any person violating the provisions of subdivision 1 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 upon any person;
- (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 osteopathy," "osteopath," "osteopathic physician," "physician," "surgeon," "M.D.," "D.O.," or any combination of these designations.

History: (5717) *RL s 2300; 1927 c 188 s 4; 1963 c 45 s 6; 1971 c 485 s 5; 1974 c 43 s 1; 1985 c 247 s 13,25; 1986 c 444*

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.
- (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.

lent of an internship or residency in any hospital or institution approved for training by the board.

(6) A person employed in a scientific, sanitary, or teaching capacity by the state university, the state department of education, 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 licensed psychologists 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.

History: (5716) *RL s 2299; 1971 c 485 s 4; 1980 c 567 s 1; 1981 c 23 s 4; 1985 c 247 s 12; 1986 c 444; 1987 c 384 art 1 s 17; 1990 c 542 s 5; 1990 c 576 s 4*

147.091 GROUND FOR DISCIPLINARY ACTION.

Subdivision 1. **Grounds listed.** The board may refuse to grant a license 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 osteopathy. 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 148A.02, 609.344, and 609.345, or a state or federal narcotics or controlled substance law.

(g) Engaging in any unethical conduct; conduct likely to deceive, 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 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 a physician's assistant or failure to supervise a 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 as mentally incompetent, mentally ill or mentally retarded, or as a chemically dependent person, a person dangerous to the public, or a person who has a psychopathic personality by a court of competent jurisdiction, within or without this state. Such adjudication shall automatically suspend a license for the duration thereof unless the board orders otherwise.

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

(l) Inability to practice medicine with reasonable skill and safety to patients by reason of illness, 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.

(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 osteopathy 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 osteopathy, 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 section 144.335 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 section 144.335 in which the referring physician has a significant financial interest unless the physician has disclosed the physician's own financial interest; 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) 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 section 144.335 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.

Subd. 2. Effective dates. 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 medicine is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a probate court pursuant to 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 pursuant to 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.

Subd. 3. Conditions on reissued license. In its discretion, the board may restore and reissue a license to practice medicine, but as a condition thereof may impose any disciplinary or corrective measure which it might originally have imposed.

Subd. 4. Temporary suspension of license. In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend the license of a physician if the board finds that the physician has violated a statute or rule which the board is empowered to enforce and continued practice by the physician would create a serious risk of harm to the public. The suspension shall take effect upon written notice to the physician, specifying the statute or rule violated. The suspension shall remain in effect until the board issues a final order in the matter after a hearing. At the time it issues the suspension notice, the board shall schedule a disciplinary hearing to be held pursuant to the administrative procedure act. The physician shall be provided with at least 20 days notice of any hearing held pursuant to this subdivision. The hearing shall be scheduled to begin no later than 30 days after the issuance of the suspension order.

Subd. 5. Evidence. In disciplinary actions alleging a violation of subdivision 1, paragraph (c) or (d), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency which entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the contents thereof.

Subd. 6. Mental examination; access to medical data. (a) If the board has probable cause to believe that a physician comes under subdivision 1, paragraph (1), it may direct the physician to submit to a mental or physical examination. For the purpose

of this subdivision every physician licensed under this chapter is deemed to have consented 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 physician to submit to an examination when directed constitutes an admission of the allegations against the physician, unless the failure was due to circumstance beyond the physician's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the physician can resume the competent practice of medicine with reasonable skill and safety to patients.

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

(b) 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 medical or other health data, obtain medical 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 physician comes under subdivision 1, paragraph (1). The medical 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 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.

Subd. 7. Tax clearance certificate. (a) In addition to the provisions of subdivision 1, the board may not issue or renew a license if the commissioner of revenue notifies the board and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. The board may issue or renew the license only if (1) the commissioner of revenue issues a tax clearance certificate and (2) the commissioner of revenue or the licensee or applicant forwards a copy of the clearance to the board. The commissioner of revenue may issue a clearance certificate only if the licensee or applicant does not owe the state any uncontested delinquent taxes.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) "Taxes" are all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes.

(2) "Delinquent taxes" do not include a tax liability if (i) an administrative or court action that contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired, or (iii) the licensee or applicant has entered into a payment agreement to pay the liability and is current with the payments.

(c) In lieu of the notice and hearing requirements of subdivision 1, when a licensee or applicant is required to obtain a clearance certificate under this subdivision, a contested case hearing must be held if the licensee or applicant requests a hearing in writing to the commissioner of revenue within 30 days of the date of the notice provided in paragraph (a). The hearing must be held within 45 days of the date the commissioner of revenue refers the case to the office of administrative hearings. Notwithstanding any law to the contrary, the licensee or applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the licensee or applicant. The notice may be served personally or by mail.

(d) The board shall require all licensees or applicants to provide their social security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the board must provide to the commis-

sioner of revenue a list of all licensees and applicants, including the name and address, social security number, and business identification number. The commissioner of revenue may request a list of the licensees and applicants no more than once each calendar year.

History: 1971 c 485 s 3; 1974 c 31 s 1; 1975 c 213 s 1; 1976 c 222 s 34; 1981 c 83 s 1; 1982 c 581 s 24; 1985 c 21 s 1; 1985 c 247 s 7,25; 1986 c 444; 1Sp1986 c 1 art 7 s 7; 1Sp1986 c 3 art 1 s 82; 1987 c 384 art 2 s 1; 1988 c 557 s 2; 1989 c 184 art 2 s 3

147.10 [Renumbered 147.081]

147.101 [Repealed, 1985 c 247 s 26]

147.11 [Repealed, 1985 c 247 s 26]

147.111 REPORTING OBLIGATIONS.

Subdivision 1. Permission to report. A person who has knowledge of any conduct constituting grounds for discipline under sections 147.01 to 147.33 may report the violation to the board.

Subd. 2. Institutions. Any hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the institution or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition a physician's privilege to practice or treat patients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action. The institution or organization shall also report the resignation of any physicians prior to the conclusion of any disciplinary proceeding, or prior to the commencement of formal charges but after the physician had knowledge that formal charges were contemplated or in preparation. Each report made under this subdivision must state the nature of the action taken, state in detail the reasons for the action, and identify the specific patient medical records upon which the action was based. No report shall be required of a physician voluntarily limiting the practice of the physician at a hospital provided that the physician notifies all hospitals at which the physician has privileges of the voluntary limitation and the reasons for it.

Subd. 3. Medical societies. A state or local medical society shall report to the board any termination, revocation, or suspension of membership or any other disciplinary action taken against a physician. If the society has received a complaint which might be grounds for discipline under sections 147.01 to 147.33 against a member physician on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the board of medical examiners.

Subd. 4. 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 sections 147.01 to 147.33 by any physician, including any conduct indicating that the physician may be medically incompetent, or may have engaged in unprofessional conduct or may be medically or physically unable to engage safely in the practice of medicine. No report shall be required if the information was obtained in the course of a physician-patient relationship if the patient is another physician and the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment.

Subd. 5. Insurers. Four times each year as prescribed by the board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to physicians, and any medical clinic, hospital, political subdivision or other entity that self-insures and provides professional liability coverage to physicians, shall submit to the board a report concerning the physicians against whom medical malpractice settlements or awards have been made to the plaintiff. The report must contain at least the following information:

(1) the total number of medical malpractice settlements or awards made to the plaintiff;

- (2) the date the medical 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 medical malpractice settlement or award;
- (5) the regular address of the practice of the physician against whom an award was made or with whom a settlement was made; and
- (6) the name of the physician 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 physician may have engaged in conduct violating sections 147.01 to 147.33.

Subd. 6. Courts. The court administrator 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 physician is mentally ill, mentally incompetent, guilty of a felony, or guilty of a violation of federal or state narcotics laws or controlled substances act, guilty of an abuse or fraud under Medicare or Medicaid, appoints a guardian of the physician pursuant to sections 525.54 to 525.61 or commits a physician pursuant to chapter 253B or sections 526.09 to 526.11.

Subd. 7. Self-reporting. A physician shall report to the board any personal action which would require that a report be filed with the board by any person, health care facility, business, or organization pursuant to subdivisions 2 to 6.

Subd. 8. Deadlines; forms. Reports required by subdivisions 2 to 7 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. 9. Subpoenas. The board may issue subpoenas for the production of any reports required by subdivisions 2 to 7 or any related documents.

History: 1985 c 247 s 14; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 557 s 3; 1990 c 576 s 5

147.12 [Repealed, 1985 c 247 s 26]

147.121 IMMUNITY.

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 pursuant to section 147.111 or for otherwise reporting to the board violations or alleged violations of section 147.091. All such reports are confidential and absolutely privileged communications.

Subd. 2. Investigation. Members of the board and persons employed by the board or engaged in the investigation of violations and in the preparation and management of charges of violations of sections 147.01 to 147.33 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 147.01 to 147.33.

History: 1985 c 247 s 15,25

147.13 [Repealed, 1985 c 247 s 26]

147.131 PHYSICIAN COOPERATION.

A physician 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 medical records, as reasonably

requested by the board, to assist the board in its investigation. The board shall pay for copies requested. If the board does not have a written consent from a patient permitting access to the patient's records, the physician shall delete any data in the record which identifies the patient before providing it to the board. The board shall maintain any records obtained pursuant to this section as investigative data pursuant to chapter 13.

History: 1985 c 247 s 16; 1986 c 444

147.141 FORMS OF DISCIPLINARY ACTION.

When the board finds that a licensed physician has violated a provision or provisions of sections 147.01 to 147.33, it may do one or more of the following:

- (1) revoke the license;
- (2) suspend the license;
- (3) impose limitations or conditions on the physician's practice of medicine, including the limitation of scope of practice to designated field specialties; the imposition of retraining or rehabilitation requirements; the requirement of practice under supervision; or the conditioning of continued practice on demonstration of knowledge or skills by appropriate examination or other review of skill and competence;
- (4) 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 physician of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding;
- (5) order the physician to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution; or
- (6) censure or reprimand the licensed physician.

History: 1985 c 247 s 17

147.151 DISCIPLINARY RECORD ON JUDICIAL REVIEW.

Upon judicial review of any board disciplinary action taken under sections 147.01 to 147.33, the reviewing court shall seal the administrative record, except for the board's final decision, and shall not make the administrative record available to the public.

History: 1985 c 247 s 18

147.16 [Repealed, 1985 c 247 s 26]

147.161 PHYSICIAN ACCOUNTABILITY.

Subdivision 1. Investigation. The board shall maintain and keep current a file containing the reports and complaints filed against physicians in the state. Each complaint filed with the board pursuant to section 214.10, subdivision 1, shall be investigated according to section 214.10, subdivision 2.

Whenever the files maintained by the board show that a medical malpractice settlement or award to the plaintiff has been made against a physician as reported by insurers pursuant to section 147.111, the executive director of the board shall notify the board and the board may authorize a review of the physician's practice.

Subd. 2. Attorney general investigates. When the board initiates a review of a physician's practice it shall notify the attorney general who shall investigate the matter in the same manner as provided in section 214.10. If an investigation is to be made, the attorney general shall notify the physician, and, if the incident being investigated occurred there, the administrator and chief of staff at the medical care facilities in which the physician serves.

Subd. 3. Access to hospital records. The board shall have access to hospital and medical records of a patient treated by the physician under review if the patient signs a written consent permitting such access. If no consent form has been signed, the hospital or physician shall first delete data in the record which identifies the patient before providing it to the board.

History: 1976 c 222 s 39; 1980 c 509 s 47; 1981 c 311 s 39; 1982 c 545 s 24; 1985 c 247 s 10,25; 1Sp1986 c 3 art 1 s 23

147.162 MEDICAL CARE FACILITIES; EXCLUSION.

Each physician shall file with the board a list of the inpatient and outpatient medical care facilities at which the physician has medical privileges. The list shall be updated when the physician applies for license renewal. Nothing in this chapter grants to any person the right to be admitted to the medical staff of a health care facility.

History: 1976 c 222 s 40; 1985 c 247 s 11,25; 1986 c 444

147.17 [Repealed, 1985 c 247 s 26]

147.171 [Repealed, 1990 c 576 s 6]

147.18 [Repealed, 1985 c 247 s 26]

147.19 [Repealed, 1985 c 247 s 26]

147.20 [Repealed, 1985 c 247 s 26]

147.21 REGISTRATION FEES FOR OSTEOPATHS.

Every doctor of osteopathy licensed by the state board of osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16, prior to May 1, 1963, and not licensed to practice medicine under this chapter shall annually register with the board in the manner prescribed in section 146.13.

History: 1963 c 45 s 9

147.22 TRANSFER RECORDS, ASSETS, AND POWERS.

The records, assets, and powers of the state board of osteopathy are transferred to the state board of medical examiners.

History: 1963 c 45 s 10; 1976 c 2 s 63

147.23 [Repealed, 1985 c 247 s 26]

147.24 [Repealed, 1990 c 576 s 6]

147.25 [Repealed, 1990 c 576 s 6]

147.26 [Repealed, 1990 c 576 s 6]

147.27 [Repealed, 1990 c 576 s 6]

147.28 [Repealed, 1990 c 576 s 6]

147.29 [Repealed, 1990 c 576 s 6]

147.30 [Repealed, 1990 c 576 s 6]

147.31 [Repealed, 1990 c 576 s 6]

147.32 [Repealed, 1990 c 576 s 6]

147.33 [Repealed, 1990 c 576 s 6]

147.34 PHYSICIAN ASSISTANTS; DELEGATED AUTHORITY TO PRESCRIBE AND ADMINISTER DRUGS AND MEDICAL DEVICES.

Subdivision 1. Delegation of authority to prescribe and administer drugs and medical devices. (a) A supervising physician may delegate to a physician assistant who is registered with the board of medical examiners and certified by the National Commission on Certification of Physician Assistants and who is under the supervising physician's supervision, the authority to prescribe and administer legend drugs and medical devices, subject to the requirements in this section and other requirements established by the commissioner of health in rules.

(b) The agreement between the physician assistant and supervising physician and any alternate supervising physicians must include a statement by the supervising physician regarding delegation or nondelegation of the functions of prescribing and administering of legend drugs and medical devices to the physician assistant. The statement must include a protocol indicating categories of drugs for which the supervising physician delegates prescriptive authority. The delegation must be appropriate to the physician assistant's practice and within the scope of the physician assistant's training. The

commissioner of health shall identify categories of drugs, if any, for which delegated prescribing is inappropriate. Physician assistants who have been delegated the authority to prescribe and administer legend drugs and medical devices shall provide evidence of current certification by the National Commission on Certification of Physician Assistants when registering or reregistering as physician assistants. Supervising physicians shall retrospectively review, on a daily basis, the prescribing and administering of legend drugs and medical devices by physician assistants, when this authority has been delegated to the physician assistant as part of the delegation agreement between the physician and the physician assistant. During each on-site visit required under Minnesota Rules, the supervising physician shall document by signature and date that the prescriptive practice of the physician assistant has been reviewed.

(c) The commissioner of health shall establish by rule:

(1) a system of identifying physician assistants eligible to prescribe drugs and medical devices;

(2) a method of determining the categories of prescription drugs and medical devices that each physician assistant is allowed to prescribe; and

(3) a system of transmitting to pharmacies a listing of physician assistants eligible to prescribe prescription drugs and medical devices and the types of drugs and medical devices they are allowed to prescribe.

Subd. 2. Authority to adopt rules. The commissioner of health may adopt or amend rules to implement this section, including the amendment of rules previously adopted under section 214.13. The commissioner may delegate to the board of medical examiners the authority to implement and enforce the rules.

History: 1990 c 524 s 1

NOTE: Subdivision 1, paragraphs (b) and (c), are effective June 1, 1991. See Laws 1990, chapter 524, section 5.