

CHAPTER 148B

SOCIAL WORK, MARRIAGE AND FAMILY THERAPY, AND MENTAL HEALTH

BOARDS OF SOCIAL WORK AND MARRIAGE AND FAMILY THERAPY

- 148B.01 Definitions.
- 148B.03 Applicability.
- 148B.04 Disclosure.
- 148B.05 Right to practice.
- 148B.06 Tax clearance certificate.
- 148B.07 Reporting obligations.
- 148B.08 Immunity.
- 148B.09 Professional cooperation.
- 148B.10 Disciplinary record on judicial review.
- 148B.11 Professional accountability.
- 148B.12 Malpractice history.
- 148B.13 Publication of disciplinary actions.
- 148B.14 Evidence of past sexual conduct.
- 148B.15 Dispute resolution.
- 148B.17 Fees.
- 148B.175 Complaints; investigation and hearing.
- 148B.18 BOARD OF SOCIAL WORK
- 148B.18 Definitions.
- 148B.19 Board of social work.
- 148B.20 Duties of the board.
- 148B.21 Requirements for licensure.
- 148B.215 Contested case hearing.
- 148B.22 License renewal requirements.
- 148B.23 Licenses; transition period.
- 148B.24 Reciprocity.
- 148B.25 Nontransferability of licenses.
- 148B.26 Denial, suspension, or revocation of license.
- 148B.27 Prohibition against unlicensed practice or use of titles; penalty.
- 148B.28 Exceptions to license requirement.

BOARD OF MARRIAGE AND FAMILY THERAPY

- 148B.29 Definitions.
- 148B.30 Board of marriage and family therapy examiners.
- 148B.31 Duties of the board.
- 148B.32 Prohibitions and penalty.
- 148B.33 Requirements for licensure.
- 148B.34 Licenses; transition period.
- 148B.35 Reciprocity with other states.
- 148B.36 Nontransferability of licenses.
- 148B.37 Refusal to grant license; suspension or revocation of license.
- 148B.38 Exceptions from license requirement.
- 148B.39 Privileged communications; exceptions.

OFFICE OF MENTAL HEALTH PRACTICE

- 148B.60 Definitions.
- 148B.61 Office of mental health practice.
- 148B.62 Mental health practitioner advisory council.
- 148B.63 Reporting obligations.
- 148B.64 Immunity.
- 148B.65 Disciplinary record on judicial review.
- 148B.66 Professional cooperation.
- 148B.67 Professional accountability.
- 148B.68 Prohibited conduct.
- 148B.69 Disciplinary actions.
- 148B.70 Additional remedies.
- 148B.71 Mental health client bill of rights.
- 148B.72 Expenses.

BOARDS OF SOCIAL WORK

AND MARRIAGE AND FAMILY THERAPY

148B.01 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of this chapter, the following terms have the meanings given.

Subd. 2. [Repealed, 1991 c 292 art 2 s 75]

Subd. 3. **Board of social work.** "Board of social work" means the board of social work established in section 148B.19.

Subd. 4. **Board of marriage and family therapy.** "Board of marriage and family therapy" means the board of marriage and family therapy established in section 148B.30.

Subd. 5. [Repealed, 1991 c 292 art 2 s 75]

Subd. 6. [Repealed, 1991 c 292 art 2 s 75]

Subd. 7. **Licensee.** "Licensee" means a person licensed by the board of social work or the board of marriage and family therapy.

History: 1987 c 347 art 1 s 1; 1991 c 292 art 2 s 33

148B.02 [Repealed, 1991 c 292 art 2 s 75]

148B.03 APPLICABILITY.

Sections 148B.04 to 148B.17 apply to the board of social work and the board of marriage and family therapy, and the licensees within their respective jurisdictions, unless superseded by an inconsistent law that relates specifically to a particular board.

History: 1987 c 347 art 1 s 3; 1991 c 292 art 2 s 34

148B.04 DISCLOSURE.

Subdivision 1. [Repealed, 1988 c 689 art 2 s 269]

Subd. 2. **Contested case proceedings.** Upon application of a party in a contested case proceeding before a board, 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 rule 34, Minnesota rules of civil procedure.

Subd. 3. **Information on disciplinary actions.** If a board imposes disciplinary measures or takes disciplinary action of any kind, the name and business address of the licensee, the nature of the misconduct, and the action taken by the board, including all settlement agreements and other board orders, are public data.

Subd. 4. **Exchange of information.** The boards shall exchange information with other boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (d).

Subd. 5. **Information to the complainant.** The board shall furnish to a person who made a complaint a statement of the result of an investigation of the complaint and a description of the activities and actions of the board relating to the complaint.

History: 1987 c 347 art 1 s 4; 1991 c 292 art 2 s 35,36; 1992 c 460 s 1,2

148B.05 RIGHT TO PRACTICE.

Subdivision 1. **Disciplinary action by a board.** A suspension, revocation, condition, limitation, qualification, or restriction of an individual's license or right to practice is in effect pending determination of an appeal unless the court, upon petition and for good cause shown, orders otherwise.

Subd. 2. [Repealed, 1992 c 460 s 20]

History: 1987 c 347 art 1 s 5; 1989 c 209 art 2 s 1; 1991 c 292 art 2 s 37; 1992 c 460 s 3

148B.06 TAX CLEARANCE CERTIFICATE.

Subdivision 1. **Certificate required.** A 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. A board may issue or renew a license or filing only if the commissioner of revenue issues a tax clearance certificate and 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. For purposes of this section, "taxes" means all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes. "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.

Subd. 2. **Hearing.** In lieu of the notice and hearing requirements of section 148B.16, 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 required in subdivision 1. 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 other law, 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.

Subd. 3. Information required. The boards 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 of social work and the board of marriage and family therapy must provide to the commissioner 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: 1987 c 347 art 1 s 6; 1989 c 184 art 2 s 5; 1991 c 292 art 2 s 38,39,74

148B.07 REPORTING OBLIGATIONS.

Subdivision 1. Permission to report. A person who has knowledge of any conduct constituting grounds for disciplinary action relating to licensure or unlicensed practice under this chapter may report the violation to the appropriate board.

Subd. 2. Institutions. A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the appropriate board any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition a licensee's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action for conduct that might constitute grounds for disciplinary action by a board under this chapter. The institution or organization shall also report the resignation of any licensees prior to the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or prior to the commencement of formal charges but after the licensee had knowledge that formal charges were contemplated or in preparation.

Subd. 3. Professional societies or associations. A state or local professional society or association for licensees shall forward to the appropriate board any complaint received concerning the ethics or conduct of the practice which the board regulates. The society or association shall forward a complaint to the appropriate board upon receipt of the complaint. The society or association shall also report to the appropriate board any disciplinary action taken against a member.

Subd. 4. Licensed professionals. A licensed health professional shall report to the appropriate board personal knowledge of any conduct that the licensed health professional reasonably believes constitutes grounds for disciplinary action under this chapter by any licensee, including conduct indicating that the licensee may be medically incompetent, or may be medically or physically unable to engage safely in the provision of services. If the information was obtained in the course of a client relationship, the client is another licensee, and the treating individual successfully counsels the other individual to limit or withdraw from practice to the extent required by the impairment, the board may deem this limitation of or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. Insurers. Four times each year as prescribed by a board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to licensees, or the medical joint underwriting association under chapter 62F, shall submit to the appropriate board a report concerning the licensees 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;
- (2) the date the malpractice settlements or awards were made;

- (3) the allegations contained in the claim or complaint leading to the settlements or awards made;
- (4) the dollar amount of each malpractice settlement or award;
- (5) the regular address of the practice of the licensee against whom an award was made or with whom a settlement was made; and
- (6) the name of the licensee 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 that tends to substantiate a charge that a licensee may have engaged in conduct violating this chapter.

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 that adjudges or includes a finding that a licensee is mentally ill, mentally incompetent, guilty of a felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of an abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the licensee pursuant to sections 525.54 to 525.61 or commits a licensee pursuant to chapter 253B or sections 526.09 to 526.11.

Subd. 7. Self-reporting. A licensee shall report to the appropriate board or to the office of mental health practice any personal action that would require that a report be filed 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 boards and the office of mental health practice 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 boards and the office of mental health practice may issue subpoenas for the production of any reports required by subdivisions 2 to 7 or any related documents.

History: 1987 c 347 art 1 s 7; 1991 c 292 art 2 s 40; 1992 c 460 s 4

148B.08 IMMUNITY.

Subdivision 1. Reporting. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report under section 148B.07 or for otherwise reporting violations or alleged violations of this chapter. All the reports are confidential.

Subd. 2. Investigation. Members of the boards of social work and marriage and family therapy and persons employed by the boards or engaged in the investigation of violations and in the preparation and management of charges of violations of this chapter on behalf of the boards, are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.

History: 1987 c 347 art 1 s 8; 1991 c 292 art 2 s 41; 1992 c 460 s 5

148B.09 PROFESSIONAL COOPERATION.

A licensee who is the subject of an investigation by or on behalf of a 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 client 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 client permitting access to the client's records, the licensee shall delete any data in the record that identifies the client 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: 1987 c 347 art 1 s 9; 1991 c 292 art 2 s 74

148B.10 DISCIPLINARY RECORD ON JUDICIAL REVIEW.

Upon judicial review of any board disciplinary or adverse action taken under this chapter, 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: 1987 c 347 art 1 s 10

148B.11 PROFESSIONAL ACCOUNTABILITY.

Subdivision 1. Investigation. Each board shall maintain and keep current a file containing the reports and complaints filed against licensees within the board's jurisdiction. Each complaint filed with a board pursuant to section 214.10, subdivision 1, must be investigated according to section 214.10, subdivision 2. If the files maintained by a board show that a malpractice settlement or award to the plaintiff has been made against a licensee as reported by insurers under section 148B.07, the executive director of the board shall notify the board and the board may authorize a review of the provider's practice.

Subd. 2. Attorney general investigates. When a board initiates a review of a licensee'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 licensee, and, if the incident being investigated occurred there, the administrator and chief of staff at the health care facilities or clinics in which the professional serves, if applicable.

Subd. 3. Access to records. The board shall be allowed access to records of a client treated by the licensee under review if the client signs a written consent permitting access. If no consent form has been signed, the hospital, clinic, or licensee shall first delete data in the record that identifies the client before providing it to the board.

History: 1987 c 347 art 1 s 11; 1992 c 292 art 2 s 74

148B.12 MALPRACTICE HISTORY.

Subdivision 1. Submission. Licensees or applicants for licensure who have previously practiced in another state shall submit with their application the following information:

(1) number, date, and disposition of any malpractice settlement or award made relating to the quality of services provided by the licensee or applicant; and

(2) number, date, and disposition of any civil litigations or arbitrations relating to the quality of services provided by the licensee or applicant in which the party complaining against the licensee or applicant prevailed or otherwise received a favorable decision or order.

Subd. 2. Board action. The board shall give due consideration to the information submitted under this section. A licensee or applicant for licensure who willfully submits incorrect information is subject to disciplinary action under this chapter.

History: 1987 c 347 art 1 s 12; 1991 c 292 art 2 s 42

148B.13 PUBLICATION OF DISCIPLINARY ACTIONS.

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

History: 1987 c 347 art 1 s 13; 1991 c 292 art 2 s 43

148B.14 EVIDENCE OF PAST SEXUAL CONDUCT.

In a proceeding for the suspension or revocation of the right to practice or other disciplinary or adverse action involving sexual contact with a client or former client, the board or administrative law judge shall not consider evidence of the client's previ-

ous 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: 1987 c 347 art 1 s 14

148B.15 DISPUTE RESOLUTION.

Subdivision 1. **Arbitration.** Each board shall encourage licensees to submit all fee disputes with clients to binding arbitration.

Subd. 2. **Mediation.** Each board shall encourage licensees to submit all disputes with clients that are not related to violations of a code of professional conduct to voluntary mediation.

History: 1987 c 347 art 1 s 15; 1992 c 292 art 2 s 74; 1992 c 460 s 6

148B.16 [Repealed, 1991 c 292 art 2 s 75]

148B.17 FEES.

Each board shall by rule establish fees, including late fees, for licenses and renewals so that the total fees collected by the board will as closely as possible equal anticipated expenditures during the fiscal biennium, as provided in section 16A.128. Fees must be credited to accounts in the special revenue fund.

History: 1987 c 347 art 1 s 17; 1989 c 335 art 4 s 61; 1991 c 292 art 2 s 44

148B.171 [Repealed, 1991 c 292 art 2 s 75]

148B.175 COMPLAINTS; INVESTIGATION AND HEARING.

Subdivision 1. **Discovery; subpoenas.** In all matters relating to its lawful regulatory activities, a board may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to appear to testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so may, upon application to the district court in any district, be ordered to comply with the subpoena or order. Any board member may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 2. **Classification of data.** The board shall maintain any records, other than client records, obtained as part of an investigation, as investigative data under section 13.41. Client records are classified as private under chapter 13, and must be protected as such in the records of the board and in administrative or judicial proceeding unless the client authorizes the board in writing to make public the identity of the client or a portion or all of the client's records.

Subd. 3. **Examination.** If a board has probable cause to believe that an applicant or licensee has engaged in conduct prohibited by section 214.10, or statute or rule enforced by the board, it may issue an order directing the applicant or licensee to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this section, every applicant or licensee is considered to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the testimony or reports constitute a privileged communication.

Subd. 4. Failure to submit to an examination. Failure to submit to an examination or evaluation when ordered, unless the failure was due to circumstances beyond the control of the applicant or licensee, constitutes an admission that the applicant or licensee violated section 214.10, or statute or rule enforced by the board, based on the factual specifications in the examination or evaluation order, and may result in an application being denied or a default and final disciplinary order being entered after a contested case hearing. The only issues to be determined at the hearing are whether the designated board member had probable cause to issue the examination or evaluation order and whether the failure to submit was due to circumstances beyond the control of the applicant or licensee. Neither the record of a proceeding under this subdivision nor the orders entered by the board are admissible, subject to subpoena, or to be used against the applicant or licensee in a proceeding in which the board is not a party or decision maker. Information obtained under this subdivision is classified as private under chapter 13 and the orders issued by a board as the result of an applicant or licensee to submit to an examination or evaluation are classified as public.

Subd. 5. Access to data and records. In addition to ordering a physical or mental examination or chemical dependency evaluation and notwithstanding section 13.42, 144.651, 595.02, or any other law limiting access to medical or other health records, a board may obtain data and health records relating to an applicant or licensee without the applicant's or licensee's consent if the board has probable cause to believe that an applicant or licensee has engaged in conduct prohibited by section 214.10, or statute or rule enforced by the board. An applicant, licensee, insurance company, health care facility, provider as defined in section 144.335, subdivision 1, paragraph (b), 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 in accordance with a written request made under this subdivision, unless the information is false and the person or entity giving the information knew or had reason to know that the information was false. Information on individuals obtained under this section is investigative data under section 13.41.

Subd. 6. Forms of disciplinary action. When grounds for disciplinary action exist under section 214.10, or statute or rule enforced by the board, it may take one or more of the following disciplinary actions:

- (1) deny the right to practice;
- (2) revoke the right to practice;
- (3) suspend the right to practice;
- (4) impose limitations on the practice of the licensee;
- (5) impose conditions on the practice of the licensee;
- (6) 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 licensee of any economic advantage gained by reason of the violation charged, or to discourage repeated violations;
- (7) impose a fee to reimburse the board for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the board for services from the office of administrative hearings, attorney fees, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and expense incurred by board members and staff;
- (8) censure or reprimand the licensee; or
- (9) take any other action justified by the facts of the case.

Subd. 7. Temporary suspension. In addition to any other remedy provided by law, the board may, acting through its designated board member and without a hearing, temporarily suspend the right of a licensee to practice if the board member finds that the licensee has violated a statute or rule that the board is empowered to enforce and that continued practice by the licensee would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the licensee specifying the statute or rule violated. The order remains in effect until the board issues a final

order in the matter after a hearing or upon agreement between the board and the licensee. Service of the order is effective if the order is served on the licensee or counsel of record personally or by first class mail to the most recent address provided to the board for the licensee or the counsel of record. Within ten days of service of the order, the board shall hold a hearing before its own members on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the board or licensee may be in affidavit form only. The licensee or the counsel of record may appear for oral argument. Within five working days after the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The board shall issue a final order within 30 days after receipt of that report.

Subd. 8. Automatic suspension; restoration. The right to practice is automatically suspended if (1) a guardian of a licensee is appointed by order of a probate court under sections 525.54 to 525.61, or (2) the licensee is committed by order of a probate court pursuant to chapter 253B or sections 526.09 to 526.11. The right to practice 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 or upon agreement between the board and the licensee. In its discretion, a board may restore and reissue permission to provide services, but as a condition of the permission may impose a disciplinary or corrective measure that it might originally have imposed.

Subd. 9. Additional remedies. The board may in its own name issue a cease and desist order to stop a person from engaging in an unauthorized practice or violating or threatening to violate a statute, rule, or order which the board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the board and is not reviewable by a court or agency.

A hearing must be initiated by the board not later than 30 days from the date of the board's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, the board shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the board.

When a request for a stay accompanies a timely hearing request, the board may, in its discretion, grant the stay. If the board does not grant a requested stay, it shall refer the request to the office of administrative hearings within three working days of receipt of the request. Within ten days after receiving the request from the board, an administrative law judge shall issue a recommendation to grant or deny the stay. The board shall grant or deny the stay within five days of receiving the administrative law judge's recommendation.

In the event of noncompliance with a cease and desist order, the board may institute a proceeding in Ramsey county district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the board not exceeding \$10,000 for each separate violation.

Subd. 10. Injunctive relief. In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, a board may in its own name bring an action in Ramsey county district court for injunctive relief to restrain any unauthorized practice or violation or threatened violation of any statute, rule, or order which the board is empowered to regulate, enforce, or issue. A temporary restraining order must be granted in the proceeding if continued activity by a licensee would create a serious risk of harm to others. The board need not show irreparable harm.

Subd. 11. Additional powers. The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a licensee from criminal prosecution by a competent authority or from disciplinary action by the board. Nothing in this section limits the board's authority to seek injunctive relief under section 214.11.

History: 1991 c 292 art 2 s 45; 1992 c 460 s 7-10

BOARD OF SOCIAL WORK

148B.18 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 148B.18 to 148B.28, the following terms have the meanings given them.

Subd. 2. **Accredited program of social work.** "Accredited program of social work" means a school of social work or other educational program that has been accredited by the council on social work education.

Subd. 3. **Board.** "Board" means the board of social work created in section 148B.19.

Subd. 4. **County agency social worker.** "County agency social worker" means an individual who is employed by a county social service agency in Minnesota in social work practice or clinical social work.

Subd. 5. **State agency social worker.** "State agency social worker" means an individual who is employed by a state social service agency in Minnesota in social work practice or clinical social work.

Subd. 6. **Public agency social worker.** "Public agency social worker" means an individual who is employed by the federal government or the state of Minnesota or any of its political subdivisions in social work practice or clinical social work.

Subd. 7. **Private agency social worker.** "Private agency social worker" means an individual who is employed by an entity not listed in subdivision 6 in the practice of social work or clinical social work.

Subd. 8. **Private practice.** "Private practice" means social work practice conducted by an individual who is either self-employed, or a member of a partnership or of a group practice, rather than being employed by an agency, clinic, or other similar entity.

Subd. 9. **Psychotherapy.** "Psychotherapy" in clinical social work practice means the application of social work theory, methodology, and values in the treatment of a person or persons who have cognitive, emotional, behavioral, or social dysfunctions through psychosocial, psychological, or interpersonal methods. The treatment is a planned and structured program which is based on information from a differential diagnostic assessment, and is directed toward the accomplishment of goals provided in a plan of care. The person-in-situation/environment configuration is considered and integrated into the diagnosis and treatment. Psychotherapy may be conducted by licensed independent clinical social workers and by licensed graduate or licensed independent social workers who practice under the supervision of either a licensed independent clinical social worker or, if approved by the board, by another qualified mental health professional.

Subd. 10. **Qualified mental health professional.** "Qualified mental health professional" means a psychiatrist, board-certified or eligible for board certification, and licensed under chapter 147; a psychologist licensed under sections 148.88 to 148.98; an independent clinical social worker who has the qualifications in section 148B.21, subdivision 6; a psychiatric registered nurse with a master's degree from an accredited school of nursing, licensed under section 148.211, with at least two years of post-master's supervised experience in direct clinical practice; or a marriage and family therapist who is licensed under sections 148B.29 to 148B.39.

Subd. 11. **Social work practice.** "Social work practice" includes the application of psychosocial theory and methods in the prevention, treatment, or resolution of social and/or psychological dysfunction caused by environmental stress, interpersonal or intrapersonal conflict, physical or mental disorders, or a combination of these causes, with particular attention to the person-in-situation configuration.

Social work practice also includes but is not limited to psychotherapy, which is restricted to social workers qualified to practice psychotherapy as defined in subdivision 9. For the following four categories of licensure, social work practice also includes the following action:

- (a) Licensed social workers evaluate and assess difficulties in psychosocial func-

tioning, develop a treatment plan to alleviate those difficulties, and either carry it out themselves or refer clients to other qualified resources for assistance. Treatment interventions commonly include but are not limited to psychosocial evaluation; counseling of individuals, families, and groups; advocacy; referral to community resources; and facilitation of organizational change to meet social needs.

(b) Licensed graduate social workers and licensed independent social workers evaluate and treat more complex problems in psychosocial functioning. Treatment interventions include but are not limited to psychosocial evaluation; counseling of individuals, families, and groups; referral to community resources; advocacy; facilitation of organizational change to meet social needs; and psychotherapy when conducted under supervision as defined in subdivision 12.

(c) Licensed independent clinical social workers provide professional services for the diagnosis, treatment, and prevention of mental and emotional disorders in individuals, families, and groups, with the goal of restoring, maintaining, and enhancing social functioning. Treatment interventions include, but are not limited to, those listed for licensed graduate and licensed independent social workers plus individual, marital, and group psychotherapy without supervision. Independent clinical social work practice may be conducted by independent clinical social workers in private independent practice or in the employ of a public or private agency or corporation or other legal entity.

Social work practice is not medical care nor any other type of remedial care that may be reimbursed under medical assistance, chapter 256B, except to the extent such care is reimbursed under section 256B.0625, subdivision 5, or as provided under Minnesota Rules, parts 9500.1070, 9500.1020, or their successor parts.

Subd. 12. Supervision. "Supervision" means the direction of social work practice in face-to-face sessions. Further standards for supervision shall be determined by the board of social work. Supervision shall be provided:

(1) by a social worker licensed at least at the level of the worker being supervised and qualified under section 148B.21 to practice without supervision, except that a licensed graduate social worker may supervise a licensed social worker; or

(2) by another qualified professional or qualified mental health professional when the board of social work determines that supervision by a social worker as required in clause (1) is unobtainable, or in other situations considered appropriate by the board of social work.

History: 1987 c 347 art 2 s 1; 1988 c 689 art 2 s 268; 1991 c 292 art 2 s 46; 1992 c 460 s 11,12,21

148B.19 BOARD OF SOCIAL WORK.

Subdivision 1. Creation. The board of social work is created. The board consists of ten members appointed by the governor. The members are:

- (1) six social workers licensed under sections 148B.18 to 148B.28;
- (2) three public members as defined in section 214.02; and
- (3) one school social worker licensed by the board of teaching.

Subd. 2. Qualifications of board members. The six social worker members of the board shall be as follows: two licensed independent clinical social workers, two licensed independent social workers, and two licensed social workers.

Social worker members shall represent the following employment settings:

- (1) two members shall be public agency social workers;
- (2) two members shall be private agency social workers;
- (3) one member shall be engaged in private practice;
- (4) one member shall be an educator engaged in regular teaching duties at an accredited program of social work; and
- (5) in addition, at least two members shall be persons of color and at least four members shall reside outside of the seven-county metropolitan area.

Subd. 3. **Members of first board appointed.** Members of the first board appointed according to subdivisions 1, clause (1), and 2, clauses (1) to (5), need not be licensed, but must meet all qualifications, other than payment of fees, to be eligible for licensure under sections 148B.18 to 148B.28.

Subd. 4. **Officers and executive secretary.** The board shall annually elect from its membership a chair, vice-chair, and secretary-treasurer, and shall adopt rules to govern its proceedings. The board shall appoint and employ an executive secretary who is not a member of the board.

Subd. 5. **Terms and salaries.** Chapter 214 applies to the board of social work unless superseded by sections 148B.18 to 148B.28.

History: 1987 c 347 art 2 s 2; 1992 c 460 s 21

148B.20 DUTIES OF THE BOARD.

Subdivision 1. **General.** The board of social work shall:

(a) Adopt and enforce rules for licensure of social workers and for regulation of their professional conduct. The rules must be designed to protect the public.

(b) Adopt rules establishing standards and methods of determining whether applicants and licensees are qualified under sections 148B.21 to 148B.23. The rules must make provision for examinations and must establish standards for professional conduct, including adoption of a code of professional ethics and requirements for continuing education.

(c) Hold examinations at least twice a year to assess applicants' knowledge and skills. The examinations may be written or oral and may be administered by the board or by a body designated by the board. Examinations must test the knowledge and skills of each of the four groups of social workers qualified under section 148B.21 to practice social work. Examinations must minimize cultural bias and must be balanced in theory.

(d) Issue licenses to individuals qualified under sections 148B.18 to 148B.28.

(e) Issue copies of the rules for licensure to all applicants.

(f) Establish and implement procedures, including a standard disciplinary process, to ensure that individuals licensed as social workers will comply with the board's rules.

(g) Establish, maintain, and publish annually a register of current licensees.

(h) Establish initial and renewal application and examination fees sufficient to cover operating expenses of the board and its agents.

(i) Educate the public about the existence and content of the rules for social work licensing to enable consumers to file complaints against licensees who may have violated the rules.

(j) Evaluate its rules in order to refine the standards for licensing social workers and to improve the methods used to enforce the board's standards.

Subd. 2. **Continuing education committee.** The board shall appoint a continuing education committee that shall advise the board on the administration of continuing education requirements in sections 148B.18 to 148B.28. The committee chair shall be appointed by the board and shall be a member of the board. Four additional committee members shall be appointed by the board and need not be board members. The committee members and chair shall consist of licensed social workers, licensed independent social workers, and licensed independent clinical social workers as defined in section 148B.21, subdivision 6, and shall include:

(1) a social worker engaged in regular teaching duties at an accredited program of social work;

(2) a public agency social worker;

(3) a private agency social worker;

(4) a social worker engaged in private practice;

(5) a public member as defined in section 214.02; and

(6) in addition, at least one member shall be a person of color and at least one member shall reside outside of the seven-county metropolitan area.

History: 1987 c 347 art 2 s 3; 1992 c 460 s 21

148B.21 REQUIREMENTS FOR LICENSURE.

Subdivision 1. **Categories of licensees.** The board shall issue licenses for the following four groups of individuals qualified under sections 148B.21 to 148B.23 to practice social work:

- (1) social workers;
- (2) graduate social workers;
- (3) independent social workers; and
- (4) independent clinical social workers.

Subd. 2. **Fee.** Each applicant shall pay a nonrefundable fee set by the board. Fees paid to the board shall be deposited in the state government special revenue fund.

Subd. 3. **Social worker.** To be licensed as a social worker, an applicant must provide evidence satisfactory to the board that the applicant:

- (1) has received a baccalaureate degree from an accredited program of social work;
- (2) has passed the examination provided for in section 148B.20, subdivision 1;
- (3) will engage in social work practice only under supervision as defined in section 148B.18, subdivision 12, for at least two years in full-time employment or 4,000 hours; and

(4) will conduct all professional activities as a social worker in accordance with standards for professional conduct established by the rules of the board.

Subd. 4. **Graduate social worker.** To be licensed as a graduate social worker, an applicant must provide evidence satisfactory to the board that the applicant:

- (1) has received a master's degree from an accredited program of social work or doctoral degree in social work;
- (2) has passed the examination provided for in section 148B.20, subdivision 1;
- (3) will engage in social work practice only under supervision as defined in section 148B.18, subdivision 12; and

(4) will conduct all professional activities as a graduate social worker in accordance with standards for professional conduct established by the rules of the board.

Subd. 5. **Independent social worker.** To be licensed as an independent social worker, an applicant must provide evidence satisfactory to the board that the applicant:

- (1) has received a master's degree from an accredited program of social work or doctoral degree in social work;
- (2) has passed the examination provided for in section 148B.20, subdivision 1;
- (3) has practiced social work for at least two years in full-time employment or 4,000 hours under supervision as defined in section 148B.18, subdivision 12, after receiving the master's or doctoral degree in social work; and

(4) will conduct all professional activities as an independent social worker in accordance with standards for professional conduct established by the rules of the board.

Subd. 6. **Independent clinical social worker.** To be licensed as an independent clinical social worker, an applicant must provide evidence satisfactory to the board that the applicant:

- (1) has received a master's degree from an accredited program of social work, or doctoral degree in social work, that included an advanced concentration of clinically oriented course work as defined by the board and a supervised clinical field placement at the graduate level, or post-master's clinical training that is found by the board to be equivalent to that course work and field placement;

(2) has practiced clinical social work for at least two years in full-time employment or 4,000 hours under supervision as defined in section 148B.18, subdivision 12, after receiving the master's or doctoral degree in social work;

(3) has passed the examination provided for in section 148B.20, subdivision 1; and

(4) will conduct all professional activities as an independent clinical social worker in accordance with standards for professional conduct established by the rules of the board.

Subd. 7. Establishment of candidacy status. (a) The board may issue a practice permit to an applicant in the following situations, provided the applicant meets all other requirements for licensure:

(1) the applicant has applied to take the first examination for licensure given by the board following either graduation or anticipated graduation from an accredited program of social work; or

(2) the applicant is licensed or certified to practice social work in Minnesota or another jurisdiction, meets the requirements in section 148B.24, is intending to establish a practice in Minnesota before being able to take the next examination for licensure given by the board, and has applied to take the same examination.

(b) The practice permit is valid until the board takes final action on the application, which shall occur within 60 days of the board's receipt of the applicant's examination results. The board, at its discretion, may extend the practice permit if the applicant fails to pass or take the examination. If the board determines that an extension of the practice permit is not warranted, the applicant must cease practicing social work immediately.

(c) An applicant who obtains a practice permit, and who has applied for a level of licensure which requires supervision upon licensure, may practice social work only under the supervision of a licensed social worker who is eligible to provide supervision under section 148B.18, subdivision 12. The applicant's supervisor must provide evidence to the board, before the applicant is approved by the board for licensure, that the applicant has practiced social work under supervision. This supervision will not apply toward the supervision requirement required after licensure.

Subd. 8. Change of licensure level. An applicant who applies under this section for licensure as a licensed independent social worker or a licensed independent clinical social worker, and who is licensed at the time of application as a licensed graduate social worker, licensed independent social worker, or a licensed independent clinical social worker under section 148B.23, is not required to meet the educational requirement of this section. The applicant must meet all other requirements for licensure at the new level of licensure.

History: 1987 c 347 art 2 s 4; 1992 c 460 s 13-15; 1992 c 603 s 5

148B.215 CONTESTED CASE HEARING.

An applicant or a licensee who is the subject of an adverse action by the board may request a contested case hearing under chapter 14. An applicant or a licensee who desires to request a contested case hearing must submit a written request to the board within 90 days of receipt of notification of the adverse action, or within 90 days of August 1, 1992, whichever date occurs later.

History: 1992 c 460 s 16

148B.22 LICENSE RENEWAL REQUIREMENTS.

Subdivision 1. Renewal. Licensees shall renew licenses at the time and in the manner established by the rules of the board.

Subd. 2. Continuing education. At the time of renewal, each licensee shall provide evidence satisfactory to the board that the licensee has completed during each two-year period at least the equivalent of 30 clock hours of continuing professional postdegree education in programs approved by the board and continues to be qualified to practice under sections 148B.18 to 148B.28.

History: 1987 c 347 art 2 s 5; 1992 c 460 s 17

148B.23 LICENSES; TRANSITION PERIOD.

Subdivision 1. **Exemption from examination.** (a) For two years from July 1, 1987, the board shall issue a license without examination to an applicant:

(1) for a licensed social worker, if the board determines that the applicant has received a baccalaureate degree from an accredited program of social work, or that the applicant has at least a baccalaureate degree from an accredited college or university and two years in full-time employment or 4,000 hours of experience in the supervised practice of social work within the five years before July 1, 1989, or within a longer time period as specified by the board;

(2) for a licensed graduate social worker, if the board determines that the applicant has received a master's degree from an accredited program of social work or doctoral degree in social work; or a master's or doctoral degree from a graduate program in a human service discipline, as approved by the board;

(3) for a licensed independent social worker, if the board determines that the applicant has received a master's degree from an accredited program of social work or doctoral degree in social work; or a master's or doctoral degree from a graduate program in a human service discipline, as approved by the board; and, after receiving the degree, has practiced social work for at least two years in full-time employment or 4,000 hours under the supervision of a social worker meeting these requirements, or of another qualified professional; and

(4) for a licensed independent clinical social worker, if the board determines that the applicant has received a master's degree from an accredited program of social work or doctoral degree in social work; or a master's or doctoral degree from a graduate program in a human service discipline as approved by the board; and, after receiving the degree, has practiced clinical social work for at least two years in full-time employment or 4,000 hours under the supervision of a clinical social worker meeting these requirements, or of another qualified mental health professional.

(b) During the period beginning August 1, 1991, and ending September 30, 1991, the board shall issue a license without examination to an applicant who was licensed as a school social worker by the board of teaching between July 1, 1987, and July 1, 1989. To qualify for a license under this paragraph, the applicant must:

(1) provide evidence, as determined by the board, of meeting all other licensure requirements under paragraph (a);

(2) provide evidence, as determined by the board, of practicing social work between July 1, 1987, and July 1, 1989, at the level of licensure being applied for;

(3) provide verification, on a form provided by the board, that the license held with the board of teaching was in good standing while licensed under their jurisdiction; and

(4) provide a completed application, including all information required in this paragraph, by September 30, 1991.

(c) The board shall allow an applicant who became licensed as a school social worker by the board of teaching between July 1, 1989, and July 1, 1990, to take the social work licensure examination and, upon passing the examination, to receive a license. To qualify for a license under this paragraph, the applicant must:

(1) take and pass one of the next two regularly scheduled social work licensure examinations administered after June 5, 1991;

(2) provide verification, on a form provided by the board, that the license held with the board of teaching is in good standing; and

(3) provide a completed application, including all information required in this paragraph, by the board's examination application deadline for the February 1992 licensure examination.

Subd. 1a. Extension of transition period allowed. The board may issue a graduate social worker license without examination, after the transition period that ends June 30, 1989, to an applicant:

MINNESOTA STATUTES 1992

1425

SOCIAL WORK, MARRIAGE AND FAMILY THERAPY, AND MENTAL HEALTH 148B.27

(1) who met the criteria in subdivision 1, clause (2), before the transition period ended; and

(2) who was unable to submit an application for licensure before the transition period ended because the person was in another country performing social work training to complete the requirements for a master's degree in social work.

Subd. 2. Other requirements. An applicant licensed under this section must also agree to:

(1) engage in social work practice only under the applicable supervision requirements provided in section 148B.21 for each category of licensees; and

(2) conduct all professional activities as a social worker in accordance with standards for professional conduct established by the board by rule.

Subd. 3. Temporary rulemaking authority. The board is authorized to adopt emergency and permanent rules to implement this section.

History: 1987 c 347 art 2 s 6; 1988 c 689 art 2 s 48; 1989 c 282 art 2 s 40; 1990 c 568 art 2 s 17; 1991 c 292 art 2 s 47

148B.24 RECIPROCITY.

The board shall issue an appropriate license to an individual who holds a current license or other credential from another jurisdiction if the board finds that the requirements for that credential are substantially similar to the requirements in sections 148B.21 to 148B.23.

History: 1987 c 347 art 2 s 7

148B.25 NONTRANSFERABILITY OF LICENSES.

A social work license is not transferable.

History: 1987 c 347 art 2 s 8

148B.26 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

Subdivision 1. Grounds. The board may refuse to renew or to grant a license to, or may suspend, revoke, or restrict the license of an individual whom the board, after a hearing under the contested case provisions of chapter 14, determines:

(1) is incompetent to engage in social work practice, or is found to be engaged in social work practice in a manner harmful or dangerous to a client or to the public;

(2) has violated the rules of the board or the statutes the board is empowered to enforce;

(3) has obtained or attempted to obtain a license or license renewal by bribery or fraudulent representation; or

(4) has knowingly made a false statement on a form required by the board for licensing or license renewal.

Subd. 2. Restoring a license. For reasons it finds sufficient, the board may grant a license previously refused, restore a license that has been revoked, or reduce a period of suspension or restriction of a license.

Subd. 3. Review. Suspension, revocation, or restriction of a license shall be reviewed by the board at the request of the licensee against whom the disciplinary action was taken.

History: 1987 c 347 art 2 s 9

148B.27 PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES; PENALTY.

Subdivision 1. Practice. After the board adopts rules, no individual shall engage in social work practice unless that individual holds a valid license as a licensed social worker, licensed graduate social worker, licensed independent social worker, or licensed independent clinical social worker.

Subd. 2. **Use of titles.** After the board adopts rules, no individual shall be presented to the public by any title incorporating the words "social work" or "social worker" unless that individual holds a valid license issued under sections 148B.18 to 148B.28. City, county, and state agency social workers who are not licensed under sections 148B.18 to 148B.28 may use the title city agency social worker or county agency social worker or state agency social worker. Hospital social workers who are not licensed under sections 148B.18 to 148B.28 may use the title hospital social worker while acting within the scope of their employment.

Subd. 3. **Penalty.** A person who violates sections 148B.21 to 148B.28 is guilty of a misdemeanor.

History: 1987 c 347 art 2 s 10; 1989 c 282 art 2 s 41

148B.28 EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. **Other professionals.** Nothing in sections 148B.18 to 148B.28 shall be construed to prevent members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes but is not limited to licensed physicians; registered nurses; licensed practical nurses; psychological practitioners; probation officers; members of the clergy; attorneys; marriage and family therapists; chemical dependency counselors; professional counselors; school counselors; and registered occupational therapists or certified occupational therapist assistants. These persons must not, however, hold themselves out to the public by any title or description stating or implying that they are engaged in the practice of social work, or that they are licensed to engage in the practice of social work.

Subd. 2. **Students.** Nothing in sections 148B.18 to 148B.28 shall be construed to prevent students enrolled in an accredited program of social work to engage in the practice of social work.

Subd. 3. **Geographic waiver.** A geographic waiver may be granted by the board on a case-by-case basis to agencies with special regional hiring problems. The waiver will permit agencies to hire individuals, who do not meet the qualifications of section 148B.21, to practice social work.

Subd. 4. **City, county, and state agency social workers.** The licensing of city, county, and state agency social workers shall be voluntary. City, county, and state agencies employing social workers shall not be required to employ licensed social workers, nor shall they require their social worker employees to be licensed.

Subd. 5. **Federally recognized tribes and private nonprofit agencies with a minority focus.** The licensure of social workers who are employed by federally recognized tribes, or by private nonprofit agencies whose primary service focus addresses ethnic minority populations, and are themselves members of ethnic minority populations within said agencies, shall be voluntary.

Subd. 6. **Hospital and nursing home social workers.** The licensure of social workers employed by hospitals and nursing homes licensed under chapters 144 and 144A shall be voluntary. Hospitals and nursing homes employing social workers shall not be required to employ licensed social workers, nor shall they require their social work employees to be licensed.

History: 1987 c 347 art 2 s 11; 1991 c 255 s 19; 1992 c 460 s 18

BOARD OF MARRIAGE AND FAMILY THERAPY

148B.29 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 148B.29 to 148B.39, the following terms have the meanings given.

Subd. 2. **Board.** "Board" means the board of marriage and family therapy created in section 148B.30.

Subd. 3. **Marriage and family therapy.** "Marriage and family therapy" means the

process of providing professional marriage and family psychotherapy to individuals, married couples, and family groups, either singly or in groups. The practice of marriage and family therapy utilizes established principles that recognize the interrelated nature of the individual problems and dysfunctions in family members to assess, understand, and treat emotional and mental problems. Marriage and family therapy includes premarital, marital, divorce, and family therapy, and is a specialized mode of treatment for the purpose of resolving emotional problems and modifying intrapersonal and interpersonal dysfunction.

History: 1987 c 347 art 3 s 1

148B.30 BOARD OF MARRIAGE AND FAMILY THERAPY EXAMINERS.

Subdivision 1. Creation. There is created a board of marriage and family therapy that consists of seven members appointed by the governor. Four members shall be licensed, practicing marriage and family therapists, each of whom shall for at least five years immediately preceding appointment, have been actively engaged as a marriage and family therapist, rendering professional services in marriage and family therapy. One member shall be engaged in the professional teaching and research of marriage and family therapy. Two members shall be representatives of the general public who have no direct affiliation with the practice of marriage and family therapy. All members shall have been a resident of the state two years preceding their appointment. Of the first board members appointed, three shall continue in office for two years, two members for three years, and two members, including the chair, for terms of four years respectively. Their successors shall be appointed for terms of four years each, except that a person chosen to fill a vacancy shall be appointed only for the unexpired term of the board member whom the newly appointed member succeeds. Upon the expiration of a board member's term of office, the board member shall continue to serve until a successor is appointed and qualified.

Subd. 2. Transition provision. Notwithstanding subdivision 1, members of the first board appointed need not be licensed under sections 148B.29 to 148B.39, but shall meet all qualifications, other than payments of fees, so as to be eligible for licensure under sections 148B.29 to 148B.39.

Subd. 3. Officers; staff. The board shall annually elect from its membership a chair, a vice-chair, and secretary-treasurer, and shall adopt rules to govern its proceedings. The board shall appoint and employ an executive secretary who shall not be a member of the board.

Subd. 4. Membership terms; compensation and removal. The membership terms, compensation, and removal of board members is governed by section 15.0575, unless superseded by this section.

History: 1987 c 347 art 3 s 2

148B.31 DUTIES OF THE BOARD.

The board shall:

(1) adopt and enforce rules for marriage and family therapy licensing, which shall be designed to protect the public;

(2) develop by rule appropriate techniques, including examinations and other methods, for determining whether applicants and licensees are qualified under sections 148B.29 to 148B.39;

(3) issue licenses to individuals who are qualified under sections 148B.29 to 148B.39;

(4) establish and implement procedures designed to assure that licensed marriage and family therapists will comply with the board's rules;

(5) study and investigate the practice of marriage and family therapy within the state in order to improve the standards imposed for the licensing of marriage and family therapists and to improve the procedures and methods used for enforcement of the board's standards;

- (6) formulate and implement a code of ethics for all licensed marriage and family therapists; and
- (7) establish continuing education requirements for marriage and family therapists.

History: 1987 c 347 art 3 s 3

148B.32 PROHIBITIONS AND PENALTY.

Subdivision 1. Unlicensed practice prohibited. After adoption of rules by the board implementing sections 148B.29 to 148B.39, no individual shall engage in marriage and family therapy practice unless that individual holds a valid license issued under sections 148B.29 to 148B.39.

Marriage and family therapy practice is not medical care nor any other type of remedial care that may be reimbursed under medical assistance, chapter 256B, except to the extent such care is reimbursed under section 256B.0625, subdivision 5.

Subd. 2. Appearance as licensee prohibited. After adoption of rules by the board implementing sections 148B.29 to 148B.39, no individual shall be held out to be a marriage and family therapist unless that individual holds a valid license issued under sections 148B.29 to 148B.39, is a psychologist licensed by the board of psychology with a competency in marriage and family therapy, or is a person providing marriage and family therapy who is employed by a hospital licensed under chapter 144 and who is acting within the scope of the person's employment.

Subd. 3. Penalty. A person who violates a provision of sections 148B.29 to 148B.39 is guilty of a gross misdemeanor.

History: 1987 c 347 art 3 s 4; 1988 c 689 art 2 s 268; 1989 c 282 art 2 s 42

148B.33 REQUIREMENTS FOR LICENSURE.

Subdivision 1. Documentary evidence of qualifications. An applicant for a license shall furnish evidence that the applicant:

- (1) has attained the age of majority;
- (2) is of good moral character;
- (3) is a citizen of the United States, or is lawfully entitled to remain and work in the United States;
- (4) has at least two years of supervised postgraduate experience in marriage and family therapy satisfactory to the board;
- (5)(i) has completed a master's or doctoral degree in marriage and family therapy from a program in a regionally accredited educational institution or from a program accredited by the commissioner on accreditations for marriage and family therapy education of the American association for marriage and family therapy; or (ii) has completed a master's or doctoral degree from a regionally accredited educational institution in a related field for which the course work is considered by the board to be equivalent to that provided in clause (5)(i);
- (6) will agree to conduct all professional activities as a licensed marriage and family therapist in accordance with a code of ethics for marriage and family therapists to be adopted by the board; and
- (7) has passed an examination approved by the board by rule.

Subd. 2. Fee. Each applicant shall pay a nonrefundable application fee set by the board.

History: 1987 c 347 art 3 s 5; 1991 c 292 art 2 s 48

148B.34 LICENSES; TRANSITION PERIOD.

Notwithstanding section 148B.33, clause (7), for two years from July 1, 1987, a license shall be issued to an applicant without examination if the board is satisfied that the applicant meets the requirements of section 148B.33, subdivision 1, clauses (1) to (6).

History: 1987 c 347 art 3 s 6

148B.35 RECIPROCITY WITH OTHER STATES.

The board shall issue a marriage and family therapist's license to an individual who holds a current license as a marriage and family therapist from another jurisdiction if the board determines that the standards for licensure in the other jurisdiction are at least equivalent to or exceed the requirements of sections 148B.29 to 148B.39 and the rules of the board.

History: 1987 c 347 art 3 s 7

148B.36 NONTRANSFERABILITY OF LICENSES.

A marriage and family therapy license is not transferable.

History: 1987 c 347 art 3 s 8

148B.37 REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE.

Subdivision 1. **Grounds for action.** The board may refuse to grant a license to, or may suspend, revoke, condition, limit, qualify, or restrict the license of any individual who the board, after a hearing under the contested case provisions of chapter 14, determines:

(1) is incompetent to practice marriage and family therapy, or is found to engage in the practice of marriage and family therapy in a manner harmful or dangerous to a client or to the public;

(2) is convicted by a court of competent jurisdiction of a crime that the board determines is of a nature to render the convicted person unfit to practice marriage and family therapy. The board should compile, maintain, and publish a list of such crimes;

(3) has violated a provision of sections 148B.29 to 148B.39 or one or more of the rules of the board;

(4) has obtained or attempted to obtain a license or license renewal by bribery or fraudulent representation;

(5) has knowingly made a false statement on a form required by the board for licensing or license renewal; or

(6) has failed to obtain continuing education credits required by the board.

Subd. 2. **Restoring a license.** For reasons it considers sufficient and upon a vote of five of its members, the board may restore a license that has been revoked, reduce a period of suspension, or withdraw a reprimand.

History: 1987 c 347 art 3 s 9

148B.38 EXCEPTIONS FROM LICENSE REQUIREMENT.

Subdivision 1. **Other professionals.** Nothing in sections 148B.29 to 148B.39 shall be construed to prevent qualified members of other licensed or certified professions or occupations, such as licensed physicians, registered nurses, licensed practical nurses, psychologists licensed by the board of psychology, social workers, probation officers, members of the clergy, attorneys, school counselors who are employed by an accredited educational institution while performing those duties for which they are employed, registered occupational therapists or certified occupational therapist assistants who are certified by the American Occupational Therapy Association, from doing work of a marriage and family therapy nature.

Subd. 2. **Students.** Nothing in sections 148B.29 to 148B.39 shall be construed to prevent marriage and family therapy practice by students or interns or individuals preparing for marriage and family therapy to practice under qualified supervision of a licensed professional, recognized and approved by the board in a recognized educational institution or agency so long as they are designated by titles such as "student," "trainee," "intern," or other titles clearly indicating training status.

Subd. 3. **Federally recognized tribes and private nonprofit agencies with a minority focus.** The licensure of marriage and family therapists who are employed by federally

recognized tribes and private nonprofit agency marriage and family therapists, whose primary service focus addresses ethnic minority populations and who are themselves members of ethnic minority populations within said agencies, shall be voluntary for a period of five years at which time the legislature will review the need for mandatory licensure for all marriage and family therapists under this subdivision.

History: 1987 c 347 art 3 s 10; 1991 c 292 art 2 s 49

148B.39 PRIVILEGED COMMUNICATIONS; EXCEPTIONS.

A person licensed under sections 148B.29 to 148B.39 and employees and professional associates of the person cannot be required to disclose any information that the person, employee, or associate may have acquired in rendering marriage and family therapy services, unless:

- (1) disclosure is required by other state laws;
- (2) failure to disclose the information presents a clear and present danger to the health or safety of an individual;
- (3) the person, employee, or associate is a party defendant to a civil, criminal, or disciplinary action arising from the therapy, in which case a waiver of the privilege accorded by this section is limited to that action;
- (4) the patient is a defendant in a criminal proceeding and the use of the privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in that person's behalf; and
- (5) a patient agrees to a waiver of the privilege accorded by this section, and in circumstances where more than one person in a family is receiving therapy, each such family member agrees to the waiver. Absent a waiver from each family member, a marital and family therapist cannot disclose information received by a family member.

History: 1987 c 347 art 3 s 11

148B.40 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.41 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.42 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.43 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.44 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.45 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.46 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.47 [Repealed, 1987 c 347 art 4 s 11; 1991 c 292 art 2 s 75]

148B.48 [Repealed, 1991 c 292 art 2 s 75]

OFFICE OF MENTAL HEALTH PRACTICE

148B.60 DEFINITIONS.

Subdivision 1. Terms. As used in sections 148B.60 to 148B.71, the following terms have the meanings given them in this section.

Subd. 2. Office of mental health practice or office. "Office of mental health practice" or "office" means the office of mental health practice established in section 148B.61.

Subd. 3. Unlicensed mental health practitioner or practitioner. "Unlicensed mental health practitioner" or "practitioner" means a person who provides or purports to provide, for remuneration, mental health services as defined in subdivision 4. It does not include persons licensed by the board of medical practice under chapter 147; the board of nursing under sections 148.171 to 148.285; the board of psychology under sections 148.88 to 148.98; the board of social work under sections 148B.18 to 148B.28; the

board of marriage and family therapy under sections 148B.29 to 148B.39; or another licensing board if the person is practicing within the scope of the license; or members of the clergy who are providing pastoral services in the context of performing and fulfilling the salaried duties and obligations required of a member of the clergy by a religious congregation. For the purposes of complaint investigation or disciplinary action relating to an individual practitioner, the term includes:

(1) hospital and nursing home social workers exempt from licensure by the board of social work under section 148B.28, subdivision 6, including hospital and nursing home social workers acting within the scope of their employment by the hospital or nursing home;

(2) persons employed by a program licensed by the commissioner of human services who are acting as mental health practitioners within the scope of their employment;

(3) persons employed by a program licensed by the commissioner of human services who are providing chemical dependency counseling services; persons who are providing chemical dependency counseling services in private practice; and

(4) clergy who are providing mental health services that are equivalent to those defined in subdivision 4.

Subd. 4. Mental health services. "Mental health services" means psychotherapy and the professional assessment, treatment, or counseling of another person for a cognitive, behavioral, emotional, social, or mental condition, symptom, or dysfunction, including intrapersonal or interpersonal dysfunctions. The term does not include pastoral services provided by members of the clergy to members of a religious congregation in the context of performing and fulfilling the salaried duties and obligations required of a member of the clergy by that religious congregation.

Subd. 5. Mental health client or client. "Mental health client" or "client" means a person who receives or pays for the services of a mental health practitioner.

Subd. 6. Mental health practitioner advisory council or council. "Mental health practitioner advisory council" or "council" means the mental health practitioner advisory council established in section 148B.62.

Subd. 7. Commissioner. "Commissioner" means the commissioner of health or the commissioner's designee.

Subd. 8. Disciplinary action. "Disciplinary action" means an adverse action taken by the commissioner against an unlicensed mental health practitioner relating to the person's right to provide mental health services.

History: 1991 c 106 s 6; 1991 c 292 art 2 s 50

148B.61 OFFICE OF MENTAL HEALTH PRACTICE.

Subdivision 1. Creation. The office of mental health practice is created in the department of health to investigate complaints and take and enforce disciplinary actions against all unlicensed mental health practitioners for violations of prohibited conduct, as defined in section 148B.68. The office shall also serve as a clearinghouse on mental health services and both licensed and unlicensed mental health professionals, through the dissemination of objective information to consumers and through the development and performance of public education activities, including outreach, regarding the provision of mental health services and both licensed and unlicensed mental health professionals who provide these services.

Subd. 2. Rulemaking. The commissioner of health shall adopt rules necessary to implement, administer, or enforce provisions of sections 148B.60 to 148B.71 pursuant to chapter 14. The commissioner may not adopt rules that restrict or prohibit persons from providing mental health services on the basis of education, training, experience, or supervision. The commissioner may consult with the mental health practitioner advisory council, established in section 148B.62, during the rulemaking process. Rules adopted pursuant to this authority are exempt from section 14.115.

Subd. 3. **Emergency rules.** The commissioner may adopt emergency rules under sections 14.29 to 14.385 to carry out the provisions of sections 148B.60 to 148B.71.

History: 1991 c 292 art 2 s 51

148B.62 MENTAL HEALTH PRACTITIONER ADVISORY COUNCIL.

Subdivision 1. **Creation.** The mental health practitioner advisory council is created to serve in an advisory capacity to the commissioner of health and staff of the office of mental health practice in the development of rules and procedures necessary to enforce sections 148B.60 to 148B.71 and in the enforcement of section 148B.68 on prohibited conduct and sections 148B.69 and 148B.70 on disciplinary action and remedies for violations of prohibited conduct. The council shall also serve in an advisory capacity in the development of public education materials and activities, including outreach activities.

Subd. 2. **Composition.** The advisory council consists of nine members, including six individuals who are providing mental health services and three public members, as defined in section 214.02. The initial appointments of the first members of the council must include at least four members who were members of the board of unlicensed mental health service providers on June 30, 1991.

Subd. 3. **Appointment.** Members of the advisory council are appointed by the commissioner of health and serve pursuant to requirements under section 15.059. Members are appointed to serve terms of four years.

Subd. 4. **Council administration.** Members of the council shall elect from among its members a chair and a vice-chair to serve for one year or until a successor is elected and qualifies.

History: 1991 c 292 art 2 s 52

148B.63 REPORTING OBLIGATIONS.

Subdivision 1. **Permission to report.** A person who has knowledge of any conduct constituting grounds for disciplinary action relating to unlicensed practice under this chapter may report the violation to the office of mental health practice.

Subd. 2. **Institutions.** A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the office of mental health practice any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an unlicensed mental health practitioner's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the office under this chapter. The institution, organization, or governmental entity shall also report the resignation of any unlicensed mental health practitioners prior to the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or prior to the commencement of formal charges but after the practitioner had knowledge that formal charges were contemplated or were being prepared.

Subd. 3. **Professional societies.** A state or local professional society for unlicensed mental health practitioners shall report to the office of mental health practice any termination, revocation, or suspension of membership or any other disciplinary action taken against an unlicensed practitioner. If the society has received a complaint that might be grounds for discipline under this chapter against a member 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 office of mental health practice.

Subd. 4. **Licensed professionals.** A licensed health professional shall report to the office of mental health practice personal knowledge of any conduct that the licensed health professional reasonably believes constitutes grounds for disciplinary action

under this chapter by any unlicensed mental health practitioner, including conduct indicating that the individual may be medically incompetent, or may be medically or physically unable to engage safely in the provision of services. If the information was obtained in the course of a client relationship, the client is an unlicensed mental health practitioner, and the treating individual successfully counsels the other practitioner to limit or withdraw from practice to the extent required by the impairment, the office may deem this limitation of or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. Insurers. Four times each year as prescribed by the commissioner, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to unlicensed mental health practitioners or the medical joint underwriting association under chapter 62F, shall submit to the office of mental health practice a report concerning the unlicensed mental health practitioners against whom malpractice settlements or awards have been made. The response must contain at least the following information:

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

The insurance company shall, in addition to the above information, submit to the office of mental health practice any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that an unlicensed mental health practitioner may have engaged in conduct violating this chapter.

Subd. 6. Courts. The court administrator of district court or any other court of competent jurisdiction shall report to the office of mental health practice any judgment or other determination of the court that adjudges or includes a finding that an unlicensed mental health practitioner is mentally ill, mentally incompetent, guilty of a felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the unlicensed mental health practitioner under sections 525.54 to 525.61 or commits an unlicensed mental practitioner under chapter 253B or sections 526.09 to 526.11.

Subd. 7. Self-reporting. An unlicensed mental health practitioner shall report to the office of mental health practice any personal action that would require that a report be filed with the office by any person, health care facility, business, or organization pursuant to subdivisions 2 to 5. The practitioner shall also report the revocation, suspension, restriction, limitation, or other disciplinary action against the mental health practitioner's license, certificate, registration, or right of practice in another state or jurisdiction, for offenses that would be subject to disciplinary action in this state and also report the filing of charges regarding the practitioner's license, certificate, registration, or right of practice in another state or jurisdiction.

Subd. 8. Deadlines; forms. Reports required by subdivisions 2 to 7 must be submitted not later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The office of mental health practice 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.

History: 1991 c 292 art 2 s 53

148B.64 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 office of mental health practice, for otherwise reporting to the office violations or alleged violations of this chapter, or for cooperating with an investigation of a report, except as provided in this subdivision. Any person who knowingly or recklessly makes a false report is liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury. An action requires clear and convincing evidence that the defendant made the statement with knowledge of falsity or with reckless disregard for its truth or falsity. The report or statement or any statement made in cooperation with an investigation or as part of a disciplinary proceeding is privileged except in an action brought under this subdivision.

Subd. 2. Investigation. The commissioner and employees of the department of health, members of the advisory council on mental health practice, and other persons engaged in the investigation of violations and in the preparation, presentation, and management of and testimony pertaining to charges of violations of this chapter are absolutely immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.

History: 1991 c 292 art 2 s 54

148B.65 DISCIPLINARY RECORD ON JUDICIAL REVIEW.

Upon judicial review of any disciplinary action taken by the commissioner under this chapter, the reviewing court shall seal the administrative record, except for the commissioner's final decision, and shall not make the administrative record available to the public.

History: 1991 c 292 art 2 s 55

148B.66 PROFESSIONAL COOPERATION.

Subdivision 1. Cooperation. An unlicensed mental health practitioner who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the office of mental health practice shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the office relating to the subject of the investigation and providing copies of client records, as reasonably requested by the office, to assist the office in its investigation, and appearing at conferences or hearings scheduled by the commissioner. If the office does not have a written consent from a client permitting access to the client's records, the unlicensed mental health practitioner shall delete any data in the record that identifies the client before providing it to the board. The office shall maintain any records obtained pursuant to this section as investigative data pursuant to section 13.41. If an unlicensed mental health practitioner refuses to give testimony or produce any documents, books, records, or correspondence on the basis of the fifth amendment to the Constitution of the United States, the commissioner may compel the unlicensed mental health practitioner to provide the testimony or information; however, the testimony or evidence may not be used against the practitioner in any criminal proceeding. Challenges to requests of the office may be brought before the appropriate agency or court.

Subd. 2. Classification of data. The commissioner shall maintain any records, other than client records, obtained as part of an investigation, as investigative data under section 13.41. Client records are classified as private under chapter 13 and must be protected as such in the records of the office and in any administrative or judicial proceeding unless the client authorizes the office in writing to make public the identity of the client or a portion or all of the client's records.

History: 1991 c 292 art 2 s 56

148B.67 PROFESSIONAL ACCOUNTABILITY.

The office of mental health practice shall maintain and keep current a file containing the reports and complaints filed against unlicensed mental health practitioners within the commissioner's jurisdiction. Each complaint filed with the office must be investigated. If the files maintained by the office show that a malpractice settlement or award has been made against an unlicensed mental health practitioner, as reported by insurers under section 148B.63, subdivision 5, the commissioner may authorize a review of the practitioner's practice by the staff of the office of mental health practice.

History: 1991 c 292 art 2 s 57

148B.68 PROHIBITED CONDUCT.

Subdivision 1. **Prohibited conduct.** The commissioner may impose disciplinary action as described in section 148B.69 against any unlicensed mental health practitioner. The following conduct is prohibited and is grounds for disciplinary action:

(a) Conviction of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court in Minnesota or any other jurisdiction in the United States, reasonably related to the provision of mental health services. Conviction, as used in this subdivision, includes a conviction of an offense which, if committed in this state, would be deemed a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered.

(b) Conviction of crimes against persons. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.23; 609.231; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; and 609.595.

(c) Failure to comply with the self-reporting requirements of section 148B.63, subdivision 6.

(d) Engaging in sexual contact with a client or former client as defined in section 148A.01, or engaging in contact that may be reasonably interpreted by a client as sexual, or engaging in any verbal behavior that is seductive or sexually demeaning to the patient, or engaging in sexual exploitation of a client or former client.

(e) Advertising that is false, fraudulent, deceptive, or misleading.

(f) Conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established.

(g) Adjudication as mentally incompetent, or as a person who has a psychopathic personality as defined in section 526.09, or who is dangerous to self, or adjudication pursuant to chapter 253B, as chemically dependent, mentally ill, mentally retarded, or mentally ill and dangerous to the public.

(h) Inability to provide mental health services with reasonable safety to clients.

(i) The habitual overindulgence in the use of or the dependence on intoxicating liquors.

(j) Improper or unauthorized personal or other use of any legend drugs as defined in chapter 151, any chemicals as defined in chapter 151, or any controlled substance as defined in chapter 152.

(k) Revealing a communication from, or relating to, a client except when otherwise required or permitted by law.

(l) Failure to comply with a client's request made under section 144.335, or to furnish a client record or report required by law.

(m) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client.

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

(o) Failure to make reports as required by section 148B.63, or cooperate with an investigation of the office.

(p) Obtaining money, property, or services from a client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud.

(q) Undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.

(r) Failure to provide the client with a copy of the client bill of rights or violation of any provision of the client bill of rights.

(s) Violating any order issued by the commissioner.

(t) Failure to comply with sections 148B.60 to 148B.71, and the rules adopted under those sections.

(u) Failure to comply with any additional disciplinary grounds established by the commissioner by rule.

Subd. 2. Evidence. In disciplinary actions alleging a violation of subdivision 1, paragraph (a), (b), (c), or (g), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the same is admissible into evidence without further authentication and constitutes *prima facie* evidence of its contents.

Subd. 3. Examination; access to medical data. (a) If the commissioner has probable cause to believe that an unlicensed mental health practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j), the commissioner may issue an order directing the practitioner to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, every unlicensed mental health practitioner is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the commissioner of health and further to have waived all objections to the admissibility of the testimony or examination reports of the health care provider performing the examination or evaluation on the grounds that the same constitute a privileged communication. Failure of an unlicensed mental health practitioner to submit to an examination or evaluation when ordered, unless the failure was due to circumstances beyond the practitioner's control, constitutes an admission that the unlicensed mental health practitioner violated subdivision 1, paragraph (g), (h), (i), or (j), based on the factual specifications in the examination or evaluation order and may result in a default and final disciplinary order being entered after a contested case hearing. An unlicensed mental health practitioner affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the practitioner can resume the provision of mental health services with reasonable safety to clients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the commissioner shall be used against a mental health practitioner in any other proceeding.

(b) In addition to ordering a physical or mental examination or chemical dependency evaluation, the commissioner may, notwithstanding section 13.42, 144.651, 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to an unlicensed mental health practitioner without the practitioner's consent if the commissioner has probable cause to believe that a practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j). The medical data may be requested from a health care professional, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A health care professional, insurance company, or government agency shall comply with any written request of the commissioner under this subdivision and is not liable in any action for damages for releasing the data requested by the commissioner if the data are released pursuant to a written request under this subdivision, unless the information is false and the person

or organization giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is private data under section 13.41.

History: 1991 c 292 art 2 s 58

148B.69 DISCIPLINARY ACTIONS.

Subdivision 1. Forms of disciplinary action. When the commissioner finds that an unlicensed mental health practitioner has violated a provision or provisions of this chapter, the commissioner may take one or more of the following actions, only against the individual practitioner:

- (1) revoke the right to practice;
- (2) suspend the right to practice;
- (3) impose limitations or conditions on the practitioner's provision of mental health services, the imposition of rehabilitation requirements, or the requirement of practice under supervision;
- (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 practitioner of any economic advantage gained by reason of the violation charged or to reimburse the office of mental health practice for all costs of the investigation and proceeding;
- (5) order the practitioner to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution;
- (6) censure or reprimand the practitioner;
- (7) impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, advisory council members' per diem compensation, staff time, and expense incurred by advisory council members and staff of the office of mental health practice; or
- (8) any other action justified by the case.

Subd. 2. Discovery; subpoenas. In all matters relating to the lawful activities of the office of mental health practice, the commissioner of health may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the commissioner or by a subpoena of the commissioner to do so may, upon application to the district court in any district, be ordered to comply with the order or subpoena. The commissioner of health may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions, in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 3. Reinstatement. The commissioner may at the commissioner's discretion reinstate the right to practice and may impose any disciplinary measure listed under subdivision 1.

Subd. 4. Temporary suspension. In addition to any other remedy provided by law, the commissioner may, acting through a person to whom the commissioner has delegated this authority and without a hearing, temporarily suspend the right of an unlicensed mental health practitioner to practice if the commissioner's delegate finds that the practitioner has violated a statute or rule that the commissioner is empowered to enforce and continued practice by the practitioner would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the practitioner

specifying the statute or rule violated. The order remains in effect until the commissioner issues a final order in the matter after a hearing or upon agreement between the commissioner and the practitioner. Service of the order is effective if the order is served on the practitioner or counsel of record personally or by first class mail. Within ten days of service of the order, the commissioner shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the office or practitioner shall be in affidavit form only. The practitioner or the counsel of record may appear for oral argument. Within five working days after the hearing, the commissioner shall issue the commissioner's order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The commissioner shall issue a final order within 30 days after receipt of that report.

Subd. 5. Automatic suspension. The right to practice is automatically suspended if (1) a guardian of an unlicensed mental health practitioner is appointed by order of a probate court under sections 525.54 to 525.61, or (2) the practitioner is committed by order of a probate court pursuant to chapter 253B or sections 526.09 to 526.11. The right to practice remains suspended until the practitioner is restored to capacity by a court and, upon petition by the practitioner, the suspension is terminated by the commissioner after a hearing or upon agreement between the commissioner and the practitioner.

Subd. 6. Public employees. Notwithstanding subdivision 1, the commissioner must not take disciplinary action against an employee of the state or a political subdivision of the state. If, after an investigation conducted in compliance with and with the authority granted under sections 148B.60 to 148B.71, the commissioner determines that the employee violated a provision or provisions of this chapter, the commissioner shall report to the employee's employer the commissioner's findings and the actions the commissioner recommends that the employer take. The commissioner's recommendations are not binding on the employer.

History: 1991 c 292 art 2 s 59

148B.70 ADDITIONAL REMEDIES.

Subdivision 1. Cease and desist. The commissioner of health may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the office of mental health practice has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the commissioner and is not reviewable by a court or agency.

A hearing must be initiated by the office of mental health practice not later than 30 days from the date of the office's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, the commissioner shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the commissioner.

When a request for a stay accompanies a timely hearing request, the commissioner may, in the commissioner's discretion, grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the office of administrative hearings within three working days of receipt of the request. Within ten days after receiving the request from the commissioner, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner shall grant or deny the stay within five days of receiving the administrative law judge's recommendation.

In the event of noncompliance with a cease and desist order, the commissioner may institute a proceeding in Hennepin county district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the office of mental health practice not exceeding \$10,000 for each separate violation.

Subd. 2. **Injunctive relief.** In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the commissioner may in the commissioner's own name bring an action in Hennepin county district court for injunctive relief to restrain an unlicensed mental health practitioner from a violation or threatened violation of any statute, rule, or order which the commissioner is empowered to regulate, enforce, or issue. A temporary restraining order must be granted in the proceeding if continued activity by a practitioner would create a serious risk of harm to others. The commissioner need not show irreparable harm.

Subd. 3. **Additional powers.** The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a practitioner from criminal prosecution by a competent authority or from disciplinary action by the commissioner.

History: 1991 c 292 art 2 s 60

148B.71 MENTAL HEALTH CLIENT BILL OF RIGHTS.

Subdivision 1. **Scope.** All unlicensed mental health practitioners other than those providing services in a facility regulated under section 144.651 or a government agency shall provide to each client prior to providing treatment a written copy of the mental health client bill of rights. A copy must also be posted in a prominent location in the office of the mental health practitioner. Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak English. The mental health client bill of rights shall include the following:

(a) the name, title, business address, and telephone number of the practitioner;
 (b) the degrees, training, experience, or other qualifications of the practitioner, followed by the following statement in bold print:

"THE STATE OF MINNESOTA HAS NOT ADOPTED UNIFORM EDUCATIONAL AND TRAINING STANDARDS FOR ALL MENTAL HEALTH PRACTITIONERS. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATION PURPOSES ONLY."

(c) the name, business address, and telephone number of the practitioner's supervisor, if any;

(d) notice that a client has the right to file a complaint with the practitioner's supervisor, if any, and the procedure for filing complaints;

(e) the name, address, and telephone number of the office of mental health practice and notice that a client may file complaints with the office;

(f) the practitioner's fees per unit of service, the practitioner's method of billing for such fees, the names of any insurance companies that have agreed to reimburse the practitioner, or health maintenance organizations with whom the practitioner contracts to provide service, whether the practitioner accepts Medicare, medical assistance, or general assistance medical care, and whether the practitioner is willing to accept partial payment, or to waive payment, and in what circumstances;

(g) a statement that the client has a right to reasonable notice of changes in services or charges;

(h) a brief summary, in plain language, of the theoretical approach used by the practitioner in treating patients;

(i) notice that the client has a right to complete and current information concerning the practitioner's assessment and recommended course of treatment, including the expected duration of treatment;

(j) a statement that clients may expect courteous treatment and to be free from verbal, physical, or sexual abuse by the practitioner;

(k) a statement that client records and transactions with the practitioner are confidential, unless release of these records is authorized in writing by the client, or otherwise provided by law;

(l) a statement of the client's right to be allowed access to records and written information from records in accordance with section 144.335;

(m) a statement that other services may be available in the community, including where information concerning services is available;

(n) a statement that the client has the right to choose freely among available practitioners, and to change practitioners after services have begun, within the limits of health insurance, medical assistance, or other health programs;

(o) a statement that the client has a right to coordinated transfer when there will be a change in the provider of services;

(p) a statement that the client may refuse services or treatment, unless otherwise provided by law; and

(q) a statement that the client may assert the client's rights without retaliation.

Subd. 2. Acknowledgment by client. Prior to the provision of any service, the client must sign a written statement attesting that the client has received the client bill of rights.

History: 1991 c 292 art 2 s 61

148B.72 EXPENSES.

The expenses of administering the office of mental health practice under sections 148B.60 to 148B.71 must be recovered by transferring to the commissioner a portion of the surplus of the fees collected by the health-related licensing boards and by assessing a fee surcharge on the indirect costs charged to each health-related licensing board. At the end of each biennium, the commissioner of finance shall identify the amount of any surplus remaining in the state government special revenue fund of the license fees collected by the health-related licensing boards. The commissioner of finance shall also determine a reasonable amount of the surplus that must remain in the state government special revenue fund as a cash flow reserve. Any surplus remaining in the account in excess of the cash flow reserve that is attributable to health-related licensing board collections must be transferred to the commissioner of health for the office of mental health practice for the next biennium, not to exceed the amount of the legislative appropriation for the office. At the end of each biennium, the commissioner of health shall determine the amount of the health-related licensing board surcharge for the next biennium that must be assessed in order to cover the costs of administering the office of mental health practice, after deducting the amount of any surplus transferred from the state government special revenue fund. The fee surcharge must be based on a percentage of the indirect costs charged to each health-related licensing board. The total amount collected through the surcharge must not exceed the amount of the legislative appropriation from the state government special revenue fund minus any surplus transferred from the special revenue fund, except that the commissioner may recover the costs of initial rulemaking and other one-time expenses over a four-year period. The commissioner of health and the commissioner of finance shall determine the amount of the surcharge without adopting rules.

History: 1991 c 292 art 2 s 62