

## CHAPTER 214

## EXAMINING AND LICENSING BOARDS

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## 214.01 DEFINITIONS.

*[For text of subd 1, see M.S.1992]*

Subd. 2. **Health-related licensing board.** "Health-related licensing board" means the board of examiners of nursing home administrators established pursuant to section 144A.19, the board of medical practice created pursuant to section 147.01, the board of nursing created pursuant to section 148.181, the board of chiropractic examiners established pursuant to section 148.02, the board of optometry established pursuant to section 148.52, the board of psychology established pursuant to section 148.90, the social work licensing board pursuant to section 148B.19, the board of marriage and family therapy pursuant to section 148B.30, the mental health practitioner advisory council established pursuant to section 148B.62, the chemical dependency counseling licensing advisory council established pursuant to section 148C.02, the board of dentistry established pursuant to section 150A.02, the board of pharmacy established pursuant to section 151.02, the board of podiatric medicine established pursuant to section 153.02, and the board of veterinary medicine, established pursuant to section 156.01.

*[For text of subd 3, see M.S.1992]*

**History:** *ISp1993 c 1 art 3 s 15*

## 214.04 SERVICES.

Subdivision 1. **Services provided.** The commissioner of administration with respect to the board of electricity, the commissioner of education with respect to the board of teaching, the commissioner of public safety with respect to the board of private detective and protective agent services, and the board of peace officer standards and training, and the commissioner of revenue with respect to the board of assessors, shall provide suitable offices and other space, joint conference and hearing facilities, examination rooms, and the following administrative support services: purchasing service, accounting service, advisory personnel services, consulting services relating to evaluation procedures and techniques, data processing, duplicating, mailing services, automated printing of license renewals, and such other similar services of a housekeeping nature as are generally available to other agencies of state government. Investigative services shall be provided the boards by employees of the office of attorney general. The commissioner of health with respect to the health-related licensing boards shall provide mailing and office supply services and may provide other facilities and services listed in this subdivision at a central location upon request of the health-related licensing boards. The commissioner of commerce with respect to the remaining non-health-related licensing boards shall provide the above facilities and services at a central location for the remaining non-health-related licensing boards. The legal and investigative services for the boards shall be provided by employees of the attorney general assigned to the departments servicing the boards. Notwithstanding the foregoing, the attorney general shall not be precluded by this section from assigning other attorneys to service a board if necessary in order to insure competent and consistent legal representation. Persons providing legal and investigative services shall to the extent practicable provide the services on a regular basis to the same board or boards.

*[For text of subds 2 to 4, see M.S.1992]*

**History:** *ISp1993 c 1 art 9 s 67*

**214.06 FEES; LICENSE RENEWALS.**

Subdivision 1. **Fee adjustment.** Notwithstanding any law to the contrary, the commissioner of health as authorized by section 214.13, all health-related licensing boards and all non-health-related licensing boards shall by rule, with the approval of the commissioner of finance, adjust any fee which the commissioner of health or the board is empowered to assess a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium, as provided in section 16A.128. For members of an occupation registered after July 1, 1984, by the commissioner of health under the provisions of section 214.13, the fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules providing for registration of members of the occupation. All fees received shall be deposited in the state treasury. Fees received by the commissioner of health or health-related licensing boards must be credited to the health occupations licensing account in the state government special revenue fund.

*[For text of subd 2, see M.S.1992]*

Subd. 3. **Health-related licensing boards.** Notwithstanding section 14.22, subdivision 1, clause (3), a public hearing is not required to be held when the health-related licensing boards need to raise fees to cover anticipated expenditures in a biennium. The notice of intention to adopt the rules, as required under section 14.22, must state that no hearing will be held.

**History:** *1Sp1993 c 1 art 9 s 68,69*

**214.09 MEMBERSHIP; COMPENSATION; REMOVAL; VACANCIES.**

*[For text of subd 1, see M.S.1992]*

Subd. 2. **Membership terms.** An appointment to a board must be made in the manner provided in section 15.0597. The terms of the members shall be four years with the terms ending on the first Monday in January. The appointing authority shall appoint as nearly as possible one-fourth of the members to terms expiring each year. If the number of members is not evenly divisible by four, the greater number of members, as necessary, shall be appointed to terms expiring in the year of commencement of the governor's term and the year or years immediately thereafter. If the number of terms which can be served by a member of a board is limited by law, a partial term must be counted for this purpose if the time served by a member is greater than one-half of the duration of the regular term. If the membership is composed of categories of members from occupations, industries, political subdivisions, the public or other groupings of persons, and if the categories have two or more members each, the appointing authority shall appoint as nearly as possible one-fourth of the members in each category at each appointment date. Members may serve until their successors are appointed and qualify. If the appointing authority fails to appoint a successor by July 1 of the year in which the term expires, the term of the member for whom a successor has not been appointed shall extend until the first Monday in January four years after the scheduled end of the original term.

*[For text of subds 3 and 4, see M.S.1992]*

**History:** *1993 c 80 s 6*

**214.10 NON-HEALTH-RELATED LICENSING BOARDS: COMPLAINTS; INVESTIGATION AND HEARING.**

*[For text of subds 1 to 3, see M.S.1992]*

Subd. 4. [Repealed, 1993 c 326 art 7 s 22]

Subd. 5. [Repealed, 1993 c 326 art 7 s 22]

Subd. 6. [Repealed, 1993 c 326 art 7 s 22]

Subd. 7. [Repealed, 1993 c 326 art 7 s 22]

*[For text of subs 8 and 9, see M.S.1992]*

Subd. 10. **Board of peace officers standards and training; receipt of complaint.** Notwithstanding the provisions of subdivision 1 to the contrary, when the executive director or any member of the board of peace officer standards and training produces or receives a written statement or complaint that alleges a violation of a statute or rule that the board is empowered to enforce, the executive director shall designate the appropriate law enforcement agency to investigate the complaint and shall order it to conduct an inquiry into the complaint's allegations. The investigating agency must complete the inquiry and submit a written summary of it to the executive director within 30 days of the order for inquiry.

Subd. 11. **Board of peace officers standards and training; reasonable grounds determination.** (a) After the investigation is complete, the executive director shall convene a three-member committee of the board to determine if the complaint constitutes reasonable grounds to believe that a violation within the board's enforcement jurisdiction has occurred. At least two members of the committee must be board members who are peace officers. No later than 30 days before the committee meets, the executive director shall give the licensee who is the subject of the complaint and the complainant written notice of the meeting. The executive director shall also give the licensee a copy of the complaint. Before making its determination, the committee shall give the complaining party and the licensee who is the subject of the complaint a reasonable opportunity to be heard.

(b) The committee shall, by majority vote, after considering the information supplied by the investigating agency and any additional information supplied by the complainant or the licensee who is the subject of the complaint, take one of the following actions:

(1) find that reasonable grounds exist to believe that a violation within the board's enforcement jurisdiction has occurred and order that an administrative hearing be held;

(2) decide that no further action is warranted; or

(3) continue the matter.

The executive director shall promptly give notice of the committee's action to the complainant and the licensee.

(c) If the committee determines that a complaint does not relate to matters within its enforcement jurisdiction but does relate to matters within another state or local agency's enforcement jurisdiction, it shall refer the complaint to the appropriate agency for disposition.

Subd. 12. **Board of peace officers standards and training; administrative hearing; board action.** (a) Notwithstanding the provisions of subdivision 2 to the contrary, an administrative hearing shall be held if ordered by the committee under subdivision 11, paragraph (b). After the administrative hearing is held, the administrative law judge shall refer the matter to the full board for final action.

(b) Before the board meets to take action on the matter and the executive director must notify the complainant and the licensee who is the subject of the complaint. After the board meets, the executive director must promptly notify these individuals and the chief law enforcement officer of the agency employing the licensee of the board's disposition.

Subd. 13. **Board of peace officers standards and training; definition.** As used in subdivisions 10 to 12, "appropriate law enforcement agency" means the law enforcement agency assigned by the executive director and the chair of the committee of the board convened under subdivision 11.

**History:** 1993 c 326 art 7 s 4-7

**214.101 CHILD SUPPORT; SUSPENSION OF LICENSE.**

Subdivision 1. **Court order; hearing on suspension.** (a) For purposes of this section, "licensing board" means a licensing board or other state agency that issues an occupational license.

(b) If a licensing board receives an order from a court under section 518.551, subdivision 12, dealing with suspension of a license of a person found by the court to be in arrears in child support or maintenance payments, or both, the board shall, within 30 days of receipt of the court order, provide notice to the licensee and hold a hearing. If the board finds that the person is licensed by the board and evidence of full payment of arrearages found to be due by the court is not presented at the hearing, the board shall suspend the license unless it determines that probation is appropriate under subdivision 2. The only issues to be determined by the board are whether the person named in the court order is a licensee, whether the arrearages have been paid, and whether suspension or probation is appropriate. The board may not consider evidence with respect to the appropriateness of the court order or the ability of the person to comply with the order. The board may not lift the suspension until the licensee files with the board proof showing that the licensee is current in child support payments and maintenance.

*[For text of subds 2 and 3, see M.S.1992]*

Subd. 4. **Verification of payments.** Before a board may terminate probation, remove a suspension, issue, or renew a license of a person who has been suspended or placed on probation under this section, it shall contact the court that referred the matter to the board to determine that the applicant is not in arrears for child support or maintenance or both. The board may not issue or renew a license until the applicant proves to the board's satisfaction that the applicant is current in support payments and maintenance.

*[For text of subd 5, see M.S.1992]*

**History:** 1993 c 322 s 1,2; 1993 c 340 s 2

**214.103 HEALTH-RELATED LICENSING BOARDS; COMPLAINTS; INVESTIGATION AND HEARING.**

Subdivision 1. **Application.** For purposes of this section, "board" means "health-related licensing board" and does not include non-health-related licensing boards. Nothing in this section supersedes section 214.10, subdivisions 2a, 3, 8, and 9, as they apply to the health-related licensing boards.

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

Subd. 3. **Referral to other agencies.** The executive director shall forward to another governmental agency any complaints received by the board which do not relate to the board's jurisdiction but which relate to matters within the jurisdiction of another governmental agency. The agency shall advise the executive director of the disposition of the complaint. A complaint or other information received by another governmental agency relating to a statute or rule which a board is empowered to enforce must be for-

warded to the executive director of the board to be processed in accordance with this section.

**Subd. 4. Role of the attorney general.** The executive director or the designated board member shall forward a complaint and any additional information to the designee of the attorney general when the executive director or the designated board member determines that a complaint is jurisdictional and

(1) requires investigation before the executive director or the designated board member may resolve the complaint;

(2) that attempts at resolution for disciplinary action or the initiation of a contested case hearing is appropriate;

(3) that an agreement for corrective action is warranted; or

(4) that the complaint should be dismissed, consistent with subdivision 8.

**Subd. 5. Investigation by attorney general.** If the executive director or the designated board member determines that investigation is necessary before resolving the complaint, the executive director shall forward the complaint and any additional information to the designee of the attorney general. The designee of the attorney general shall evaluate the communications forwarded and investigate as appropriate. The designee of the attorney general may also investigate any other complaint forwarded under subdivision 3 when the designee of the attorney general determines that investigation is necessary. In the process of evaluation and investigation, the designee shall consult with or seek the assistance of the executive director or the designated board member. The designee may also consult with or seek the assistance of other qualified persons who are not members of the board who the designee believes will materially aid in the process of evaluation or investigation. Upon completion of the investigation, the designee shall forward the investigative report to the executive director.

**Subd. 6. Attempts at resolution.** (a) At any time after receipt of a complaint, the executive director or the designated board member may attempt to resolve the complaint with the regulated person. The available means for resolution include a conference or any other written or oral communication with the regulated person. A conference may be held for the purposes of investigation, negotiation, education, or conciliation. The results of attempts at resolution with the regulated person may include a recommendation to the board for disciplinary action, an agreement between the executive director or the designated board member and the regulated person for corrective action, or the dismissal of a complaint. If attempts at resolution are not in the public interest or are not satisfactory to the executive director or the designated board member, then the executive director or the designated board member may initiate a contested case hearing.

(1) The designee of the attorney general shall represent the board in all attempts at resolution which the executive director or the designated board member anticipate may result in disciplinary action. The available remedies for disciplinary action by consent with the regulated person are those listed in section 214.108, subdivision 4. A stipulation between the executive director or the designated board member and the regulated person shall be presented to the board for the board's consideration. An approved stipulation and resulting order shall become public data.

(2) The designee of the attorney general shall represent the board upon the request of the executive director or the designated board member in all attempts at resolution which the executive director or the designated board member anticipate may result in corrective action. Any agreement between the executive director or the designated board member and the regulated person for corrective action shall be in writing and shall be reviewed by the designee of the attorney general prior to its execution. The agreement for corrective action shall provide for dismissal of the complaint upon successful completion by the regulated person of the corrective action.

(b) Upon receipt of a complaint alleging sexual contact or sexual conduct with a client, the board must forward the complaint to the designee of the attorney general for an investigation. If, after it is investigated, the complaint appears to provide a basis for

disciplinary action, the board shall resolve the complaint by disciplinary action or initiate a contested case hearing. Notwithstanding paragraph (a), clause (2), a board may not take corrective action or dismiss a complaint alleging sexual contact or sexual conduct with a client unless, in the opinion of the executive director, the designated board member, and the designee of the attorney general, there is insufficient evidence to justify disciplinary action.

**Subd. 7. Contested case hearing.** If the executive director or the designated board member determines that attempts at resolution of a complaint are not in the public interest or are not satisfactory to the executive director or the designated board member, the executive director or the designated board member, after consultation with the designee of the attorney general, may initiate a contested case hearing under chapter 14. The designated board member or any board member who was consulted during the course of an investigation may participate at the contested case hearing. A designated or consulted board member may not deliberate or vote in any proceeding before the board pertaining to the case.

**Subd. 8. Dismissal of a complaint.** A complaint may not be dismissed without the concurrence of two board members. The designee of the attorney general must review before dismissal any complaints which allege any violation of chapter 609, any conduct which would be required to be reported under section 626.556 or 626.557, any sexual contact or sexual conduct with a client, any violation of a federal law, any actual or potential inability to practice the regulated profession or occupation by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental or physical condition, any violation of state medical assistance laws, or any disciplinary action related to credentialing in another jurisdiction or country which was based on the same or related conduct specified in this subdivision.

**Subd. 9. Information to complainant.** A board shall furnish to a person who made a complaint a description of the actions of the board relating to the complaint.

**Subd. 10. Prohibited participation by board member.** A board member who has actual bias or a current or former direct financial or professional connection with a regulated person may not vote in board actions relating to the regulated person.

**History:** 1Sp1993 c 1 art 9 s 70

## **214.131 COMMISSIONER CEASE AND DESIST AUTHORITY AND PENALTY FOR VIOLATION.**

**Subdivision 1. Cease and desist order.** The commissioner of health may 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 that the commissioner of health 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 after service of the order, the subject of the order fails to request a hearing in writing, the cease and desist order becomes final.

A hearing must be initiated by the commissioner of health not later than 30 days after the date the commissioner receives a written hearing request. Within 30 days after receiving the administrative law judge's report, the commissioner of health 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 of health.

When a request for a stay accompanies a timely hearing request, the commissioner of health may 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 work days after receiving the request. Within ten days after receiving the request from the commissioner of health, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner of health shall grant or deny the stay within five work days after receiving the administrative law judge's recommendation.

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

Subd. 2. **Civil penalty.** When the commissioner of health finds that a person has violated one or more provisions of any statute, rule, or order that the commissioner of health is empowered to regulate, enforce, or issue, the commissioner of health may impose, for each violation, a civil penalty that deprives the person of any economic advantage gained by the violation, or that reimburses the department of health for costs of the investigation and proceeding, or both.

Subd. 3. **Injunctive relief.** In addition to any other remedy provided by law, the commissioner of health may bring an action in district court for injunctive relief to restrain any unauthorized practice or violation of any statute, rule, or order that the commissioner of health is empowered to regulate, enforce, or issue. A temporary restraining order may be granted in the proceeding if continued activity by a person would create a serious risk of harm to others.

Subd. 4. **Additional powers.** The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a person from criminal prosecution by any competent authority or from disciplinary action by the commissioner of health. Any violation of any order of the commissioner is a misdemeanor.

**History:** 1993 c 201 s 6

**214.141** [Repealed, 1Sp1993 c 1 art 9 s 75]

## **214.16 DATA COLLECTION; HEALTH CARE PROVIDER TAX.**

*[For text of subds 1 and 2, see M.S.1992]*

Subd. 3. **Grounds for disciplinary action.** The board shall take disciplinary action, which may include license revocation, against a regulated person for:

(1) intentional failure to provide the commissioner of health or the health care analysis unit established under section 62J.30 with the data required under chapter 62J;

(2) intentional failure to provide the commissioner of revenue with data on gross revenue and other information required for the commissioner to implement sections 295.50 to 295.58; and

(3) intentional failure to pay the health care provider tax required under section 295.52.

**History:** 1993 c 345 art 12 s 8