

CHAPTER 148B

SOCIAL WORK, MARRIAGE AND FAMILY THERAPY,
AND MENTAL HEALTH

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148B.01 DEFINITIONS.

[For text of subd 1, see M.S.1996]

Subd. 3. [Repealed, 1997 c 193 s 48]

Subd. 4. **Board.** "Board" means the board of marriage and family therapy established in section 148B.30.Subd. 7. **Licensee.** "Licensee" means a person licensed by the board of marriage and family therapy.**History:** 1997 c 193 s 2,3

148B.03 APPLICABILITY.

Sections 148B.04 to 148B.17 apply to the board of marriage and family therapy, and the licensee within its jurisdiction, unless superseded by an inconsistent law that relates specifically to it.

History: 1997 c 193 s 4

148B.04 DISCLOSURE.

Subd. 2. **Contested case proceedings.** Upon application of a party in a contested case proceeding before the 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 the 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 board shall exchange information with other boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (d).*[For text of subds 5 and 6, see M.S.1996]***History:** 1997 c 193 s 5-7

148B.06 TAX CLEARANCE CERTIFICATE.

[For text of subds 1 and 2, see M.S.1996]

Subd. 3. Information required. The board shall require all licensees or applicants to provide their social security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the board must provide to the 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: 1997 c 193 s 8

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 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 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 the 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 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 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 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 or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. Insurers. Four times each year as prescribed by the board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to licensees, or the medical joint underwriting association under chapter 62F, shall submit to the 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.

Subd. 7. Self-reporting. A licensee shall report to the 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 board 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 board 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: 1997 c 193 s 9

148B.08 IMMUNITY.

[For text of subd 1, see M.S.1996]

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

History: 1997 c 193 s 10

148B.18 DEFINITIONS.

Subdivision 1. Applicability. For the purposes of sections 148B.18 to 148B.289, the following terms have the meanings given them.

[For text of subd 2, see M.S.1996]

Subd. 2a. Applicant. "Applicant" means a person who has submitted an application, with the appropriate fee, for licensure by the board.

[For text of subd 3, see M.S.1996]

Subd. 3a. Client. "Client" means an individual, couple, family, group, organization, or community that receives, received, or should have received services from an applicant or a licensee.

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.

Subd. 4a. Licensee. "Licensee" means a person licensed by the board.

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.

Subd. 6. [Repealed, 1997 c 193 s 48]

Subd. 7. [Repealed, 1997 c 193 s 48]

[For text of subds 8 to 10, see M.S.1996]

Subd. 11. Social work practice. (a) "Social work practice" is the application of social work theory, knowledge, methods, and ethics to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities, with particular attention to the person-in-environment configuration.

(b) For all levels of licensure, social work practice includes assessment, treatment planning and evaluation, case management, information and referral, counseling, advocacy, teaching, research, supervision, consultation, community organization, and the development, implementation, and administration of policies, programs, and activities.

(c) For persons licensed at the licensed independent clinical social worker level, and for persons licensed at either the licensed graduate social worker or the licensed independent social worker level who practice social work under the supervision of a licensed independent clinical social worker, social work practice includes the diagnosis and treatment of mental and emotional disorders in individuals, families, and groups. The treatment of mental and emotional disorders includes the provision of individual, marital, and group psychotherapy.

[For text of subd 12, see M.S.1996]

History: 1997 c 193 s 11-16,47

148B.185 APPLICABILITY.

Sections 148B.18 to 148B.289 apply to all applicants and licensees, to all persons practicing social work with clients in this state, and to persons engaged in the unauthorized practice of social work.

History: 1997 c 193 s 17

148B.19 BOARD OF SOCIAL WORK.

Subdivision 1. Creation. The board of social work is created. The board consists of 15 members appointed by the governor. The members are:

- (1) ten social workers licensed under sections 148B.18 to 148B.289; and
- (2) five public members as defined in section 214.02.

Subd. 2. Qualifications of board members. Five of the social worker members of the board shall be licensed at the baccalaureate level of licensure and five shall be licensed at the master's level of licensure.

Eight of the social worker members shall be engaged in the practice of social work in Minnesota in the following settings:

- (1) one member shall be engaged in the practice of social work in a state agency;
- (2) one member shall be engaged in the practice of social work in a county agency;
- (3) two members shall be engaged in the practice of social work in a private agency;
- (4) one member shall be engaged in the practice of social work in a private clinical social work setting;

(5) one member shall be an educator engaged in regular teaching duties at an accredited program of social work;

(6) one member shall be engaged in the practice of social work in an elementary, middle, or secondary school; and

(7) one member shall be employed in a hospital or nursing home licensed under chapter 144 or 144A.

In addition, at least five members shall be persons with expertise in communities of color and at least six members shall reside outside of the seven-county metropolitan area.

Subd. 3. [Repealed, 1997 c 193 s 48]

Subd. 4. Officers and executive director. 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 director 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.289.

History: 1997 c 193 s 18-20,47

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.289.

(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) 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.

(i) 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. 3. Duties of the board. The 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.1285. Fees must be credited to accounts in the special revenue fund.

History: 1997 c 193 s 21,22

148B.21 REQUIREMENTS FOR LICENSURE.

[For text of subds 1 and 2, see M.S.1996]

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 of part-time employment;

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

(5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by 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;

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

(5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by 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 of part-time employment under supervision as defined in section 148B.18, subdivision 12, after receiving the master's or doctoral degree in social work;

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

(5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by 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 of part-time employment 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;

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

(5) has not engaged in conduct warranting a disciplinary action against a licensee. If the applicant has engaged in conduct warranting disciplinary action against a licensee, the board may issue a license only on the applicant's showing that the public will be protected through the issuance of a license with conditions or limitations approved by the board.

Subd. 6a. Background checks. The board shall request a criminal history background check from the superintendent of the bureau of criminal apprehension on all applicants for initial licensure. An application for a license under this section must be accompanied by an executed criminal history consent form and the fee for conducting the criminal history background check.

Subd. 7. Temporary permit. (a) The board may issue a temporary permit to practice social work to an applicant in the following situations, provided the applicant meets all other requirements for licensure:

(1) the applicant has passed the licensure examination and the applicant's accredited program of social work has submitted an affidavit on a form provided by the board verifying the applicant's completion of the requirements for a degree. The affidavit must be submitted within 15 days of the date of completion of the degree requirements. The temporary permit under this clause is valid for six months, or until a license is issued, whichever comes first, and is nonrenewable;

(2) the applicant has applied for licensure under section 148B.24 and the board determines that the applicant must pass the licensure examination before being licensed. The temporary permit under this clause is valid if the applicant passes the examination and completes the licensure process within the time periods specified by the board, and is nonrenewable; or

(3) the applicant has passed the licensure examination, has graduated from a program of social work in candidacy status with the Council on Social Work Education, and the program of social work has submitted an affidavit on a form provided by the board verifying the applicant's completion of the requirements for a degree. The affidavit must be submitted within 15 days of the date of completion of the degree requirements. The temporary permit under this clause is valid for six months, and may be extended at the board's discretion upon a showing that the social work program remains in good standing with the Council on Social Work Education. If the board receives notice from the Council on Social Work Education that the program of social work is not in good standing or that accreditation will not be granted to the program of social work, then the temporary permit shall be invalid immediately and the applicant shall not qualify for licensure.

(b) An applicant who obtains a temporary permit 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.

(c) A temporary permit is nonrenewable.

[For text of subds 8 and 9, see M.S.1996]

History: 1997 c 193 s 23-28

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 the date on which the board mailed the notification of the adverse action.

History: 1997 c 193 s 29

148B.22 LICENSE RENEWAL REQUIREMENTS.

[For text of subd 1, see M.S.1996]

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.289.

Subd. 3. Background checks. The board shall request a criminal history background check from the superintendent of the bureau of criminal apprehension on all licensees under its jurisdiction who did not complete a criminal history background check as part of an application for initial licensure. This background check is a one-time requirement. An application for a license under this section must be accompanied by an executed criminal history consent form and the fee for conducting the criminal history background check.

History: 1997 c 193 s 30,47

148B.23 [Repealed, 1997 c 193 s 48]

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

Subdivision 1. Grounds. The following conduct is grounds for the board to deny the application for or the renewal of a temporary permit or license, to take disciplinary or other action against a license as provided for in section 148B.281, or to take corrective action against a licensee as provided for in chapter 214:

(1) engaging in any conduct which violates any statute or rule enforced by the board, or any other law that is related to the practice of social work;

(2) violating any order issued by the board;

(3) practicing outside the scope of practice authorized by this chapter for each level of licensure;

(4) failing to demonstrate the qualifications or satisfy the requirements for licensure, with the burden of proof on the applicant to demonstrate the qualifications or the satisfaction of the requirements;

(5) obtaining a temporary permit, license, or license renewal by fraud, bribery, or cheating, or attempting to subvert the examination process;

(6) making a false statement or misrepresentation to the board;

(7) having been the subject of revocation, suspension, or surrender of a social work or related license or of other adverse action related to a social work or related license in another jurisdiction or country;

(8) failing to report the revocation, suspension, or surrender of a social work or related license or other adverse action related to a social work or related license in another jurisdiction or country, failing to report that a complaint or other charges regarding the person's license have been brought in this or another jurisdiction or country, or having been refused a license by any other jurisdiction or country;

(9) engaging in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established;

(10) engaging in unethical conduct or conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a client, or engaging in a practice which is professionally incompetent with proof of actual injury not having to be established;

(11) being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent or mentally ill, chemically dependent, mentally ill and dangerous to the public, or a psychopathic personality;

(12) being unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals or any other materials, or as a result of any mental or physical condition;

(13) engaging in improper or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(14) obtaining money, property, or services from a client through the use of undue influence, harassment, duress, deception, or fraud or through the improper use of a professional position;

(15) engaging in sexual contact, as defined in section 148A.01, with a client or conduct that is or may reasonably be interpreted by the client as sexual, engaging in verbal behavior that is or may reasonably be interpreted as sexually seductive or sexually demeaning to a client, or engaging in conduct that violates section 617.23;

(16) being convicted, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or a no contest plea, of a crime against a minor;

(17) being convicted, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or a no contest plea of a felony, gross misdemeanor, or misdemeanor reasonably related to the practice of social work, as evidenced by a certified copy of the conviction;

(18) engaging in an unfair discriminatory practice prohibited by chapter 363 of an employee of the applicant, licensee, or facility in which the applicant or licensee practices;

(19) engaging in false, fraudulent, deceptive, or misleading advertising; or

(20) revealing a privileged communication from or relating to a client except when otherwise required or permitted by law.

[For text of subds 2 and 3, see M.S.1996]

Subd. 4. Conduct before licensure. The board's jurisdiction to exercise its powers as provided for in subdivision 1 extends to an applicant's or licensee's conduct that occurred

prior to licensure, if the conduct fell below minimum standards for the practice of social work at the time the conduct occurred or the conduct continues to affect the applicant's or licensee's present ability to practice social work in conformity with this chapter and the board's rules.

History: 1997 c 193 s 31,32

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

Subdivision 1. Practice. No individual shall engage in social work practice unless that individual holds a valid temporary permit or a 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. 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 temporary permit or a license issued under sections 148B.18 to 148B.289. City, county, and state agency social workers who are not licensed under sections 148B.18 to 148B.289 may use only the title city agency social worker or county agency social worker or state agency social worker.

[For text of subds 2a and 2b, see M.S.1996]

Subd. 3. Penalty. A person who violates sections 148B.21 to 148B.289 is guilty of a misdemeanor.

History: 1997 c 193 s 33,34,47

148B.28 EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. Other professionals. Nothing in sections 148B.18 to 148B.289 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. Persons engaged in the practice of social work are not exempt from the board's jurisdiction solely by the use of one of the above titles.

[For text of subds 2 and 3, see M.S.1996]

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.

[For text of subd 5, see M.S.1996]

History: 1997 c 193 s 35,36

148B.281 COMPLAINTS; INVESTIGATION AND HEARING.

Subdivision 1. Discovery; subpoenas. In all matters relating to its lawful regulatory activities, the 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 proceedings 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 the board has probable cause to believe that an applicant or licensee has engaged in conduct prohibited by chapter 214 or a 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 chapter 214 or a 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 without the taking of testimony or other evidence. If a contested case hearing is requested, 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 the board as the result of an applicant's or a licensee's failure 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, the 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 chapter 214 or a 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 chapter 214 or a 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;

(9) require the passing of the examination provided for in section 148B.20, subdivision 1; or

(10) take any other action justified by the facts of the case.

Subd. 7. Censure or reprimand. (a) In addition to the board's authority to issue a censure or a reprimand to a licensee, a designated board member reviewing a complaint as provided for in chapter 214 may issue a censure or a reprimand to a licensee. The censure or reprimand shall notify the licensee that the censure or reprimand will become final disciplinary action unless the licensee requests a hearing within 14 days.

(b) If the licensee requests a timely hearing, the committee shall either schedule a hearing or withdraw the censure or reprimand. The hearing shall be de novo before the board, provided that the designated board member who issued the censure or reprimand shall not deliberate or vote. Evidence shall be received only in form of affidavits or other documents except for testimony by the licensee or other witnesses whose testimony the board chair has authorized for good cause. If testimony is authorized, it shall be subject to cross-examination. After the hearing, the board shall affirm or dismiss the censure or reprimand, or direct the committee to initiate a contested case proceeding pursuant to chapter 14.

Subd. 8. 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. 9. Automatic suspension; restoration. The right to practice is automatically suspended if (1) a guardian of a licensee is appointed by order of a court under sections 525.54 to 525.61, or (2) the licensee is committed by order of a court pursuant to chapter 253B. 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, the 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. 10. 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. 11. Injunctive relief. In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the 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. 12. 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.

Subd. 13. Pending appeal. 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.

History: 1997 c 193 s 37

148B.282 PROFESSIONAL COOPERATION; APPLICANT OR LICENSEE.

An applicant or a licensee who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation, providing copies of client and other records in the applicant's or licensee's possession relating to the matter under investigation and executing releases for records, as reasonably requested by the board, and appearing at conferences or hearings scheduled by the board. The board shall pay for copies requested. The board shall be allowed access to any records of a client provided services by the applicant or licensee under review. If the client has not signed a consent permitting access to the client's records, the applicant or licensee shall delete any data in the record that identifies the client before providing them to the board. The board shall maintain any records obtained pursuant to this section as investigative data pursuant to chapter 13.

History: 1997 c 193 s 38

148B.283 REPORTING OBLIGATIONS.

Subdivision 1. Permission to report. A person who has knowledge of any conduct by an applicant or a licensee which may constitute grounds for disciplinary action under this chapter or the rules of the board or of any unlicensed practice under this chapter may report the violation to the 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 insti-

tution or organization located in this state shall report to the 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 an applicant's or 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 the board under this chapter. The institution or organization shall also report the resignation of any applicants or 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 applicant or 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 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 board upon receipt of the complaint. The society or association shall also report to the board any disciplinary action taken against a member.

Subd. 4. Licensed professionals. (a) A licensed health professional shall report to the board information on the following conduct by an applicant or a licensee:

- (1) sexual contact or sexual conduct with a client or a former client;
- (2) failure to make reports required by section 626.556 or 626.557;
- (3) impairment in the ability to practice by reason of illness, use of alcohol, drugs, or other chemicals, or as a result of any mental or physical condition;
- (4) improper or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;
- (5) fraud in the licensure application process or any other false statements made to the board;
- (6) conviction of a felony reasonably related to the practice of social work, including conviction of the psychotherapist sex crimes in chapter 609; and
- (7) a violation of a board order.

(b) A licensed health professional shall also report to the board information on any other conduct by an applicant or a licensee that constitutes grounds for disciplinary action under this chapter or the rules of the board when the licensed health professional reasonably believes, after appropriate assessment, that the client's functioning has been or likely will be affected negatively by the conduct, regardless of whether the conduct has ceased.

(c) Notwithstanding paragraphs (a) and (b), a licensed health professional shall report to the board knowledge of any actions which institutions must report under subdivision 2.

Subd. 5. Reporting other licensed professionals. An applicant or a licensee shall report to the appropriate board conduct by a licensed health professional which would constitute grounds for disciplinary action under the chapter governing the practice of the other licensed health professional and which is required by law to be reported to the same board.

Subd. 6. Insurers and other entities making liability payments. (a) Four times each year as prescribed by the board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to licensees, or the medical joint underwriting association under chapter 62F, shall submit to the 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.

(b) A medical clinic, hospital, political subdivision, or other entity which makes professional liability insurance payments on behalf of applicants or licensees shall submit to the board a report concerning malpractice settlements or awards paid on behalf of applicants or licensees, and any settlements or awards paid by a clinic, hospital, political subdivision, or other entity on its own behalf because of care rendered by applicants or licensees. This requirement excludes forgiveness of bills. The report shall be made to the board within 30 days of payment of all or part of any settlement or award.

(c) The insurance company or other entity making professional liability insurance payments shall, in addition to the information in paragraph (b), report to the board any information it possesses that tends to substantiate a charge, including the factual data underlying a settlement, that an applicant or a licensee may have engaged in conduct violating this chapter.

Subd. 7. 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 an applicant or 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 applicant or licensee pursuant to sections 525.54 to 525.61 or commits an applicant or a licensee pursuant to chapter 253B.

Subd. 8. Self-reporting. An applicant or a licensee shall report to the board 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 7.

Subd. 9. Deadlines; forms. Reports required by subdivisions 2 to 8 must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Subd. 10. Subpoenas. The board may issue subpoenas for the production of any reports required by subdivisions 2 to 8 or any related documents.

History: 1997 c 193 s 39

148B.284 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.283 or for otherwise reporting, providing information, or testifying about violations or alleged violations of this chapter. The reports are classified under section 13.41.

Subd. 2. Investigation. Board members and employees; persons engaged on behalf of the board in the investigation of violations and in the preparation, presentation, and management of and testimony pertaining to charges of violations; and persons engaged in monitoring compliance with statutes, rules, board orders, or corrective action agreements 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: 1997 c 193 s 40

148B.285 DISCLOSURE.

Subdivision 1. Contested case proceedings. (a) Upon application of a party in a board hearing or a contested case hearing before the 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.

(b) The board hearing or contested case hearing shall be open to the public, except that the board or administrative law judge shall close the hearing for testimony by clients, and testimony and argument about clients.

(c) Notwithstanding section 13.41, information which may identify a client, client records, and licensee health records are private data during the contested case hearing, as part of the hearing record, and as part of any appellate or other court record.

(d) Clients may waive the protections afforded by this subdivision.

Subd. 2. Information on disciplinary actions. If the 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. 3. Exchange of information. The board shall exchange information with other boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (d).

Subd. 4. 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.

Subd. 5. Classification of certain residence addresses and telephone numbers. Notwithstanding section 13.41, subdivision 2 or 4, the residence address and telephone number of an applicant or licensee are private data on individuals as defined in section 13.02, subdivision 12, if the applicant or licensee so requests and provides an alternative address and telephone number.

Subd. 6. 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: 1997 c 193 s 41

148B.286 PROFESSIONAL ACCOUNTABILITY.

Subdivision 1. Investigation. The board shall maintain and keep current a file containing the reports and complaints filed against applicants or licensees within the board's jurisdiction. Each complaint filed with the board pursuant to chapter 214 must be investigated according to chapter 214. If the files maintained by the board show that a malpractice settlement or award to the plaintiff has been made against an applicant or a licensee as reported by insurers under section 148B.283, 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 the board initiates a review of an applicant's or a licensee's practice it shall notify the attorney general who shall investigate the matter in the same manner as provided in chapter 214. If an investigation is to be made, the attorney general shall notify the applicant or 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 any records of a client provided services by the applicant or licensee under review. If the client has not signed a consent permitting access, the applicant, licensee, or custodian of the records shall first delete the client's name or other client identifiers before providing the records to the board.

History: 1997 c 193 s 42

148B.287 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: 1997 c 193 s 43

148B.288 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 previous sexual conduct nor shall any reference to this conduct be made during the proceedings or in the findings, except by motion of the complainant, unless the evidence would be admissible under the applicable provisions of section 609.347, subdivision 3.

History: 1997 c 193 s 44

148B.289 TAX CLEARANCE CERTIFICATE.

Subdivision 1. Certificate required. The board may not issue or renew a license if the commissioner of revenue notifies the board and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. The board may issue or renew 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 (1) an administrative or court action that contests the amount or validity of the liability has been filed or served, (2) the appeal period to contest the tax liability has not expired, or (3) 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.281, 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 board shall require all licensees or applicants to provide their social security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the board must provide to the 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: 1997 c 193 s 45

148B.60 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1996]

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 or registered by the board of medical practice under chapter 147A; 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.289; 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) 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;
- (2) 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
- (3) clergy who are providing mental health services that are equivalent to those defined in subdivision 4.

[For text of subds 4 to 8, see M.S.1996]

History: 1997 c 193 s 47

148B.66 PROFESSIONAL COOPERATION; UNLICENSED PRACTITIONER.

[For text of subds 1 and 2, see M.S.1996]

Subd. 3. Exchanging information. (a) The office of mental health practice shall establish internal operating procedures for:

(1) exchanging information with state boards; agencies, including the office of ombudsman for mental health and mental retardation; health related and law enforcement facilities; departments responsible for licensing health related occupations, facilities, and programs; and law enforcement personnel in this and other states; and

(2) coordinating investigations involving matters within the jurisdiction of more than one regulatory agency.

(b) The procedures for exchanging information must provide for the forwarding to the entities described in paragraph (a), clause (1), of information and evidence, including the results of investigations, that are relevant to matters within the regulatory jurisdiction of the organizations in paragraph (a). The data have the same classification in the hands of the agency receiving the data as they have in the hands of the agency providing the data.

(c) The office of mental health practice shall establish procedures for exchanging information with other states regarding disciplinary action against licensed and unlicensed mental health practitioners.

(d) The office of mental health practice shall forward to another governmental agency any complaints received by the office that do not relate to the office's jurisdiction but that relate to matters within the jurisdiction of the other governmental agency. The agency to which a complaint is forwarded shall advise the office of mental health practice of the disposition of the complaint. A complaint or other information received by another governmental agency relating to a statute or rule that the office of mental health practice is empowered to enforce must be forwarded to the office to be processed in accordance with this section.

(e) The office of mental health practice shall furnish to a person who made a complaint a description of the actions of the office relating to the complaint.

History: 1997 c 187 art 2 s 5