

CHAPTER 148

PUBLIC HEALTH OCCUPATIONS, LICENSING

148.06	Application; examination; license; fee.	148.511	Speech-language pathologists and audiologists.
148.08	Rules.		Definitions.
148.10	Licenses revoked; new licenses.	148.6402	General licensure procedures.
148.104	Cooperation during investigations.	148.6420	Renewal of licensure; after expiration date.
148.105	Violation.	148.6425	Grounds for denial of licensure or discipline; investigation procedures; disciplinary actions.
148.106	Peer review of services and fees.	148.6448	Registration renewal.
148.212	Temporary permit.	148.7809	Disciplinary action; investigation; penalty for violation.
148.261	Grounds for disciplinary action.	148.941	
148.284	Certification of advanced practice registered nurses.		

148.06 APPLICATION; EXAMINATION; LICENSE; FEE.

Subdivision 1. **License required; qualifications.** No person shall practice chiropractic in this state without first being licensed by the state board of chiropractic examiners. The applicant shall have earned at least one-half of all academic credits required for awarding of a baccalaureate degree from the University of Minnesota, or other university, college, or community college of equal standing, in subject matter determined by the board, and taken a four-year resident course of at least eight months each in a school or college of chiropractic or in a chiropractic program that is accredited by the council on chiropractic education or accredited by an agency approved by the United States Office of Education or their successors as of January 1, 1988. The board may issue licenses to practice chiropractic without compliance with prechiropractic or academic requirements listed above if in the opinion of the board the applicant has the qualifications equivalent to those required of other applicants, the applicant satisfactorily passes written and practical examinations as required by the board of chiropractic examiners, and the applicant is a graduate of a college of chiropractic with a reciprocal recognition agreement with the council on chiropractic education as of January 1, 1988. The board may recommend a two-year prechiropractic course of instruction to any university, college, or community college which in its judgment would satisfy the academic prerequisite for licensure as established by this section.

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

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

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

History: 2001 c 121 s 1

148.08 RULES.

Subd. 2. **How regulated.** Chiropractors shall be subject to the same rules and regulations, both municipal and state, that govern other licensed doctors or physicians in the control of contagious and infectious diseases, and shall be entitled to sign health and death records, and to all rights and privileges of other doctors or physicians in all matters pertaining to the public health, except prescribing internal drugs or the practice of medicine, physical therapy, surgery and obstetrics.

[For text of subd 3, see M.S.2000]

History: 1Sp2001 c 9 art 15 s 32

148.10 LICENSES REVOKED; NEW LICENSES.

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

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

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

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

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

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

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

(7) Practicing under a license which has not been renewed.

(8) Advanced physical or mental disability.

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

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

(11) Unprofessional conduct.

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

In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.384, 144.651, or any other law limiting access to health data, obtain health data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that a doctor of chiropractic comes under this clause. The health data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision, unless the information is false and the provider or entity giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private under sections 13.01 to 13.87.

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

(13) Aiding or abetting an unlicensed person in the practice of chiropractic, except that it is not a violation of this clause for a doctor of chiropractic to employ, supervise, or delegate functions to a qualified person who may or may not be required to obtain a license or registration to provide health services if that person is practicing within the scope of the license or registration or delegated authority.

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

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

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

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

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

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

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

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

(b) For the purposes of paragraph (a), clause (2), conduct that subverts or attempts to subvert the licensing examination process includes, but is not limited to: (1) conduct that violates the security of the examination materials, such as removing examination materials from the examination room or having unauthorized possession of any portion of a future, current, or previously administered licensing examination; (2) conduct that violates the standard of test administration, such as communicating with another examinee during administration of the examination, copying another examinee's answers, permitting another examinee to copy one's answers, or possessing unauthorized materials; or (3) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

(c) For the purposes of paragraph (a), clauses (4) and (5), conviction as used in these subdivisions includes a conviction of an offense that if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered.

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

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

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

[For text of subd 2, see M.S.2000]

Subd. 3. Reprimand; penalties; probation. In addition to the other powers granted to the board under this chapter, the board may, in connection with any person whom

the board. after a hearing, adjudges unqualified or whom the board, after a hearing, finds to have performed one or more of the acts described in subdivision 1:

- (1) publicly reprimand or censure the person;
- (2) place the person on probation for the period and upon the terms and conditions that the board may prescribe; and
- (3) require payment of all costs of proceedings resulting in the disciplinary action; and
- (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 doctor of chiropractic of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding. For purposes of this section, the cost of the investigation and proceeding may include, but is not limited to, fees paid for services provided by the office of administrative hearings, legal and investigative services provided by the office of the attorney general, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and travel costs and expenses incurred by board staff and board members.

[For text of subds 4 to 6, see M.S.2000]

History: 1999 c 227 s 22; 2001 c 121 s 2,3

148.104 COOPERATION DURING INVESTIGATIONS.

A doctor of chiropractic who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes appearing at conferences, meetings, or hearings scheduled by the board and for which the board provided notice in accordance with chapter 14; responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation; and providing copies of patient health records, as reasonably requested by the board, to assist the board in its investigation. If the board does not have written consent from a patient allowing the board access to the patient's health records, a doctor of chiropractic shall delete any data in the record which identifies the patient before providing the records to the board.

History: 2001 c 121 s 4

148.105 VIOLATION.

[For text of subd 1, see M.S.2000]

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

- (1) a student practicing under the direct supervision of a preceptor while the student is enrolled in and regularly attending a recognized chiropractic college or chiropractic program;
- (2) a student who is in continuing training and performing the duties of an intern or resident or engaged in postgraduate work considered by the board to be the equivalent of an internship or residency in any institution approved for training by the board;
- (3) a doctor of chiropractic licensed in another state or jurisdiction who is in actual consultation in Minnesota;
- (4) a doctor of chiropractic licensed in another state or jurisdiction who is in this state for the sole purpose of providing chiropractic services at a competitive athletic event. The doctor of chiropractic may practice chiropractic only on participants in the athletic event;
- (5) a doctor of chiropractic licensed in another state or jurisdiction whose duties are entirely of a research, public health, or educational character and while directly engaged in such duties, and who is employed in a scientific, sanitary, or teaching capacity by: (i) an accredited institution; (ii) a public or private school, college, or other

bona fide educational institution; (iii) a nonprofit organization which has tax-exempt status in accordance with the Internal Revenue Code, section 501(c)(3), and is organized and operated primarily for the purpose of conducting scientific research; or (iv) the state department of health;

(6) a doctor of chiropractic licensed in another state or jurisdiction who treats the doctor of chiropractic's home state patients or other participating patients while the doctor of chiropractic and those patients are participating together in outdoor recreation in this state as defined by section 86A.03, subdivision 3; and

(7) a person licensed in another state or jurisdiction who is a commissioned officer of, a member of, or employed by the armed forces of the United States, the United States Public Health Service, the Veterans Administration, any federal institution, or any federal agency while engaged in the performance of official duties within this state.

History: 2001 c 121 s 5

148.106 PEER REVIEW OF SERVICES AND FEES.

Subdivision 1. [Repealed, 2001 c 121 s 7]

Subd. 2. [Repealed, 2001 c 121 s 7]

Subd. 3. [Repealed, 2001 c 121 s 7]

Subd. 4. [Repealed, 2001 c 121 s 7]

Subd. 5. [Repealed, 2001 c 121 s 7]

Subd. 6. [Repealed, 2001 c 121 s 7]

Subd. 7. [Repealed, 2001 c 121 s 7]

Subd. 8. [Repealed, 2001 c 121 s 7]

Subd. 9. [Repealed, 2001 c 121 s 7]

Subd. 10. **Confidentiality of peer review records.** All data and information acquired by the board or the peer review committee before August 1, 2001, in the exercise of its duties and functions in conducting peer reviews before August 1, 2001, shall be subject to the same disclosure and confidentiality protections as provided for data and information of other review organizations under section 145.64. The data, information, and records are classified as private data on individuals for purposes of chapter 13. The patient records obtained by the board pursuant to this section must be used solely for the purposes of the board relating to peer review or the disciplinary process.

History: 2001 c 121 s 6

148.212 TEMPORARY PERMIT.

Upon receipt of the applicable licensure or reregistration fee and permit fee, and in accordance with rules of the board, the board may issue a nonrenewable temporary permit to practice professional or practical nursing to an applicant for licensure or reregistration who is not the subject of a pending investigation or disciplinary action, nor disqualified for any other reason, under the following circumstances:

(a) The applicant for licensure by examination under section 148.211, subdivision 1, has graduated from an approved nursing program within the 60 days preceding board receipt of an affidavit of graduation or transcript and has been authorized by the board to write the licensure examination for the first time in the United States. The permit holder must practice professional or practical nursing under the direct supervision of a registered nurse. The permit is valid from the date of issue until the date the board takes action on the application or for 60 days whichever occurs first.

(b) The applicant for licensure by endorsement under section 148.211, subdivision 2, is currently licensed to practice professional or practical nursing in another state, territory, or Canadian province. The permit is valid from submission of a proper request until the date of board action on the application.

(c) The applicant for licensure by endorsement under section 148.211, subdivision 2, or for reregistration under section 148.231, subdivision 5, is currently registered in a

formal, structured refresher course or its equivalent for nurses that includes clinical practice.

(d) The applicant for licensure by examination under section 148.211, subdivision 1, has been issued a Commission on Graduates of Foreign Nursing Schools certificate, has completed all requirements for licensure except the examination, and has been authorized by the board to write the licensure examination for the first time in the United States. The permit holder must practice professional nursing under the direct supervision of a registered nurse. The permit is valid from the date of issue until the date the board takes action on the application or for 60 days, whichever occurs first.

History: *1Sp2001 c 9 art 13 s 2*

148.261 GROUNDS FOR DISCIPLINARY ACTION.

[For text of subs 1 and 4, see M.S.2000]

Subd. 5. Examination; access to medical data. The board may take the following actions if it has probable cause to believe that grounds for disciplinary action exist under subdivision 1, clause (9) or (10):

(a) It may direct the applicant or nurse to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, when a nurse licensed under sections 148.171 to 148.285 is directed in writing by the board to submit to a mental or physical examination or chemical dependency evaluation, that person is considered to have consented and to have waived all objections to admissibility on the grounds of privilege. Failure of the applicant or nurse to submit to an examination when directed constitutes an admission of the allegations against the applicant or nurse, unless the failure was due to circumstances beyond the person's control, and the board may enter a default and final order without taking testimony or allowing evidence to be presented. A nurse affected under this paragraph shall, at reasonable intervals, be given an opportunity to demonstrate that the competent practice of professional, advanced practice registered, or practical nursing can be resumed with reasonable skill and safety to patients. Neither the record of proceedings nor the orders entered by the board in a proceeding under this paragraph, may be used against a nurse in any other proceeding.

(b) It may, notwithstanding sections 13.384, 144.651, 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a registered nurse, advanced practice registered nurse, licensed practical nurse, or applicant for a license without that person's consent. The medical data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision unless the information is false and the provider giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private data on individuals as defined in section 13.02.

History: *1999 c 227 s 22*

148.284 CERTIFICATION OF ADVANCED PRACTICE REGISTERED NURSES.

(a) No person shall practice advanced practice registered nursing or use any title, abbreviation, or other designation tending to imply that the person is an advanced practice registered nurse, clinical nurse specialist, nurse anesthetist, nurse-midwife, or nurse practitioner unless the person is certified for such advanced practice registered nursing by a national nurse certification organization.

(b) Paragraph (a) does not apply to an advanced practice registered nurse who is within six months after completion of an advanced practice registered nurse course of

study and is awaiting certification, provided that the person has not previously failed the certification examination.

(c) An advanced practice registered nurse who has completed a formal course of study as an advanced practice registered nurse and has been certified by a national nurse certification organization prior to January 1, 1999, may continue to practice in the field of nursing in which the advanced practice registered nurse is practicing as of July 1, 1999, regardless of the type of certification held if the advanced practice registered nurse is not eligible for the proper certification.

History: *1Sp2001 c 9 art 13 s 3*

148.511 SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

Sections 148.511 to 148.5196 apply only to persons who are applicants for registration, who are registered, who use protected titles, or who represent that they are registered. Sections 148.511 to 148.5196 do not apply to school personnel licensed by the board of teaching, provided that school personnel practicing within the scope of their licensed occupation preface titles protected under section 148.513 with the words "school" or "educational."

History: *2001 c 7 s 34*

148.6402 DEFINITIONS.

[For text of subs 1 to 13, see M.S.2000]

Subd. 14. **Occupational therapist.** "Occupational therapist" means an individual who meets the qualifications in sections 148.6401 to 148.6450 and is licensed by the commissioner.

[For text of subd 15, see M.S.2000]

Subd. 16. **Occupational therapy assistant.** "Occupational therapy assistant" means an individual who meets the qualifications for an occupational therapy assistant in sections 148.6401 to 148.6450 and is licensed by the commissioner.

[For text of subd 17, see M.S.2000]

Subd. 18. [Repealed, 2001 c 7 s 91]

[For text of subs 19 to 26, see M.S.2000]

History: *2001 c 7 s 35,36*

148.6420 GENERAL LICENSURE PROCEDURES.

[For text of subd 1, see M.S.2000]

Subd. 2. **Persons applying for licensure under section 148.6408 or 148.6410.** Persons applying for licensure under section 148.6408 or 148.6410 must submit the materials required in subdivision 1 and the following:

- (1) a certificate of successful completion of the requirements in section 148.6408, subdivision 1, or 148.6410, subdivision 1; and
- (2) the applicant's test results from the examining agency, as evidence that the applicant received a qualifying score on a credentialing examination meeting the requirements of section 148.6408, subdivision 2, or 148.6410, subdivision 2.

[For text of subd 3, see M.S.2000]

Subd. 4. **Applicants credentialed in another jurisdiction.** In addition to providing the materials required in subdivision 1, an applicant credentialed in another jurisdiction must request that the appropriate government body in each jurisdiction in which the applicant holds or held an occupational therapy credential send a letter to the commissioner that verifies the applicant's credentials. Except as provided in section 148.6418, a license shall not be issued until the commissioner receives letters verifying

each of the applicant's credentials. Each letter must include the applicant's name and date of birth, credential number and date of issuance, a statement regarding investigations pending and disciplinary actions taken or pending against the applicant, current status of the credential, and the terms under which the credential was issued.

[For text of subd 5, see M.S.2000]

History: 2001 c 7 s 37,38

148.6425 RENEWAL OF LICENSURE; AFTER EXPIRATION DATE.

[For text of subd 1, see M.S.2000]

Subd. 2. Licensure renewal after licensure expiration date. An individual whose application for licensure renewal is received after the licensure expiration date must submit the following:

(1) a completed and signed application for licensure following lapse in licensed status on forms provided by the commissioner;

(2) the renewal fee and the late fee required under section 148.6445;

(3) proof of having met the continuing education requirements since the individual's initial licensure or last licensure renewal; and

(4) additional information as requested by the commissioner to clarify information in the application, including information to determine whether the individual has engaged in conduct warranting disciplinary action as set forth in section 148.6448. The information must be submitted within 30 days after the commissioner's request.

Subd. 3. Licensure renewal four years or more after licensure expiration date. (a) An individual who requests licensure renewal four years or more after the licensure expiration date must submit the following:

(1) a completed and signed application for licensure on forms provided by the commissioner;

(2) the renewal fee and the late fee required under section 148.6445;

(3) proof of having met the continuing education requirement for the most recently completed two-year continuing education cycle; and

(4) at the time of the next licensure renewal, proof of having met the continuing education requirement, which shall be prorated based on the number of months licensed during the biennial licensure period.

(b) In addition to the requirements in paragraph (a), the applicant must submit proof of one of the following:

(1) verified documentation of successful completion of 160 hours of supervised practice approved by the commissioner as described in paragraph (c);

(2) verified documentation of having achieved a qualifying score on the credentialing examination for occupational therapists or the credentialing examination for occupational therapy assistants administered within the past year; or

(3) documentation of having completed a combination of occupational therapy courses or an occupational therapy refresher program that contains both a theoretical and clinical component approved by the commissioner. Only courses completed within one year preceding the date of the application or one year after the date of the application qualify for approval.

(c) To participate in a supervised practice as described in paragraph (b), clause (1), the applicant shall obtain limited licensure. To apply for limited licensure, the applicant shall submit the completed limited licensure application, fees, and agreement for supervision of an occupational therapist or occupational therapy assistant practicing under limited licensure signed by the supervising therapist and the applicant. The supervising occupational therapist shall state the proposed level of supervision on the supervision agreement form provided by the commissioner. The supervising therapist shall determine the frequency and manner of supervision based on the condition of the patient or client, the complexity of the procedure, and the proficiencies of the

supervised occupational therapist. At a minimum, a supervising occupational therapist shall be on the premises at all times that the person practicing under limited licensure is working; be in the room ten percent of the hours worked each week by the person practicing under limited licensure; and provide daily face-to-face collaboration for the purpose of observing service competency of the occupational therapist or occupational therapy assistant, discussing treatment procedures and each client's response to treatment, and reviewing and modifying, as necessary, each treatment plan. The supervising therapist shall document the supervision provided. The occupational therapist participating in a supervised practice is responsible for obtaining the supervision required under this paragraph and must comply with the commissioner's requirements for supervision during the entire 160 hours of supervised practice. The supervised practice must be completed in two months and may be completed at the applicant's place of work.

(d) In addition to the requirements in paragraphs (a) and (b), the applicant must submit additional information as requested by the commissioner to clarify information in the application, including information to determine whether the applicant has engaged in conduct warranting disciplinary action as set forth in section 148.6448. The information must be submitted within 30 days after the commissioner's request.

History: 2001 c 7 s 39,40

148.6448 GROUNDS FOR DENIAL OF LICENSURE OR DISCIPLINE; INVESTIGATION PROCEDURES; DISCIPLINARY ACTIONS.

Subdivision 1. **Grounds for denial of licensure or discipline.** The commissioner may deny an application for licensure, may approve licensure with conditions, or may discipline a licensee using any disciplinary actions listed in subdivision 3 on proof that the individual has:

- (1) intentionally submitted false or misleading information to the commissioner or the advisory council;
- (2) failed, within 30 days, to provide information in response to a written request by the commissioner or advisory council;
- (3) performed services of an occupational therapist or occupational therapy assistant in an incompetent manner or in a manner that falls below the community standard of care;
- (4) failed to satisfactorily perform occupational therapy services during a period of temporary licensure;
- (5) violated sections 148.6401 to 148.6450;
- (6) failed to perform services with reasonable judgment, skill, or safety due to the use of alcohol or drugs, or other physical or mental impairment;
- (7) been convicted of violating any state or federal law, rule, or regulation which directly relates to the practice of occupational therapy;
- (8) aided or abetted another person in violating any provision of sections 148.6401 to 148.6450;
- (9) been disciplined for conduct in the practice of an occupation by the state of Minnesota, another jurisdiction, or a national professional association, if any of the grounds for discipline are the same or substantially equivalent to those in sections 148.6401 to 148.6450;
- (10) not cooperated with the commissioner or advisory council in an investigation conducted according to subdivision 2;
- (11) advertised in a manner that is false or misleading;
- (12) engaged in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public;
- (13) demonstrated a willful or careless disregard for the health, welfare, or safety of a client;

(14) performed medical diagnosis or provided treatment, other than occupational therapy, without being licensed to do so under the laws of this state;

(15) paid or promised to pay a commission or part of a fee to any person who contacts the occupational therapist for consultation or sends patients to the occupational therapist for treatment;

(16) engaged in an incentive payment arrangement, other than that prohibited by clause (15), that promotes occupational therapy overutilization, whereby the referring person or person who controls the availability of occupational therapy services to a client profits unreasonably as a result of client treatment;

(17) engaged in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws, Food and Drug Administration regulations, or state medical assistance laws;

(18) obtained money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud;

(19) performed services for a client who had no possibility of benefiting from the services;

(20) failed to refer a client for medical evaluation when appropriate or when a client indicated symptoms associated with diseases that could be medically or surgically treated;

(21) engaged in conduct with a client that is sexual or may reasonably be interpreted by the client as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient;

(22) violated a federal or state court order, including a conciliation court judgment, or a disciplinary order issued by the commissioner, related to the person's occupational therapy practice; or

(23) any other just cause related to the practice of occupational therapy.

[For text of subds 2 to 5, see M.S.2000]

History: 2001 c 7 s 41

148.7809 REGISTRATION RENEWAL.

[For text of subds 1 to 3, see M.S.2000]

Subd. 4. Lapse of registration status. (a) Except as provided in paragraph (b), an athletic trainer whose registration has lapsed must:

(1) apply for registration renewal under this section; and

(2) submit evidence satisfactory to the board from a licensed medical physician verifying employment in athletic training for eight weeks every three years during the time of the lapse in registration.

(b) The board shall not renew, reissue, reinstate, or restore a registration that has lapsed after June 30, 1999, and has not been renewed within two annual renewal cycles starting July 1, 2001. An athletic trainer whose registration is canceled for nonrenewal must obtain a new registration by applying for registration and fulfilling all requirements then in existence for an initial registration.

History: 2001 c 31 s 2

148.941 DISCIPLINARY ACTION; INVESTIGATION; PENALTY FOR VIOLATION.

[For text of subd 1, see M.S.2000]

Subd. 2. Grounds for disciplinary action; forms of disciplinary action. (a) The board may impose disciplinary action as described in paragraph (b) against an applicant or licensee whom the board, by a preponderance of the evidence, determines:

(1) has violated a statute, rule, or order that the board issued or is empowered to enforce;

(2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of psychology, that adversely affects the person's ability or fitness to practice psychology;

(3) has engaged 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;

(4) has been convicted of or has pled guilty or nolo contendere to a felony or other crime, an element of which is dishonesty or fraud, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in the practice of psychology;

(5) has employed fraud or deception in obtaining or renewing a license, in requesting approval of continuing education activities, or in passing an examination;

(6) has had a license, certificate, charter, registration, privilege to take an examination, or other similar authority denied, revoked, suspended, canceled, limited, reprimanded, or otherwise disciplined, or not renewed for cause in any jurisdiction; or has surrendered or voluntarily terminated a license or certificate during a board investigation of a complaint, as part of a disciplinary order, or while under a disciplinary order;

(7) has been subject to a corrective action or similar action in another jurisdiction or by another regulatory authority;

(8) has failed to meet any requirement for the issuance or renewal of the person's license. The burden of proof is on the applicant or licensee to demonstrate the qualifications or satisfy the requirements for a license under the Psychology Practice Act;

(9) has failed to cooperate with an investigation of the board as required under subdivision 4;

(10) has demonstrated an inability to practice psychology with reasonable skill and safety to clients due to any mental or physical illness or condition; or

(11) has engaged in fee splitting. This clause does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the licensee or under a licensee's administrative authority. This clause also does not apply to the charging of a general membership fee by a licensee or applicant to health care providers, as defined in section 144.335, for participation in a referral service, provided that the licensee or applicant discloses in advance to each referred client the financial nature of the referral arrangement. Fee splitting includes, but is not limited to:

(i) paying, offering to pay, receiving, or agreeing to receive a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of clients;

(ii) dividing client fees with another individual or entity, unless the division is in proportion to the services provided and the responsibility assumed by each party;

(iii) referring an individual or entity to any health care provider, as defined in section 144.335, or for other professional or technical services in which the referring licensee or applicant has a significant financial interest unless the licensee has disclosed the financial interest in advance to the client; and

(iv) dispensing for profit or recommending any instrument, test, procedure, or device that for commercial purposes the licensee or applicant has developed or distributed, unless the licensee or applicant has disclosed any profit interest in advance to the client.

(b) If grounds for disciplinary action exist under paragraph (a), the board may take one or more of the following actions:

(1) refuse to grant or renew a license;

(2) revoke a license;

(3) suspend a license;

(4) impose limitations or conditions on a licensee's practice of psychology, including, but not limited to, limiting the scope of practice to designated competencies, imposing retraining or rehabilitation requirements, requiring the licensee to practice under supervision, or conditioning continued practice on the demonstration of knowledge or skill by appropriate examination or other review of skill and competence;

(5) censure or reprimand the licensee;

(6) refuse to permit an applicant to take the licensure examination or refuse to release an applicant's examination grade if the board finds that it is in the public interest; or

(7) impose a civil penalty not exceeding \$7,500 for each separate violation. The amount of the penalty shall be fixed so as to deprive the applicant or licensee of any economic advantage gained by reason of the violation charged, to discourage repeated violations, or to recover the board's costs that occur in bringing about a disciplinary order. For purposes of this clause, costs are limited to legal, paralegal, and investigative charges billed to the board by the attorney general's office, witness costs, consultant and expert witness fees, and charges attendant to the use of an administrative law judge.

(c) In lieu of or in addition to paragraph (b), the board may require, as a condition of continued licensure, termination of suspension, reinstatement of license, examination, or release of examination grades, that the applicant or licensee:

(1) submit to a quality review, as specified by the board, of the applicant's or licensee's ability, skills, or quality of work;

(2) complete to the satisfaction of the board educational courses specified by the board; and

(3) reimburse to the board all costs incurred by the board that are the result of a provider failing, neglecting, or refusing to fully comply, or not complying in a timely manner, with any part of the remedy section of a stipulation and consent order or the corrective action section of an agreement for corrective action. For purposes of this clause, costs are limited to legal, paralegal, and investigative charges billed to the board by the attorney general's office, witness costs, consultant and expert witness fees, and charges attendant to the use of an administrative law judge.

(d) Service of the order is effective if the order is served on the applicant, licensee, or counsel of record personally or by mail to the most recent address provided to the board for the licensee, applicant, or counsel of record. The order shall state the reasons for the entry of the order.

[For text of subs 3 to 6, see M.S.2000]

Subd. 7. Limitation period. (a) For complaints against providers received by the board after July 31, 2001, a board proceeding against a provider must not be instituted unless it is begun within seven years from the date of some portion of the alleged misconduct that is complained of.

(b) The following are exceptions to the limitation period in paragraph (a):

(1) complaints alleging a violation of subdivision 2, paragraph (a), clauses (2), (4), (5), and (6);

(2) complaints alleging sexual intercourse or other physical intimacies with a client, or any verbal or physical behavior that is sexually seductive or sexually demeaning to the client; or complaints alleging sexual intercourse or other physical intimacies with a former client, or any verbal or physical behavior that is sexually demeaning to the former client, for a period of two years following the date of the last professional contact with the former client, whether or not the provider has formally terminated the professional relationship. Physical intimacies include handling of the breasts, genital areas, buttocks, or thighs of either sex by either the provider or the client.

(c) If a complaint is received by the board less than 12 months from the expiration of the limitation period in paragraph (a), the limitation period is extended for a period of 12 months from the date the complaint is received by the board.

(d) If alleged misconduct is complained of that involves a client who is a minor, the limitation period in paragraph (a) does not begin until the minor reaches the age of 18.

(e) For purposes of this subdivision only, "proceeding" means the service of a notice of conference, or in cases in which a notice of conference was not served, a notice of hearing.

History: 2001 c 66 s 1,2