

## CHAPTER 148B

SOCIAL WORK, MARRIAGE AND FAMILY  
THERAPY, MENTAL HEALTHBOARD OF MARRIAGE AND  
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## BOARD OF MARRIAGE AND FAMILY THERAPY

## 148B.01 DEFINITIONS.

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

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 [Repealed, 1991 c 292 art 2 s 75]

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 [Repealed, 1997 c 193 s 48]

Subd. 4. **Board.** "Board" means the Board of Marriage and Family Therapy established in section 148B.30.

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 [Repealed, 1991 c 292 art 2 s 75]

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 [Repealed, 1991 c 292 art 2 s 75]

Subd. 7. **Licensee.** "Licensee" means a person licensed by the Board of Marriage and Family Therapy.

**History:** 1987 c 347 art 1 s 1; 1991 c 292 art 2 s 33; 1997 c 193 s 2,3

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**148B.02** [Repealed, 1991 c 292 art 2 s 75]

## **148B.03 APPLICABILITY.**

Sections 148B.04 to 148B.17 apply to the Board of Marriage and Family Therapy, and the licensees within its jurisdiction, unless superseded by an inconsistent law that relates specifically to it.

**History:** 1987 c 347 art 1 s 3; 1991 c 292 art 2 s 34; 1997 c 193 s 4

## **148B.04 DISCLOSURE.**

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 [Repealed, 1988 c 689 art 2 s 269]

Subd. 2. **Contested case proceedings.** Upon application of a party in a contested case proceeding before 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 (c).

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

Subd. 6. **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.

**History:** 1987 c 347 art 1 s 4; 1991 c 292 art 2 s 35,36; 1992 c 460 s 1,2; 1993 c 240 s 2; 1994 c 618 art 1 s 23; 1997 c 193 s 5-7; 2000 c 284 s 4

## **148B.05 RIGHT TO PRACTICE.**

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

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 [Repealed, 1992 c 460 s 20]

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

## **148B.06 TAX CLEARANCE CERTIFICATE.**

Subdivision 1. **Certificate required.** A board may not issue or renew a license if the commissioner of revenue notifies the board and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. A board may issue or renew a license or filing only if the commissioner of revenue issues a tax clearance certificate and the commissioner of revenue or the licensee or applicant forwards a copy of the clearance to the board. The commissioner of revenue may issue a clearance certificate only if the licensee or applicant does not owe the state any uncontested delinquent taxes. For purposes of this section, "taxes" means all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes. "Delinquent taxes" do not include a tax liability if (i) an administrative or court action that contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired,

or (iii) the licensee or applicant has entered into a payment agreement to pay the liability and is current with the payments.

Subd. 2. **Hearing.** In lieu of the notice and hearing requirements of section 148B.175, 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:** 1987 c 347 art 1 s 6; 1989 c 184 art 2 s 5; 1991 c 292 art 2 s 38,39,74; 1993 c 13 art 2 s 6; 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 of 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

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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 a person who 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 524.5-101 to 524.5-502 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:** 1987 c 347 art 1 s 7; 1991 c 292 art 2 s 40; 1992 c 460 s 4; 1Sp1994 c 1 art 2 s 12; 1997 c 193 s 9; 2002 c 221 s 3; 2004 c 146 art 3 s 47

## 148B.08 IMMUNITY.

**Subdivision 1. Reporting.** Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report under section 148B.07 or for otherwise reporting violations or alleged violations of this chapter. The reports are classified under section 13.41.

**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:** 1987 c 347 art 1 s 8; 1991 c 292 art 2 s 41; 1992 c 460 s 5; 1993 c 240 s 3; 1997 c 193 s 10

**148B.09 PROFESSIONAL COOPERATION.**

A licensee who is the subject of an investigation by or on behalf of a board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of client records, as reasonably requested by the board, to assist the board in its investigation. The board shall pay for copies requested. If the board does not have a written consent from a client permitting access to the client's records, the licensee shall delete any data in the record that identifies the client before providing it to the board. The board shall maintain any records obtained pursuant to this section as investigative data pursuant to chapter 13.

*History: 1987 c 347 art 1 s 9; 1991 c 292 art 2 s 74*

**148B.10 DISCIPLINARY RECORD ON JUDICIAL REVIEW.**

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

*History: 1987 c 347 art 1 s 10*

**148B.11 PROFESSIONAL ACCOUNTABILITY.**

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

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

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

*History: 1987 c 347 art 1 s 11; 1991 c 292 art 2 s 74*

**148B.12 MALPRACTICE HISTORY.**

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

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

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

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

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

**148B.13 PUBLICATION OF DISCIPLINARY ACTIONS.**

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

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

**148B.14 EVIDENCE OF PAST SEXUAL CONDUCT.**

In a proceeding for the suspension or revocation of the right to practice or other disciplinary or adverse action involving sexual contact with a client or former client, the board or administrative law judge shall not consider evidence of the client's 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:** 1987 c 347 art 1 s 14

**148B.15 DISPUTE RESOLUTION.**

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

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

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

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

**148B.17 FEES.**

Each board shall by rule establish fees, including late fees, for licenses and renewals so that the total fees collected by the board will as closely as possible equal anticipated expenditures during the fiscal biennium, as provided in section 16A.1285. Fees must be credited to accounts in the special revenue fund.

**History:** 1987 c 347 art 1 s 17; 1989 c 335 art 4 s 61; 1991 c 292 art 2 s 44; 1996 c 305 art 3 s 22

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

**148B.175 COMPLAINTS; INVESTIGATION AND HEARING.**

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

Subd. 2. **Classification of data.** The board shall maintain any records, other than client records, obtained as part of an investigation, as investigative data under section 13.41. Client records are classified as private under chapter 13, and must be protected

as such in the records of the board and in administrative or judicial proceeding unless the client authorizes the board in writing to make public the identity of the client or a portion or all of the client's records.

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

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

**Subd. 5. Access to data and records.** In addition to ordering a physical or mental examination or chemical dependency evaluation and notwithstanding section 13.384, 144.651, 595.02, or any other law limiting access to medical or other health records, a board may obtain data and health records relating to an applicant or licensee without the applicant's or licensee's consent if the board has probable cause to believe that an applicant or licensee has engaged in conduct prohibited by section 214.10, or statute or rule enforced by the board. An applicant, licensee, insurance company, health care facility, provider as defined in section 144.335, subdivision 1, paragraph (b), or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request made under this subdivision, unless the information is false and the person or entity giving the information knew or had reason to know that the information was false. Information on individuals obtained under this section is investigative data under section 13.41.

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

- (1) deny the right to practice;
- (2) revoke the right to practice;
- (3) suspend the right to practice;
- (4) impose limitations on the practice of the licensee;
- (5) impose conditions on the practice of the licensee;
- (6) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the licensee of any economic advantage gained by reason of the violation charged, or to discourage repeated violations;
- (7) impose a fee to reimburse the board for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the board for services from the Office of Administrative Hearings, attorney

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fees, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and expense incurred by board members and staff;

(8) censure or reprimand the licensee; or

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

Subd. 7. **Temporary suspension.** In addition to any other remedy provided by law, the board may, acting through its designated board member and without a hearing, temporarily suspend the right of a licensee to practice if the board member finds that the licensee has violated a statute or rule that the board is empowered to enforce and that continued practice by the licensee would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the licensee specifying the statute or rule violated. The order remains in effect until the board issues a final order in the matter after a hearing or upon agreement between the board and the licensee. Service of the order is effective if the order is served on the licensee or counsel of record personally or by first class mail to the most recent address provided to the board for the licensee or the counsel of record. Within ten days of service of the order, the board shall hold a hearing before its own members on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the board or licensee may be in affidavit form only. The licensee or the counsel of record may appear for oral argument. Within five working days after the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The board shall issue a final order within 30 days after receipt of that report.

Subd. 8. **Automatic suspension; restoration.** The right to practice is automatically suspended if (1) a guardian of a licensee is appointed by order of a court under sections 524.5-101 to 524.5-502, 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, a board may restore and reissue permission to provide services, but as a condition of the permission may impose a disciplinary or corrective measure that it might originally have imposed.

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

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

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

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



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

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

**History:** 1991 c 292 art 2 s 45; 1992 c 460 s 7-10; 1Sp1994 c 1 art 2 s 13; 1999 c 227 s 22; 2004 c 146 art 3 s 47

## BOARD OF SOCIAL WORK

### 148B.18 DEFINITIONS.

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

Subd. 2. **Accredited program of social work.** "Accredited program of social work" means a school of social work or other educational program that has been accredited by the Council on Social Work Education.

Subd. 2a. **Applicant.** "Applicant" means a person who has submitted an application, with the appropriate fee, for licensure, temporary licensure, or reinstatement of an expired license.

Subd. 3. **Board.** "Board" means the Board of Social Work created in section 148B.19.

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]

Subd. 8. **Private practice.** "Private practice" means social work practice conducted by a licensee practicing within the permissible scope of a license, as defined in subdivision 11, and under appropriate supervision, as defined in subdivisions 11 and 12, who is either self-employed, or a member of a partnership or of a group practice, rather than being employed by an agency, clinic, or other similar entity.

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

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social worker or, if approved by the board, by another qualified mental health professional.

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

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.

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

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

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

Subd. 13. **Temporary licensee.** "Temporary licensee" means a person licensed by the board under section 148B.21, subdivision 7.

**History:** 1987 c 347 art 2 s 1; 1988 c 689 art 2 s 268; 1991 c 292 art 2 s 46; 1992 c 460 s 11,12,21; 1993 c 240 s 4,5; 1997 c 193 s 11-16,47; 2003 c 111 s 2,3

## 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. The employment of the executive director shall be subject to the terms described in section 214.04, subdivision 2a.

Subd. 5. **Terms and salaries.** Chapter 214 applies to the Board of Social Work unless superseded by sections 148B.18 to 148B.289.

**History:** 1987 c 347 art 2 s 2; 1992 c 460 s 21; 1993 c 240 s 6,7; 1997 c 193 s 18-20,47; 2004 c 279 art 11 s 4

#### 148B.20 DUTIES OF 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.24. 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.24.
- (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.

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(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. 2. [Repealed, 1993 c 337 s 20]

Subd. 3. **Duties of board.** The board shall 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:** 1987 c 347 art 2 s 3; 1992 c 460 s 21; 1997 c 193 s 21,22; 1998 c 254 art 1 s 49; 2003 c 111 s 4

## 148B.21 REQUIREMENTS FOR LICENSURE.

Subdivision 1. **Categories of licensees.** The board shall issue licenses for the following four groups of individuals qualified under this section to practice social work:

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

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

Subd. 3. **Social worker.** (a) Except as provided in paragraph (b), 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.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (2), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as a social worker if the applicant:

- (1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (3), (4), and (5); and
- (2) provides to the board letters of recommendation and experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.

This paragraph expires August 1, 2005.

Subd. 4. **Graduate social worker.** (a) Except as provided in paragraph (b), 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;

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(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.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (2), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as a graduate social worker if the applicant:

(1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (3), (4), and (5); and

(2) provides to the board letters of recommendation and experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.

This paragraph expires August 1, 2005.

Subd. 5. **Independent social worker.** (a) Except as provided in paragraph (b), 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.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (2), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as an independent social worker if the applicant:

(1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (3), (4), and (5); and

(2) provides to the board letters of recommendation and experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.

This paragraph expires August 1, 2005.

Subd. 6. **Independent clinical social worker.** (a) Except as provided in paragraph (b), 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

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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.

(b) An applicant who was born in a foreign country, who has taken and failed to pass the examination specified in paragraph (a), clause (3), at least once since January 1, 2000, and for whom English is a second language, is eligible for licensure as an independent clinical social worker if the applicant:

(1) provides evidence satisfactory to the board of compliance with the requirements in paragraph (a), clauses (1), (2), (4), and (5); and

(2) provides to the board letters of recommendation and experience ratings from two licensed social workers and one professor from the applicant's social work program who can attest to the applicant's competence.

This paragraph expires August 1, 2005.

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. The board shall deposit all fees paid by applicants for criminal history background checks under this subdivision into the miscellaneous special revenue fund. The fees collected under this subdivision are appropriated to the board for the purpose of reimbursing the Bureau of Criminal Apprehension for the cost of the background checks upon their completion.

Subd. 7. **Temporary license.** (a) The board may issue a temporary license to practice social work to an applicant who is either:

(1) not licensed in any jurisdiction but has:

(i) applied for a license under section 148B.24;

(ii) applied for a temporary license on a form provided by the board;

(iii) submitted a form provided by the board authorizing the board to complete a criminal background check with the Minnesota Bureau of Criminal Apprehension;

(iv) passed the applicable licensure examination provided for in section 148B.20, subdivision 1, paragraph (c); and

(v) attested on a form provided by the board that the applicant has completed the requirements for a baccalaureate or master's degree from a social work program accredited by the Council on Social Work Education or the requirements for a doctoral degree in social work; or

(2) licensed in another jurisdiction, may or may not have applied for a license under section 148B.20, and has:

(i) applied for a temporary license on a form provided by the board;

(ii) submitted a form provided by the board authorizing the board to complete a criminal background check with the Minnesota Bureau of Criminal Apprehension;

(iii) submitted evidence satisfactory to the board that the applicant is currently licensed or credentialed to practice social work in another jurisdiction; and

(iv) attested on a form provided by the board that the applicant has completed the requirements for a baccalaureate or master's degree from a social work program accredited by the Council on Social Work Education or the requirements for a doctoral degree in social work.

(b) An applicant for a temporary license must not practice social work in Minnesota until the applicant has been granted a temporary license. An applicant who is practicing social work at the time of application is ineligible for a temporary license.

(c) An applicant for a temporary license must pay the nonrefundable application fee described in section 148B.226 plus the required fee for the cost of the criminal background check. Only one fee for the cost of the criminal background check must be submitted when the applicant is applying for both a temporary license and a license under section 148B.20.

(d) An applicant who is not licensed in another jurisdiction and who obtains a temporary license 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 applies toward the supervision requirement required after licensure.

(e) A temporary licensee who has provided evidence to the board that the licensee has completed the requirements for a baccalaureate degree in social work from a social work program accredited by the Council on Social Work Education may temporarily engage in the social work practice described in section 148B.18, subdivision 11, paragraph (b), but may not engage in the social work practice described in section 148B.18, subdivision 11, paragraph (c).

(f) A temporary licensee who has provided evidence to the board that the licensee has completed the requirements for a master's degree in social work from a social work program accredited by the Council on Social Work Education, or the requirements for a doctoral degree in social work, may temporarily engage in the social work practice described in section 148B.18, subdivision 11, paragraphs (b) and (c).

(g) A temporary licensee shall conduct all professional activities as a social worker in accordance with the requirements established by the statutes and rules of the board.

(h) A temporary licensee must use the title "Social Worker - Temporary Licensee" in all professional use of the temporary licensee's name.

(i) The board may immediately revoke the temporary license of any temporary licensee who violates any requirements of this subdivision. A temporary licensee whose temporary license is revoked shall immediately return the temporary license to the board.

(j) A temporary license is valid for six months, or until the board issues or denies a license, or until the board revokes the temporary license, whichever comes first, and is nonrenewable. An individual holding a temporary license may not practice social work for more than six months without a license under section 148B.24.

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

**Subd. 9. Supervision requirement.** If supervised social work practice is required for licensure under this section, and if the applicant has not engaged in the practice of social work during the five years preceding the applicant's application for licensure, then the board may grant a conditional license to the applicant that would require that the applicant obtain additional social work supervision or additional continuing edu-

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cation hours, or both, within a specified time period after licensure. The board shall establish rules to implement this section.

**History:** 1987 c 347 art 2 s 4; 1992 c 460 s 13-15; 1992 c 603 s 5; 1993 c 240 s 8-12; 1997 c 193 s 23-28; 1998 c 254 art 1 s 50,51; 2001 c 90 s 1-5; 1Sp2001 c 9 art 13 s 4; 2002 c 379 art 1 s 113; 2003 c 111 s 5

## 148B.215 CONTESTED CASE HEARING.

An applicant or a licensee who is the subject of an adverse action by the board may request a contested case hearing under chapter 14. An applicant or a licensee who desires to request a contested case hearing must submit a written request to the board within 90 days of the date on which the board mailed the notification of the adverse action.

**History:** 1992 c 460 s 16; 1997 c 193 s 29

## 148B.22 LICENSE RENEWAL REQUIREMENTS.

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

Subd. 1a. **Reinstatement of expired licenses.** (a) The board must reinstate an expired license under either of the following conditions:

(1) hardship cases in which the applicant has:

(i) demonstrated to the board's satisfaction that the applicant was unable to comply with the board's license renewal requirements due to a mental or physical condition;

(ii) submitted an application for reinstatement on a form provided by the board;

(iii) paid the applicable hardship reinstatement fee described in section 148B.226, subdivision 2, paragraph (j);

(iv) demonstrated to the board's satisfaction that the applicant was in compliance with the board's continuing education requirements at the time the license expired; and

(v) if applicable, demonstrated to the board's satisfaction that the licensee is in compliance with the supervised practice requirements established by the board in rule and statute; or

(2) nonhardship cases in which the applicant has:

(i) submitted an application for reinstatement on a form provided by the board within one year of the date the license expired;

(ii) paid the applicable nonhardship reinstatement fee described in section 148B.226, subdivision 2, paragraph (k);

(iii) demonstrated to the board's satisfaction that the applicant was in compliance with the board's continuing education requirements at the time the license expired; and

(iv) if applicable, demonstrated to the board's satisfaction that the licensee is in compliance with the supervised practice requirements established by the board in rule and statute.

(b) When an applicant's expired license has been reinstated under paragraph (a), clause (1) or (2), the reinstated license is effective the day following the day the license expired.

(c) A licensee whose license expired on or after August 1, 2001, may apply for reinstatement of an expired license pursuant to paragraph (a), clause (2). The application must be submitted no later than July 31, 2004.

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 onetime 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. The board shall deposit all fees paid by licensees for criminal history background checks under this subdivision into the miscellaneous special revenue fund. The fees collected under this subdivision are appropriated to the board for the purpose of reimbursing the Bureau of Criminal Apprehension for the cost of the background checks upon their completion.

**History:** 1987 c 347 art 2 s 5; 1992 c 460 s 17; 1997 c 193 s 30,47; 1Sp2001 c 9 art 13 s 5; 2002 c 379 art 1 s 113; 2003 c 111 s 6

#### 148B.224 ALTERNATIVE LICENSE STATUS.

Subdivision 1. **Defined; qualifications.** A license may be placed on inactive status if a licensee is not practicing social work in Minnesota and the licensee does not wish to meet license renewal requirements every two years. A licensee qualifies for inactive status if the licensee demonstrates to the board that the licensee is not practicing social work, as defined by section 148B.18, in any setting in Minnesota.

Subd. 2. **Application.** (a) A licensee may apply for inactive status: (1) at any time by submitting a written application for inactive status; or (2) as an alternative to applying for the renewal of a license by so recording on the application for license renewal form and submitting the completed, signed form. The application for inactive status must be accompanied by the nonrefundable inactive status fee specified in section 148B.226, payable to the Board of Social Work. An application that is not completed or signed, or which is not accompanied by the correct inactive status fee, shall be returned to the licensee and is void. If the application for inactive status is received after the expiration date, the licensee shall pay a late fee as specified in section 148B.226, payable to the Board of Social Work, in addition to the inactive status fee, before the application for inactive status will be considered by the board.

(b) The licensee shall attest on a form provided by the board that the applicant will not use the title social worker and will not engage in social work practice in any setting in Minnesota after the date of the board's approval of the application for inactive status.

Subd. 3. **Approval.** The board shall approve an application for inactive status if the qualifications and application requirements have been met.

Subd. 4. **Practice prohibited.** Licensees on inactive status shall not practice, attempt to practice, offer to practice, or advertise or hold themselves out as authorized to practice social work in any setting in Minnesota and shall use only the title "Social Worker - Inactive Status."

Subd. 5. **Time limit on inactive status.** A licensee may maintain a license on inactive status for up to ten consecutive years. Within 30 days after the end of this ten-year period, the licensee must apply for reactivation of the license pursuant to subdivision 7 or the license expires. The board shall mail an application for reactivation to a licensee at least 45 days before the expiration date of the license. Placing the application for license reactivation in first class United States mail, addressed to the licensee at the licensee's last known mailing address with postage prepaid, constitutes valid mailing. Failure to receive the reactivation application does not release a licensee holder from the requirements of this section.

Subd. 6. **Continuing education requirement.** A licensee whose license is on inactive status must continue to obtain the continuing education hours required by rule that would be required if the licensee's license were on active status.

Subd. 7. **Reactivating a license.** (a) To reactivate a license, a licensee must complete an application for reactivation of a license, in a form specified by the board; document compliance with the continuing education hours required by subdivision 6 and any continuing education hours not reported by the last expiration date of the license; submit a supervision plan under rules of the board, if required; pay a prorated

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license renewal fee for the balance of the biennial renewal cycle; and pay the duplicate license certificate fee specified in section 148B.226, if the licensee needs a license in order to meet the requirements of Minnesota Rules, part 8740.0340, subpart 4.

(b) If a licensee who reactivates a license has been on inactive status for five or more consecutive years and has not practiced social work during this period, the licensee must receive at least 38 hours of supervision for the first year of full-time practice or 2,000 hours of part-time practice, in accordance with the supervised practice requirements in rules of the board, for application to the licensee's current level. A licensee must submit a supervision plan before beginning practice, in accordance with rules of the board. A licensee must have the supervisor submit verification of the supervised practice in a form specified by the board within 30 days of completing this supervised practice requirement. This supervision requirement must be waived if the licensee can document at least two years of social work practice, outside of Minnesota, within the previous five-year period.

(c) For licensed social workers, the completed hours of supervised practice required under this subdivision apply toward any remaining hours required by Minnesota Rules, part 8740.0130, subpart 3.

(d) Licensed graduate social workers and licensed independent social workers shall complete this supervised practice requirement before applying for another social work license. Supervised practice hours obtained to meet this requirement may be applied toward the supervised practice requirement for another social work license.

**Subd. 8. License or renewal fee.** A licensee who is approved for inactive status before the end of the renewal cycle may not receive a refund for any portion of the license fee or renewal fee.

**Subd. 9. Disciplinary or corrective action.** The board shall retain jurisdiction over a license on inactive status and may take disciplinary or corrective action against the licensee based on conduct occurring before inactive status was granted or during the inactive status period.

**History:** 2003 c 111 s 7

## 148B.225 EMERITUS STATUS.

**Subdivision 1. Defined; qualifications.** A licensee may apply for an emeritus license if the licensee is retired from social work practice and does not intend to practice social work in any setting in Minnesota. A licensee shall qualify for an emeritus license if the licensee demonstrates to the board that the licensee is not practicing social work, as defined in section 148B.18, and verifies that the licensee is retired from social work practice.

**Subd. 2. Application.** (a) A licensee may apply for an emeritus license: (1) at any time by submitting a written application for an emeritus license; or (2) as an alternative to applying for the renewal of a license by so recording on the application for license renewal form and submitting a completed, signed form. The application for an emeritus license must be accompanied by the onetime, nonrefundable emeritus license fee specified in section 148B.226, payable to the Board of Social Work. An application which is not completed or signed, or which is not accompanied by the correct emeritus license fee, must be returned to the licensee and is void.

(b) An applicant for an emeritus license shall attest on a form provided by the board that the licensee will not use the title "social worker" and will not engage in social work practice in any setting in Minnesota after the date of the board's approval of the application for an emeritus license.

**Subd. 3. Approval.** The board shall approve an application for an emeritus license if the qualifications and application requirements have been met. Upon approval of an application for an emeritus license, the board shall issue an emeritus license certificate.

**Subd. 4. Practice prohibited.** A licensee with an emeritus license shall not practice, attempt to practice, offer to practice, or advertise or hold out as authorized to practice

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social work in any setting in Minnesota; and shall use only the title "social worker emeritus."

Subd. 5. **Reactivating a license.** A licensee with an emeritus license may reactivate a license by meeting the requirements of section 148B.224, subdivision 7.

Subd. 6. **License or renewal fee.** A licensee who applies for and is approved for an emeritus license before the end of the renewal cycle may not receive a refund for any portion of the license fee or renewal fee.

Subd. 7. **Disciplinary action.** (a) The board may resolve any pending complaints against a licensee before approving an application for an emeritus license.

(b) The board shall retain jurisdiction and may take disciplinary action against a licensee holding an emeritus license based on conduct occurring before issuance of the emeritus license.

**History:** 2003 c 111 s 8

## 148B.226 FEES.

Subdivision 1. **How payable.** The fees in subdivision 2 must be paid by personal check, bank draft, cashier's check, or money order payable to the Board of Social Work. All fees are nonrefundable.

Subd. 2. **Fee amounts.** (a) Application fees for licensure are as follows:

(1) for a licensed social worker or a licensed graduate social worker, \$45;  
(2) for a licensed independent social worker or a licensed independent clinical social worker, \$90;

(3) for a reciprocity application for licensure at all levels, \$150; and

(4) for a temporary license application, \$50.

(b) A criminal background check fee must be paid in the amount determined by the Bureau of Criminal Apprehension.

(c) License fees payable in addition to application fees for licensure are as follows:

(1) licensed social worker, \$115.20;

(2) licensed graduate social worker, \$201.60;

(3) licensed independent social worker, \$302.40; and

(4) licensed independent clinical social worker, \$331.20.

(d) License renewal fees are as follows:

(1) licensed social worker, \$115.20;

(2) licensed graduate social worker, \$201.60;

(3) licensed independent social worker, \$302.40; and

(4) licensed independent clinical social worker, \$331.20.

(e) An emeritus license fee is \$43.20.

(f) A duplicate license wall certificate is \$30.

(g) Inactive status fees are as follows:

(1) licensed social worker, \$115.20;

(2) licensed graduate social worker, \$201.60;

(3) licensed independent social worker, \$302.40; and

(4) licensed independent clinical social worker, \$331.20.

(h) A duplicate license card is \$10.

(i) A late fee is one-half of the applicable license renewal fee or inactive status fee.

(j) Hardship reinstatement fees are as follows:

(1) licensed social worker, \$172.80;

(2) licensed graduate social worker, \$302.40;

(3) licensed independent social worker, \$453.60; and

(4) licensed independent clinical social worker, \$496.80.

(k) Nonhardship reinstatement fees are as follows:

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- (1) licensed social worker, \$230.40;
- (2) licensed graduate social worker, \$403.20;
- (3) licensed independent social worker, \$604.80; and
- (4) licensed independent clinical social worker, \$662.40.

**History:** 2003 c 111 s 9

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

## **148B.24 RECIPROCITY.**

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

**History:** 1987 c 347 art 2 s 7; 1998 c 254 art 1 s 52

## **148B.25 NONTRANSFERABILITY OF LICENSES.**

A social work license is not transferable.

**History:** 1987 c 347 art 2 s 8

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

Subdivision 1. **Grounds.** The following conduct is grounds for the board to deny the application for or the renewal of a temporary 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 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 363A 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.

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

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

**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:** 1987 c 347 art 2 s 9; 1993 c 240 s 13; 1997 c 193 s 31,32; 2003 c 111 s 10

#### **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 license 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 license 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.

**Subd. 2a. Jurisdiction.** Nothing in sections 148B.60 to 148B.71 shall prohibit the board from taking disciplinary or other action that the board is authorized to take against either a licensee who is found to be practicing outside the scope of the license or a person who is found to be engaging in the unauthorized practice of social work.

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Subd. 2b. **Use of hospital social worker title.** Individuals employed as social workers on June 30, 1996, by a hospital licensed under chapter 144 who do not qualify for licensure under section 148B.21, may use the title "hospital social worker" for as long as they continue to be employed by a hospital licensed under chapter 144.

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

**History:** 1987 c 347 art 2 s 10; 1989 c 282 art 2 s 41; 1993 c 240 s 14; 1994 c 465 art 2 s 1; 1995 c 63 s 4,5; 1997 c 193 s 33,34,47; 1998 c 254 art 1 s 53; 2003 c 111 s 11,12

## 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.

Subd. 2. **Students.** An internship, externship, or any other social work experience that is required for the completion of an accredited program of social work does not constitute the practice of social work under this chapter.

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

Subd. 4. **City, county, and state agency social workers.** The licensing of city, county, and state agency social workers shall be voluntary. City, county, and state agencies employing social workers shall not be required to employ licensed social workers.

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

Subd. 6. [Repealed, 1995 c 63 s 9]

**History:** 1987 c 347 art 2 s 11; 1991 c 255 s 19; 1992 c 460 s 18; 1993 c 240 s 15; 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 13.384, 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;

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(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 524.5-101 to 524.5-502, 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.



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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.

Subd. 14. **Duty to warn.** Section 148.975 applies to social work licensees and clients.

**History:** 1997 c 193 s 37; 1999 c 227 s 22; 2001 c 42 s 1; 2004 c 146 art 3 s 47

## 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.

**Subd. 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 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 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.

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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 a person who 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 524.5-101 to 524.5-502 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; 2002 c 221 s 4; 2004 c 146 art 3 s 47

## 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 (c).

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; 2000 c 284 s 5

#### 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

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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

## BOARD OF MARRIAGE AND FAMILY THERAPY

### 148B.29 DEFINITIONS.

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

Subd. 2. **Board.** "Board" means the Board of Marriage and Family Therapy created in section 148B.30.

Subd. 3. **Marriage and family therapy.** "Marriage and family therapy" means the process of providing professional marriage and family psychotherapy to individuals, married couples, and family groups, either singly or in groups. The practice of marriage and family therapy utilizes established principles that recognize the interrelated nature of the individual problems and dysfunctions in family members to assess, understand, and treat emotional and mental problems. Marriage and family therapy includes premarital, marital, divorce, and family therapy, and is a specialized mode of treatment for the purpose of resolving emotional problems and modifying intrapersonal and interpersonal dysfunction.

**History:** 1987 c 347 art 3 s 1

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

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

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

Subd. 3. **Officers; staff.** The board shall annually elect from its membership a chair, a vice-chair, and secretary-treasurer, and shall adopt rules to govern its proceed-

ings. The board shall appoint and employ an executive secretary who shall not be a member of the board.

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

**History:** 1987 c 347 art 3 s 2

#### 148B.31 DUTIES OF THE BOARD.

The board shall:

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

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

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

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

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

(6) formulate and implement a code of ethics for all licensed marriage and family therapists; and

(7) establish continuing education requirements for marriage and family therapists.

**History:** 1987 c 347 art 3 s 3

#### 148B.32 PROHIBITIONS AND PENALTY.

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

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

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

**History:** 1987 c 347 art 3 s 4; 1988 c 689 art 2 s 268; 1989 c 282 art 2 s 42; 1995 c 234 art 8 s 46; 2000 c 488 art 9 s 4

#### 148B.33 REQUIREMENTS FOR LICENSURE.

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

(1) has attained the age of majority;

(2) is of good moral character;

(3) is a citizen of the United States, or is lawfully entitled to remain and work in the United States;

(4) has at least two years of supervised postgraduate experience in marriage and family therapy satisfactory to the board;

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(5)(i) has completed a master's or doctoral degree in marriage and family therapy from a program in a regionally accredited educational institution or from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education of the American Association for Marriage and Family Therapy; or (ii) has completed a master's or doctoral degree from a regionally accredited educational institution in a related field for which the course work is considered by the board to be equivalent to that provided in clause (5)(i);

(6) will agree to conduct all professional activities as a licensed marriage and family therapist in accordance with a code of ethics for marriage and family therapists to be adopted by the board; and

(7) has passed an examination approved by the board by rule.

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

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

**148B.34** [Repealed, 1996 c 310 s 1]

## **148B.35 RECIPROCIITY WITH OTHER STATES:**

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

**History:** 1987 c 347 art 3 s 7

## **148B.36 NONTRANSFERABILITY OF LICENSES.**

A marriage and family therapy license is not transferable.

**History:** 1987 c 347 art 3 s 8

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

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

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

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

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

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

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

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

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

**History:** 1987 c 347 art 3 s 9



**148B.38 EXCEPTIONS FROM LICENSE REQUIREMENT.**

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

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

Subd. 3. **Federally recognized tribes and private nonprofit agencies with a minority focus.** The licensure of marriage and family therapists who are employed by federally recognized tribes and private nonprofit agency marriage and family therapists, whose primary service focus addresses ethnic minority populations and who are themselves members of ethnic minority populations within said agencies, shall be voluntary for a period of five years at which time the legislature will review the need for mandatory licensure for all marriage and family therapists under this subdivision.

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

**148B.39 PRIVILEGED COMMUNICATIONS; EXCEPTIONS.**

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

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

*History:* 1987 c 347 art 3 s 11

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

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

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

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

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

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

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

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

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

## LICENSED PROFESSIONAL COUNSELING

### 148B.50 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 148B.50 to 148B.593, the following terms have the meanings given.

Subd. 2. **Approved supervisor.** "Approved supervisor" means a licensed professional counselor, licensed psychologist, or other qualified supervisor as determined by the board, who has four years of professional counseling experience and documents to the board the completion of a training in counseling supervision that included content and experiences relevant to the supervision of professional counselors.

Subd. 3. **Board.** "Board" means the Board of Behavioral Health and Therapy established by section 148B.51.

Subd. 4. **Licensed professional counseling.** "Licensed professional counseling" means the application of counseling, human development, and mental health research, principles, and procedures to maintain and enhance the mental health, development, personal and interpersonal effectiveness, and adjustment to work and life of individuals and families.

Subd. 5. **Scope of practice.** (a) The scope of practice of a licensed professional counselor includes, but is not limited to:

(1) the implementation of professional counseling treatment interventions including evaluation, treatment planning, assessment, and referral;

(2) direct counseling services to individuals, groups, and families;

(3) counseling strategies that effectively respond to multicultural populations;

(4) knowledge of relevant laws and ethics impacting practice;

(5) crisis intervention;

(6) consultation; and

(7) program evaluation and applied research.

(b) For the purposes of paragraph (a), clause (1), "professional counseling treatment interventions" means the application of cognitive, affective, behavioral, systemic, and community counseling strategies which include principles of human development, wellness, and pathology. Counselors provide mental health services for clients whose symptoms significantly interfere with daily functioning and would most likely not improve in a reasonable time period without intervention.

(c) Licensed professional counseling does not include activities or services undertaken by persons listed in section 148B.592, or the performance of any act that licensed professional counselors are not educated and trained to perform.

(d) In order to evaluate and treat mental illness, a licensed professional counselor must complete the postgraduate training specified in section 245.462, subdivision 18, clause (6), or 245.4871, subdivision 27, clause (6).

**History:** 2003 c 118 s 4

### 148B.51 BOARD OF BEHAVIORAL HEALTH AND THERAPY.

The Board of Behavioral Health and Therapy consists of 13 members appointed by the governor. Five of the members shall be professional counselors licensed or eligible for licensure under sections 148B.50 to 148B.593. Five of the members shall be alcohol and drug counselors licensed under chapter 148C. Three of the members shall be public members as defined in section 214.02. The board shall annually elect from its membership a chair and vice-chair. The board shall appoint and employ an executive director who is not a member of the board. The employment of the executive director

shall be subject to the terms described in section 214.04, subdivision 2a. Chapter 214 applies to the Board of Behavioral Health and Therapy unless superseded by sections 148B.50 to 148B.593.

**History:** 2003 c 118 s 5; 2004 c 279 art 11 s 5

#### 148B.52 DUTIES OF THE BOARD.

(a) The Board of Behavioral Health and Therapy shall:

(1) establish by rule appropriate techniques, including examinations and other methods, for determining whether applicants and licensees are qualified under sections 148B.50 to 148B.593;

(2) establish by rule standards for professional conduct, including adoption of a Code of Professional Ethics and requirements for continuing education and supervision;

(3) issue licenses to individuals qualified under sections 148B.50 to 148B.593;

(4) establish by rule standards for initial education including coursework for licensure and content of professional education;

(5) establish, maintain, and publish annually a register of current licensees and approved supervisors;

(6) establish initial and renewal application and examination fees sufficient to cover operating expenses of the board and its agents;

(7) educate the public about the existence and content of the laws and rules for licensed professional counselors to enable consumers to file complaints against licensees who may have violated the rules; and

(8) periodically evaluate its rules in order to refine the standards for licensing professional counselors and to improve the methods used to enforce the board's standards.

(b) The board may appoint a professional discipline committee for each occupational licensure regulated by the board, and may appoint a board member as chair. The professional discipline committee shall consist of five members representative of the licensed occupation and shall provide recommendations to the board with regard to rule techniques, standards, procedures, and related issues specific to the licensed occupation.

**History:** 2003 c 118 s 6; 2004 c 279 art 5 s 1

#### 148B.53 REQUIREMENTS FOR LICENSURE.

Subdivision 1. **General requirements.** (a) To be licensed as a licensed professional counselor (LPC), an applicant must provide evidence satisfactory to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed a master's degree program in counseling that includes a minimum of 48 semester hours and a supervised field experience of not fewer than 700 hours that is counseling in nature;

(4) has submitted to the board a plan for supervision during the first 2,000 hours of professional practice or has submitted proof of supervised professional practice that is acceptable to the board; and

(5) has demonstrated competence in professional counseling by passing the National Counseling Exam (NCE) administered by the National Board for Certified Counselors, Inc. (NBCC) including obtaining a passing score on the examination accepted by the board based on the determinations made by the NBCC and oral and situational examinations if prescribed by the board.

(b) The degree described in paragraph (a), clause (3), must be from a counseling program recognized by the Council for Accreditation of Counseling and Related Education Programs (CACREP) or from an institution of higher education that is

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accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA). Specific academic course content and training must meet standards established by the CACREP, including course work in the following subject areas:

- (1) the helping relationship, including counseling theory and practice;
- (2) human growth and development;
- (3) lifestyle and career development;
- (4) group dynamics, processes, counseling, and consulting;
- (5) assessment and appraisal;
- (6) social and cultural foundations, including multicultural issues;
- (7) principles of etiology, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
- (8) family counseling and therapy;
- (9) research and evaluation; and
- (10) professional counseling orientation and ethics.

(c) To be licensed as a professional counselor, a psychological practitioner licensed under section 148.908 need only show evidence of licensure under that section and is not required to comply with paragraph (a) or (b).

Subd. 2. **Minimum hour effective date.** The minimum semester hour requirement imposed by subdivision 1, paragraph (a), clause (3), is not effective until July 1, 2004. This subdivision expires July 1, 2005.

Subd. 3. **Fee.** Each applicant shall pay a nonrefundable fee as follows:

- (1) initial license application fee for licensed professional counseling (LPC) - \$250;
- (2) annual active license renewal fee for LPC - \$200 or equivalent;
- (3) annual inactive license renewal fee for LPC - \$100;
- (4) license renewal late fee - \$100 per month or portion thereof;
- (5) copy of board order or stipulation - \$10;
- (6) certificate of good standing or license verification - \$10;
- (7) duplicate certificate fee - \$10;
- (8) professional firm renewal fee - \$25;
- (9) initial registration fee - \$50; and
- (10) annual registration renewal fee - \$25.

**History:** 2003 c 118 s 7; 2004 c 279 art 5 s 2,3

## 148B.54 LICENSE RENEWAL REQUIREMENTS.

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

Subd. 2. **Continuing education.** At the completion of the first two years of licensure, a licensee must provide evidence satisfactory to the board of completion of 12 additional postgraduate semester credit hours or its equivalent in counseling as determined by the board, except that no licensee shall be required to show evidence of greater than 60 semester hours or its equivalent. Thereafter, 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 40 clock hours of professional postdegree continuing education in programs approved by the board and continues to be qualified to practice under sections 148B.50 to 148B.593.

**History:** 2003 c 118 s 8; 2004 c 279 art 5 s 4

## 148B.55 LICENSES; TRANSITION PERIOD.

For two years beginning July 1, 2003, the board shall issue a license without examination to an applicant if the board determines that the applicant otherwise satisfies the requirements in section 148B.53, subdivision 1, if the applicant is a licensed

psychological practitioner, a licensed marriage and family therapist, or a licensed alcohol and drug counselor, or is in the process of being so licensed. An applicant licensed under this section must also agree to conduct all professional activities as a licensed professional counselor in accordance with standards for professional conduct established by the board by rule. This section expires July 1, 2005.

**History:** 2003 c 118 s 9; 2004 c 279 art 5 s 5

#### 148B.56 RECIPROCITY.

The board may issue a license to an individual who holds a current license or other credential from another jurisdiction if the board finds that the requirements for that credential are substantially similar to the requirements in sections 148B.50 to 148B.593.

**History:** 2003 c 118 s 10

#### 148B.58 NONTRANSFERABILITY OF LICENSES.

A professional counseling license is not transferable.

**History:** 2003 c 118 s 11

#### 148B.59 GROUNDS FOR DISCIPLINARY ACTION; FORMS OF DISCIPLINARY ACTION; RESTORATION OF LICENSE.

(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 licensed professional counseling, that adversely affects the person's ability or fitness to practice professional counseling;

(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 professional counseling;

(5) has employed fraud or deception in obtaining or renewing a license, or in passing an examination;

(6) has had any counseling license, certificate, registration, privilege to take an examination, or other similar authority denied, revoked, suspended, canceled, limited, or not renewed for cause in any jurisdiction;

(7) 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 Licensed Professional Counseling Act;

(8) has failed to cooperate with an investigation of the board;

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

(10) 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. Fee splitting includes, but is not limited to:

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(i) dividing fees with another person or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional; and

(ii) referring a client to any health care provider as defined in section 144.335 in which the referring licensee has a significant financial interest, unless the licensee has disclosed in advance to the client the licensee's own financial interest; or

(11) has engaged 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.

(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 professional counseling, 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 \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the applicant or licensee of any economic advantage gained by reason of the violation charged, to discourage similar violations or to reimburse the board for the cost of the investigation and proceeding, including, but 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.

(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; and

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

The board may also refer a licensee, if appropriate, to the health professionals services program described in sections 214.31 to 214.37.

(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.

**History:** 2003 c 118 s 12; 2004 c 279 art 5 s 6

## 148B.591 PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES.

**Subdivision 1. Practice.** After the effective date of rules adopted by the board, no individual may engage in the practice of licensed professional counseling unless that individual holds a valid license or is exempt from licensure under section 148B.592.

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Subd. 2. **Use of titles.** After the board adopts rules, no individual may be presented to the public by any title or practice incorporating the words "licensed professional counselor" or "LPC" unless that individual holds a valid license issued under sections 148B.50 to 148B.593.

*History:* 2003 c 118 s 13

## 148B.5915 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, executing all releases requested by the board, 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 under this section as investigative data pursuant to chapter 13.

*History:* 2004 c 279 art 5 s 7

## 148B.5916 IMMUNITY.

Subdivision 1. **Reporting.** A person, health care facility, business, or organization is immune from civil liability or criminal prosecution for reporting to the board violations or alleged violations of sections 148B.50 to 148B.593. All such reports are classified under section 13.41.

Subd. 2. **Investigation.** Members of the board, persons employed by the board, and consultants retained by the board for the purpose of investigation of violations or 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 sections 148B.50 to 148B.593.

*History:* 2004 c 279 art 5 s 8

## 148B.592 EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. **Other professionals.** Nothing in sections 148B.50 to 148B.593 prevents 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, licensed psychologists, probation officers, attorneys, social workers, marriage and family therapists, qualified rehabilitation consultants, natural family planning practitioners certified by the American Academy of Natural Family Planning, and registered occupational therapists or certified occupational therapist assistants. These persons must not, however, use a title incorporating the words "licensed professional counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed to engage in the practice of professional counseling unless they are licensed under sections 148B.50 to 148B.593.

Subd. 2. **Students.** Nothing in sections 148B.50 to 148B.593 prevents a student, intern, or trainee enrolled in an accredited program of professional counseling from engaging in professional counseling as part of the supervised course of study if the person is identified as a "counselor intern."

Subd. 3. **Government agencies; educational institutions.** Nothing in sections 148B.50 to 148B.593 limits the activities and services of, or use of, an official title by a person employed as a counselor by a federal, state, county, or municipal agency, or

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public or private educational institution if the person is performing the activities within the scope of the person's employment.

Subd. 4. **Unlicensed practitioners.** (a) MS 2002 [Expired, 2003 c 118 s 14 subd 4 para (a)]

(b) Nothing in this section limits the authority of unlicensed complementary and alternative health care practitioners to perform services under chapter 146A.

Subd. 5. **Nonresidents.** A nonresident may engage in the practice of professional counseling within the state without a license for up to 30 days during any calendar year if the nonresident is authorized to provide the services under the law of the state or country of residence and the nonresident has provided proof of credentials to the board, been found qualified to render services in the state, and been granted permission by the board to practice.

Subd. 6. **Clergy.** Nothing in sections 148B.50 to 148B.593 limits the activities and services of a rabbi, priest, minister, or clergyperson of any religious denomination or sect, provided such activities and services are within the scope of the performance of regular or specialized ministerial duties.

Subd. 7. **Nonprofit organizations and charities.** Nothing in sections 148B.50 to 148B.593 limits the activities, services, and descriptions of persons offering volunteer or professional services for public or private nonprofit organizations or charities.

**History:** 2003 c 118 s 14

## 148B.593 DISCLOSURE OF INFORMATION.

(a) A person licensed under sections 148B.50 to 148B.593 may not disclose without written consent of the client any communication made by the client to the licensee in the course of the practice of professional counseling, nor may any employee of the licensee reveal the information without the consent of the employer or client except as provided under section 626.556 or 626.557.

(b) For purposes of sections 148B.50 to 148B.593, the confidential relations and communications between the licensee and a client are placed upon the same basis as those that exist between a licensed psychologist and client. Nothing in sections 148B.50 to 148B.593 may be construed to require any communications to be disclosed except by court order.

**History:** 2003 c 118 s 15

## OFFICE OF MENTAL HEALTH PRACTICE

### 148B.60 DEFINITIONS.

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

Subd. 2. **Office of Mental Health Practice or office.** "Office of Mental Health Practice" or "office" means the Office of Mental Health Practice established in section 148B.61.

Subd. 3. **Unlicensed mental health practitioner or practitioner.** "Unlicensed mental health practitioner" or "practitioner" means a person who provides or purports to provide, for remuneration, mental health services as defined in subdivision 4. It does not include persons licensed by the Board of Medical Practice under chapter 147 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; the Board of Behavioral Health and Therapy under sections 148B.50 to 148B.593; or another licensing board if the person is practicing within the scope of the license; 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; American Indian medicine men and women; licensed attorneys; proba-



tion officers; school counselors employed by a school district while acting within the scope of employment as school counselors; registered occupational therapists; or occupational therapy assistants. 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.

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

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

**Subd. 6.** [Repealed, 1996 c 305 art 1 s 38]

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

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

**History:** 1991 c 106 s 6; 1991 c 292 art 2 s 50; 1995 c 63 s 6; 1995 c 205 art 2 s 4; 1997 c 193 s 47; 2000 c 460 s 32; 2003 c 118 s 16

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

#### 148B.61 OFFICE OF MENTAL HEALTH PRACTICE.

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

**Subd. 2. Rulemaking.** The commissioner of health shall adopt rules necessary to implement, administer, or enforce provisions of sections 148B.60 to 148B.71 pursuant to chapter 14. The commissioner may not adopt rules that restrict or prohibit persons from providing mental health services on the basis of education, training, experience, or supervision.

**Subd. 3.** [Deleted, 1995 c 233 art 2 s 57]

**History:** 1991 c 292 art 2 s 51; 1996 c 305 art 1 s 39; art 2 s 32

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

**148B.62** [Repealed, 1995 c 164 s 35]

**148B.63 REPORTING OBLIGATIONS.**

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

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

Subd. 3. **Professional societies.** A state or local professional society for unlicensed mental health practitioners shall report to the Office of Mental Health Practice any termination, revocation, or suspension of membership or any other disciplinary action taken against an unlicensed practitioner. If the society has received a complaint that might be grounds for discipline under this chapter against a member on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the Office of Mental Health Practice.

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

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

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

The insurance company shall, in addition to the above information, submit to the Office of Mental Health Practice any information, records, and files, including clients'

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charts and records, it possesses that tend to substantiate a charge that an unlicensed mental health practitioner may have engaged in conduct violating this chapter.

**Subd. 6. Courts.** The court administrator of district court or any other court of competent jurisdiction shall report to the Office of Mental Health Practice any judgment or other determination of the court that adjudges or includes a finding that an unlicensed mental health practitioner is mentally ill, mentally incompetent, guilty of a felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the unlicensed mental health practitioner under sections 524.5-101 to 524.5-502 or commits an unlicensed mental practitioner under chapter 253B.

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

**Subd. 8. Deadlines; forms.** Reports required by subdivisions 2 to 7 must be submitted not later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The Office of Mental Health Practice may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

**History:** 1991 c 292 art 2 s 53; 1Sp1994 c 1 art 2 s 14; 2004 c 146 art 3 s 47

NOTE: This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

## 148B.64 IMMUNITY.

**Subdivision 1. Reporting.** Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report to the Office of Mental Health Practice, for otherwise reporting to the office violations or alleged violations of this chapter, or for cooperating with an investigation of a report, except as provided in this subdivision. Any person who knowingly or recklessly makes a false report is liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury. An action requires clear and convincing evidence that the defendant made the statement with knowledge of falsity or with reckless disregard for its truth or falsity. The report or statement or any statement made in cooperation with an investigation or as part of a disciplinary proceeding is privileged except in an action brought under this subdivision.

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

**History:** 1991 c 292 art 2 s 54; 1996 c 305 art 1 s 40

NOTE: This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

## 148B.65 DISCIPLINARY RECORD ON JUDICIAL REVIEW.

Upon judicial review of any disciplinary action taken by the commissioner under this chapter, the reviewing court shall seal the administrative record, except for the

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commissioner's final decision, and shall not make the administrative record available to the public.

**History:** 1991 c 292 art 2 s 55

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

## 148B.66 PROFESSIONAL COOPERATION; UNLICENSED PRACTITIONER.

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

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

**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

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Mental Health Practice is empowered to enforce must be forwarded to the office to be processed in accordance with this section.

(c) 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:** 1991 c 292 art 2 s 56; 1995 c 164 s 1; 1996 c 440 art 1 s 38; 1997 c 187 art 2 s 5

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

## 148B.67 PROFESSIONAL ACCOUNTABILITY.

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

**History:** 1991 c 292 art 2 s 57

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

## 148B.68 PROHIBITED CONDUCT.

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

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

(b) Conviction of crimes against persons. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.2242; 609.23; 609.231; 609.2325; 609.233; 609.2335; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1; clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; 609.595; and 609.72, subdivision 3.

(c) Failure to comply with the self-reporting requirements of section 148B.63, subdivision 7.

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

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

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

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

- (h) Inability to provide mental health services with reasonable safety to clients.
- (i) The habitual overindulgence in the use of or the dependence on intoxicating liquors.
- (j) Improper or unauthorized personal or other use of any legend drugs as defined in chapter 151, any chemicals as defined in chapter 151, or any controlled substance as defined in chapter 152.
- (k) Revealing a communication from, or relating to, a client except when otherwise required or permitted by law.
- (l) Failure to comply with a client's request made under section 144.335, or to furnish a client record or report required by law.
- (m) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client.
- (n) Engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws.
- (o) Failure to make reports as required by section 148B.63, or cooperate with an investigation of the office.
- (p) Obtaining money, property, or services from a client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud.
- (q) Undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.
- (r) Failure to provide the client with a copy of the client bill of rights or violation of any provision of the client bill of rights.
- (s) Violating any order issued by the commissioner.
- (t) Failure to comply with sections 148B.60 to 148B.71, and the rules adopted under those sections.
- (u) Failure to comply with any additional disciplinary grounds established by the commissioner by rule.
- (v) Revocation, suspension, restriction, limitation, or other disciplinary action against the mental health practitioner's license, certificate, registration, or right of practice in this or another state or jurisdiction, for offenses that would be subject to disciplinary action in this state, or failure to report to the Office of Mental Health Practice that charges regarding the practitioner's license, certificate, registration, or right of practice have been brought in this or another state or jurisdiction.
- (w) Bartering for services with a client.

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

Subd. 3. **Examination; access to medical data.** (a) If the commissioner has probable cause to believe that an unlicensed mental health practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j), the commissioner may issue an order directing the practitioner to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, every unlicensed mental health practitioner is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the commissioner of health and further to have waived all objections to the admissibility of the testimony or examination reports of the health care provider performing the examination or evaluation on the grounds that the same constitute a privileged communication. Failure of an unlicensed mental health practitioner to submit to an examination or evaluation when ordered, unless the failure was due to circumstances beyond the practitioner's control, constitutes an admission that the unlicensed mental health practitioner violated subdivision 1, paragraph (g), (h), (i), or

(j), based on the factual specifications in the examination or evaluation order and may result in a default and final disciplinary order being entered after a contested case hearing. An unlicensed mental health practitioner affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the practitioner can resume the provision of mental health services with reasonable safety to clients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the commissioner shall be used against a mental health practitioner in any other proceeding.

(b) In addition to ordering a physical or mental examination or chemical dependency evaluation, the commissioner may, notwithstanding section 13.384, 144.651, 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to an unlicensed mental health practitioner without the practitioner's consent if the commissioner has probable cause to believe that a practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j). The medical data may be requested from a health care professional, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the Department of Human Services. A health care professional, insurance company, or government agency shall comply with any written request of the commissioner under this subdivision and is not liable in any action for damages for releasing the data requested by the commissioner if the data are released pursuant to a written request under this subdivision, unless the information is false and the person or organization giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is private data under section 13.41.

**History:** 1991 c 292 art 2 s 58; 1Sp1994 c 1 art 2 s 15; 1995 c 164 s 2; 1995 c 229 art 4 s 9; 1995 c 259 art 3 s 1; 1999 c 227 s 22; 2000 c 460 s 33

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a); as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

#### 148B.69 DISCIPLINARY ACTIONS.

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

- (1) revoke the right to practice;
- (2) suspend the right to practice;
- (3) impose limitations or conditions on the practitioner's provision of mental health services, the imposition of rehabilitation requirements, or the requirement of practice under supervision;
- (4) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the practitioner of any economic advantage gained by reason of the violation charged or to reimburse the Office of Mental Health Practice for all costs of the investigation and proceeding;
- (5) order the practitioner to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution;
- (6) censure or reprimand the practitioner;
- (7) impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the Office of Administrative Hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the staff of the Office of Mental Health Practice; or
- (8) any other action justified by the case.

Subd. 2. **Discovery; subpoenas.** In all matters relating to the lawful activities of the Office of Mental Health Practice, the commissioner of health may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to

appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the commissioner or by a subpoena of the commissioner to do so may, upon application to the district court in any district, be ordered to comply with the order or subpoena. The commissioner of health may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions, in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 2a. **Hearings.** If the commissioner proposes to take action against the practitioner as described in subdivision 1, the commissioner must first notify the person against whom the action is proposed to be taken and provide the person with an opportunity to request a hearing under the contested case provisions of chapter 14. If the person does not request a hearing by notifying the commissioner within 30 days after service of the notice of the proposed action, the commissioner may proceed with the action without a hearing.

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

Subd. 4. **Temporary suspension.** In addition to any other remedy provided by law, the commissioner may, acting through a person to whom the commissioner has delegated this authority and without a hearing, temporarily suspend the right of an unlicensed mental health practitioner to practice if the commissioner's delegate finds that the practitioner has violated a statute or rule that the commissioner is empowered to enforce and continued practice by the practitioner would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the commissioner issues a final order in the matter after a hearing or upon agreement between the commissioner and the practitioner. Service of the order is effective if the order is served on the practitioner or counsel of record personally or by first class mail. Within ten days of service of the order, the commissioner shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the officer or practitioner shall be in affidavit form only. The practitioner or the counsel of record may appear for oral argument. Within five working days after the hearing, the commissioner shall issue the commissioner's order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The commissioner shall issue a final order within 30 days after receipt of that report.

Subd. 5. **Automatic suspension.** The right to practice is automatically suspended if (1) a guardian of an unlicensed mental health practitioner is appointed by order of a court under sections 524.5-101 to 524.5-502, or (2) the practitioner is committed by order of a court pursuant to chapter 253B. The right to practice remains suspended until the practitioner is restored to capacity by a court and, upon petition by the practitioner, the suspension is terminated by the commissioner after a hearing or upon agreement between the commissioner and the practitioner.

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



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Subd. 7. **Release to obtain nonpublic data.** An unlicensed mental health practitioner who is the subject of an investigation must sign a release authorizing the commissioner to obtain criminal conviction data, reports about abuse or neglect of clients, and other information pertaining to investigations of violations of statutes or rules from the Bureau of Criminal Apprehension, the Federal Bureau of Investigation, the Department of Human Services, the Office of Health Facilities Complaints, private certification organizations, county social service agencies, the Division of Driver and Vehicle Services in the Department of Public Safety, adult protection services, child protection services, and other agencies that regulate provision of health care services. After the commissioner gives written notice to an individual who is the subject of an investigation, the agencies shall assist the commissioner with the investigation by giving the commissioner the requested data.

**History:** 1991 c 292 art 2 s 59; 1Sp1994 c 1 art 2 s 16; 1996 c 305 art 1 s 41; 1998 c 317 s 11; 2000 c 460 s 34; 2004 c 146 art 3 s 47

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a); the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

## 148B.70 ADDITIONAL REMEDIES.

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

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

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

In the event of noncompliance with a cease and desist order, the commissioner may institute a proceeding in Hennepin County District Court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the Office of Mental Health Practice not exceeding \$10,000 for each separate violation.

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

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

**History:** 1991 c 292 art 2 s 60

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NOTE: This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

## 148B.71 MENTAL HEALTH CLIENT BILL OF RIGHTS.

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

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

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

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

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

(e) the name, address, and telephone number of the Office of Mental Health Practice and notice that a client may file complaints with the office;

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** 1991 c 292 art 2 s 61; 2000 c 460 s 35

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, effective July 1, 2005. Laws 2003, chapter 118, section 29, paragraph (a); the effective date, as amended by Laws 2004, chapter 279, article 5, section 10.

**148B.72** [Repealed, 1Sp1993 c 1 art 9 s 75]