

148.5195 INVESTIGATION PROCESS AND GROUNDS FOR DISCIPLINARY ACTION.

Subdivision 1. **Investigations of complaints.** The commissioner or advisory council may initiate an investigation upon receiving a signed complaint or other signed written communication that alleges or implies that an individual has violated sections 148.511 to 148.5198. According to section 214.13, subdivision 6, in the receipt, investigation, and hearing of a complaint that alleges or implies an individual has violated sections 148.511 to 148.5198, the commissioner shall follow the procedures in section 214.10.

Subd. 2. **Rights of applicants and licensees.** The rights of an applicant denied licensure are stated in section 148.519, subdivision 2, paragraph (d). A licensee shall not be subjected to disciplinary action under this section without first having an opportunity for a contested case hearing under chapter 14.

Subd. 3. **Grounds for disciplinary action by commissioner.** The commissioner may take any of the disciplinary actions listed in subdivision 4 on proof that the individual has:

- (1) intentionally submitted false or misleading information to the commissioner or the advisory council;
- (2) failed, within 30 days, to provide information in response to a written request by the commissioner or advisory council;
- (3) performed services of a speech-language pathologist or audiologist in an incompetent or negligent manner;
- (4) violated sections 148.511 to 148.5198;
- (5) failed to perform services with reasonable judgment, skill, or safety due to the use of alcohol or drugs, or other physical or mental impairment;
- (6) violated any state or federal law, rule, or regulation, and the violation is a felony or misdemeanor, an essential element of which is dishonesty, or which relates directly or indirectly to the practice of speech-language pathology or audiology. Conviction for violating any state or federal law which relates to speech-language pathology or audiology is necessarily considered to constitute a violation, except as provided in chapter 364;
- (7) aided or abetted another person in violating any provision of sections 148.511 to 148.5198;
- (8) been or is being disciplined by another jurisdiction, if any of the grounds for the discipline is the same or substantially equivalent to those under sections 148.511 to 148.5198;
- (9) not cooperated with the commissioner or advisory council in an investigation conducted according to subdivision 1;
- (10) advertised in a manner that is false or misleading;
- (11) engaged in conduct likely to deceive, defraud, or harm the public; or demonstrated a willful or careless disregard for the health, welfare, or safety of a client;
- (12) failed to disclose to the consumer any fee splitting or any promise to pay a portion of a fee to any other professional other than a fee for services rendered by the other professional to the client;

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

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

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

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

(17) had the certification required by chapter 153A denied, suspended, or revoked according to chapter 153A;

(18) used the term doctor of audiology, doctor of speech-language pathology, AuD, or SLPD without having obtained the degree from an institution accredited by the North Central Association of Colleges and Secondary Schools, the Council on Academic Accreditation in Audiology and Speech-Language Pathology, the United States Department of Education, or an equivalent;

(19) failed to comply with the requirements of section 148.5192 regarding supervision of speech-language pathology assistants; or

(20) if the individual is an audiologist or certified hearing instrument dispenser:

(i) prescribed or otherwise recommended to a consumer or potential consumer the use of a hearing instrument, unless the prescription from a physician or recommendation from an audiologist or certified dispenser is in writing, is based on an audiogram that is delivered to the consumer or potential consumer when the prescription or recommendation is made, and bears the following information in all capital letters of 12-point or larger boldface type: "THIS PRESCRIPTION OR RECOMMENDATION MAY BE FILLED BY, AND HEARING INSTRUMENTS MAY BE PURCHASED FROM, THE LICENSED AUDIOLOGIST OR CERTIFIED DISPENSER OF YOUR CHOICE";

(ii) failed to give a copy of the audiogram, upon which the prescription or recommendation is based, to the consumer when the consumer requests a copy;

(iii) failed to provide the consumer rights brochure required by section 148.5197, subdivision 3;

(iv) failed to comply with restrictions on sales of hearing instruments in sections 148.5197, subdivision 3, and 148.5198;

(v) failed to return a consumer's hearing instrument used as a trade-in or for a discount in the price of a new hearing instrument when requested by the consumer upon cancellation of the purchase agreement;

(vi) failed to follow Food and Drug Administration or Federal Trade Commission regulations relating to dispensing hearing instruments;

(vii) failed to dispense a hearing instrument in a competent manner or without appropriate training;

(viii) delegated hearing instrument dispensing authority to a person not authorized to dispense a hearing instrument under this chapter or chapter 153A;

(ix) failed to comply with the requirements of an employer or supervisor of a hearing instrument dispenser trainee;

(x) violated a state or federal court order or judgment, including a conciliation court judgment, relating to the activities of the individual's hearing instrument dispensing; or

(xi) failed to include on the audiogram the practitioner's printed name, credential type, credential number, signature, and date.

Subd. 4. Disciplinary actions. If the commissioner finds that an individual should be disciplined according to subdivision 3, the commissioner may take any one or more of the following actions:

(1) refuse to grant or renew licensure;

(2) suspend licensure for a period not exceeding one year;

(3) revoke licensure;

(4) take any reasonable lesser action against an individual upon proof that the individual has violated sections 148.511 to 148.5198; or

(5) impose, for each violation, a civil penalty not exceeding \$10,000 that deprives the licensee of any economic advantage gained by the violation and that reimburses the Department of Health for costs of the investigation and proceedings resulting in disciplinary action, including the amount paid for services of the administrative hearings, the amount paid for services of the Office of the Attorney General, attorney fees, court reporters, witnesses, reproduction of records, advisory council members' per diem compensation, department staff time, and expenses incurred by advisory council members and department staff.

Subd. 5. Consequences of disciplinary actions. Upon the suspension or revocation of licensure, the speech-language pathologist or audiologist shall cease to practice speech-language pathology or audiology, to use titles protected under sections 148.511 to 148.5198, and to represent to the public that the speech-language pathologist or audiologist is licensed by the commissioner.

Subd. 6. Reinstatement requirements after disciplinary action. A speech-language pathologist or audiologist who has had licensure suspended may petition on forms provided by the commissioner for reinstatement following the period of suspension specified by the commissioner. The requirements of section 148.5191 for renewing licensure must be met before licensure may be reinstated.

Subd. 7. Authority to contract. The commissioner shall contract with the health professionals services program as authorized by sections 214.31 to 214.37 to provide these services to practitioners under this chapter. The health professionals services program does not affect the commissioner's authority to discipline violations of sections 148.511 to 148.5198.

History: 1996 c 363 s 13; 1998 c 317 s 9; 2003 c 87 s 41-45; 2004 c 279 art 1 s 17; 2005 c 147 art 7 s 7,19; 2006 c 267 art 2 s 9; 2008 c 189 s 13; 2010 c 274 s 3