

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2070

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03/03/2014	5940	Authors added Hayden; Benson
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A bill for an act

1.1 relating to health occupations; modifying grounds for disciplinary action by
 1.2 the Board of Nursing; modifying the health professionals services program;
 1.3 modifying the compensation paid to the health-related licensing board members;
 1.4 amending Minnesota Statutes 2012, sections 148.261, subdivisions 1, 4, by adding
 1.5 a subdivision; 214.09, subdivision 3; 214.32, by adding a subdivision; 214.33,
 1.6 subdivision 3; 214.35; Minnesota Statutes 2013 Supplement, section 364.09.
 1.7

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2012, section 148.261, subdivision 1, is amended to read:

1.10 Subdivision 1. **Grounds listed.** The board may deny, revoke, suspend, limit, or
 1.11 condition the license and registration of any person to practice professional, advanced
 1.12 practice registered, or practical nursing under sections 148.171 to 148.285, or to otherwise
 1.13 discipline a licensee or applicant as described in section 148.262. The following are
 1.14 grounds for disciplinary action:

1.15 (1) Failure to demonstrate the qualifications or satisfy the requirements for a license
 1.16 contained in sections 148.171 to 148.285 or rules of the board. In the case of a person
 1.17 applying for a license, the burden of proof is upon the applicant to demonstrate the
 1.18 qualifications or satisfaction of the requirements.

1.19 (2) Employing fraud or deceit in procuring or attempting to procure a permit, license,
 1.20 or registration certificate to practice professional or practical nursing or attempting to
 1.21 subvert the licensing examination process. Conduct that subverts or attempts to subvert
 1.22 the licensing examination process includes, but is not limited to:

1.23 (i) conduct that violates the security of the examination materials, such as removing
 1.24 examination materials from the examination room or having unauthorized possession of
 1.25 any portion of a future, current, or previously administered licensing examination;

2.1 (ii) conduct that violates the standard of test administration, such as communicating
2.2 with another examinee during administration of the examination, copying another
2.3 examinee's answers, permitting another examinee to copy one's answers, or possessing
2.4 unauthorized materials; or

2.5 (iii) impersonating an examinee or permitting an impersonator to take the
2.6 examination on one's own behalf.

2.7 (3) Conviction of a felony or gross misdemeanor reasonably related to the practice
2.8 of professional, advanced practice registered, or practical nursing. Conviction as used in
2.9 this subdivision includes a conviction of an offense that if committed in this state would
2.10 be considered a felony or gross misdemeanor without regard to its designation elsewhere,
2.11 or a criminal proceeding where a finding or verdict of guilt is made or returned but the
2.12 adjudication of guilt is either withheld or not entered.

2.13 (4) Revocation, suspension, limitation, conditioning, or other disciplinary action
2.14 against the person's professional or practical nursing license or advanced practice
2.15 registered nursing credential, in another state, territory, or country; failure to report to the
2.16 board that charges regarding the person's nursing license or other credential are pending in
2.17 another state, territory, or country; or having been refused a license or other credential by
2.18 another state, territory, or country.

2.19 (5) Failure to or inability to perform professional or practical nursing as defined in
2.20 section 148.171, subdivision 14 or 15, with reasonable skill and safety, including failure
2.21 of a registered nurse to supervise or a licensed practical nurse to monitor adequately the
2.22 performance of acts by any person working at the nurse's direction.

2.23 (6) Engaging in unprofessional conduct, including, but not limited to, a departure
2.24 from or failure to conform to board rules of professional or practical nursing practice that
2.25 interpret the statutory definition of professional or practical nursing as well as provide
2.26 criteria for violations of the statutes, or, if no rule exists, to the minimal standards of
2.27 acceptable and prevailing professional or practical nursing practice, or any nursing
2.28 practice that may create unnecessary danger to a patient's life, health, or safety. Actual
2.29 injury to a patient need not be established under this clause.

2.30 (7) Failure of an advanced practice registered nurse to practice with reasonable
2.31 skill and safety or departure from or failure to conform to standards of acceptable and
2.32 prevailing advanced practice registered nursing.

2.33 (8) Delegating or accepting the delegation of a nursing function or a prescribed
2.34 health care function when the delegation or acceptance could reasonably be expected to
2.35 result in unsafe or ineffective patient care.

3.1 (9) Actual or potential inability to practice nursing with reasonable skill and safety
3.2 to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or
3.3 as a result of any mental or physical condition.

3.4 (10) Adjudication as mentally incompetent, mentally ill, a chemically dependent
3.5 person, or a person dangerous to the public by a court of competent jurisdiction, within or
3.6 without this state.

3.7 (11) Engaging in any unethical conduct, including, but not limited to, conduct likely
3.8 to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard
3.9 for the health, welfare, or safety of a patient. Actual injury need not be established under
3.10 this clause.

3.11 (12) Engaging in conduct with a patient that is sexual or may reasonably be
3.12 interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually
3.13 demeaning to a patient, or engaging in sexual exploitation of a patient or former patient.

3.14 (13) Obtaining money, property, or services from a patient, other than reasonable
3.15 fees for services provided to the patient, through the use of undue influence, harassment,
3.16 duress, deception, or fraud.

3.17 (14) Revealing a privileged communication from or relating to a patient except when
3.18 otherwise required or permitted by law.

3.19 (15) Engaging in abusive or fraudulent billing practices, including violations of
3.20 federal Medicare and Medicaid laws or state medical assistance laws.

3.21 (16) Improper management of patient records, including failure to maintain adequate
3.22 patient records, to comply with a patient's request made pursuant to sections 144.291 to
3.23 144.298, or to furnish a patient record or report required by law.

3.24 (17) Knowingly aiding, assisting, advising, or allowing an unlicensed person to
3.25 engage in the unlawful practice of professional, advanced practice registered, or practical
3.26 nursing.

3.27 (18) Violating a rule adopted by the board, an order of the board, or a state or federal
3.28 law relating to the practice of professional, advanced practice registered, or practical
3.29 nursing, or a state or federal narcotics or controlled substance law.

3.30 (19) Knowingly providing false or misleading information that is directly related
3.31 to the care of that patient unless done for an accepted therapeutic purpose such as the
3.32 administration of a placebo.

3.33 (20) Aiding suicide or aiding attempted suicide in violation of section 609.215 as
3.34 established by any of the following:

3.35 (i) a copy of the record of criminal conviction or plea of guilty for a felony in
3.36 violation of section 609.215, subdivision 1 or 2;

4.1 (ii) a copy of the record of a judgment of contempt of court for violating an
4.2 injunction issued under section 609.215, subdivision 4;

4.3 (iii) a copy of the record of a judgment assessing damages under section 609.215,
4.4 subdivision 5; or

4.5 (iv) a finding by the board that the person violated section 609.215, subdivision
4.6 1 or 2. The board shall investigate any complaint of a violation of section 609.215,
4.7 subdivision 1 or 2.

4.8 (21) Practicing outside the scope of practice authorized by section 148.171,
4.9 subdivision 5, 10, 11, 13, 14, 15, or 21.

4.10 (22) Practicing outside the specific field of nursing practice for which an advanced
4.11 practice registered nurse is certified unless the practice is authorized under section 148.284.

4.12 (23) Making a false statement or knowingly providing false information to the
4.13 board, failing to make reports as required by section 148.263, or failing to cooperate with
4.14 an investigation of the board as required by section 148.265.

4.15 (24) Engaging in false, fraudulent, deceptive, or misleading advertising.

4.16 (25) Failure to inform the board of the person's certification status as a nurse
4.17 anesthetist, nurse-midwife, nurse practitioner, or clinical nurse specialist.

4.18 (26) Engaging in clinical nurse specialist practice, nurse-midwife practice, nurse
4.19 practitioner practice, or registered nurse anesthetist practice without current certification
4.20 by a national nurse certification organization acceptable to the board, except during the
4.21 period between completion of an advanced practice registered nurse course of study and
4.22 certification, not to exceed six months or as authorized by the board.

4.23 (27) Engaging in conduct that is prohibited under section 145.412.

4.24 (28) Failing to report employment to the board as required by section 148.211,
4.25 subdivision 2a, or knowingly aiding, assisting, advising, or allowing a person to fail to
4.26 report as required by section 148.211, subdivision 2a.

4.27 (29) Discharge from the health professionals services program as described in
4.28 sections 214.31 to 214.37, or any other alternative monitoring or diversion program for
4.29 reasons other than satisfactory completion of the program as set forth in the participation
4.30 agreement.

4.31 Sec. 2. Minnesota Statutes 2012, section 148.261, is amended by adding a subdivision
4.32 to read:

4.33 Subd. 1a. **Conviction of a felony-level criminal sexual conduct offense.** (a) The
4.34 board shall not grant a license to practice nursing to any person who has been convicted of
4.35 a felony-level criminal sexual conduct offense.

5.1 (b) A license to practice nursing is automatically revoked if the licensee is convicted
5.2 of a felony-level criminal sexual conduct offense on or after August 1, 2014.

5.3 (c) A license that has been denied or revoked pursuant to this subdivision is not
5.4 subject to chapter 364.

5.5 (d) For purposes of this subdivision, "criminal sexual conduct offense" means a
5.6 violation of sections 609.342 to 609.345, or a similar statute in another jurisdiction, and
5.7 "conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty
5.8 by the court, unless the court stays imposition or execution of the sentence and final
5.9 disposition of the case is accomplished at a nonfelony level.

5.10 Sec. 3. Minnesota Statutes 2012, section 148.261, subdivision 4, is amended to read:

5.11 Subd. 4. **Evidence.** In disciplinary actions alleging a violation of subdivision 1,
5.12 clause (3) or (4), or subdivision 1a, a copy of the judgment or proceeding under the seal
5.13 of the court administrator or of the administrative agency that entered the same shall be
5.14 admissible into evidence without further authentication and shall constitute prima facie
5.15 evidence of the violation concerned.

5.16 Sec. 4. Minnesota Statutes 2012, section 214.09, subdivision 3, is amended to read:

5.17 Subd. 3. **Compensation.** (a) Members of the boards may be compensated at the rate
5.18 of ~~\$55~~ \$75 a day spent on board activities, when authorized by the board, plus expenses in
5.19 the same manner and amount as authorized by the commissioner's plan adopted under
5.20 section 43A.18, subdivision 2. Members who, as a result of time spent attending board
5.21 meetings, incur child care expenses that would not otherwise have been incurred, may be
5.22 reimbursed for those expenses upon board authorization.

5.23 (b) Members who are state employees or employees of the political subdivisions
5.24 of the state must not receive the daily payment for activities that occur during working
5.25 hours for which they are also compensated by the state or political subdivision. However,
5.26 a state or political subdivision employee may receive the daily payment if the employee
5.27 uses vacation time or compensatory time accumulated in accordance with a collective
5.28 bargaining agreement or compensation plan for board activity. Members who are state
5.29 employees or employees of the political subdivisions of the state may receive the expenses
5.30 provided for in this subdivision unless the expenses are reimbursed by another source.
5.31 Members who are state employees or employees of political subdivisions of the state
5.32 may be reimbursed for child care expenses only for time spent on board activities that
5.33 are outside their working hours.

6.1 (c) Each board must adopt internal standards prescribing what constitutes a day
6.2 spent on board activities for purposes of making daily payments under this subdivision.

6.3 Sec. 5. Minnesota Statutes 2012, section 214.32, is amended by adding a subdivision
6.4 to read:

6.5 Subd. 6. **Duties of a participating board.** Upon receiving a report from the
6.6 program manager in accordance with section 214.33, subdivision 3, that a regulated person
6.7 has been discharged from the program due to noncompliance, the participating board shall
6.8 temporarily suspend the regulated person's professional license until the completion of a
6.9 disciplinary investigation. The board must complete the disciplinary investigation within
6.10 60 days of receipt of the report from the program. If the investigation is not completed by
6.11 the board within 60 days, the temporary suspension shall be lifted, unless the regulated
6.12 person requests a delay in the disciplinary proceedings for any reason, upon which the
6.13 temporary suspension shall remain in place until the completion of the investigation.

6.14 Sec. 6. Minnesota Statutes 2012, section 214.33, subdivision 3, is amended to read:

6.15 Subd. 3. **Program manager.** (a) The program manager shall report to the
6.16 appropriate participating board a regulated person who does not meet program admission
6.17 criteria, violates the terms of the program participation agreement, or leaves or is
6.18 discharged from the program except upon fulfilling the terms for successful completion
6.19 of the program as set forth in the participation agreement.

6.20 (b) The program manager shall report to the appropriate participating board a
6.21 regulated person who is alleged to have committed violations of the person's practice act
6.22 that are outside the authority of the health professionals services program as described in
6.23 sections 214.31 to 214.37.

6.24 (c) The program manager shall report to the appropriate participating board
6.25 violations that may be related to a regulated person's impairment, but are also grounds
6.26 for discipline under the applicable practice act, including, but not limited to, diversion
6.27 of controlled substances. For purposes of this paragraph, "diversion" means any act
6.28 or deviation that transfers a prescription drug from a lawful to unlawful channel of
6.29 distribution or use. Regulated persons reported under this paragraph are not automatically
6.30 rendered ineligible for the program, but may continue to be monitored with the consent
6.31 of the regulated person's board.

6.32 (d) The program manager shall inform any reporting person of the disposition of the
6.33 person's report to the program.

7.1 **EFFECTIVE DATE.** Paragraph (c) is effective August 1, 2014, and applies to
7.2 violations that occur after the effective date.

7.3 Sec. 7. Minnesota Statutes 2012, section 214.35, is amended to read:

7.4 **214.35 CLASSIFICATION OF DATA.**

7.5 All data collected and maintained and any agreements with regulated persons
7.6 entered into as part of the program is classified as active investigative data under section
7.7 13.41 while the individual is in the program, except for monitoring data which is classified
7.8 as private. When a regulated person successfully completes the program, the data and
7.9 participation agreement become inactive investigative data which shall be classified as
7.10 private data under section 13.02, subdivision 12, or nonpublic data under section 13.02,
7.11 subdivision 9, in the case of data not on individuals. Data and agreements shall not be
7.12 forwarded to ~~the~~ a board unless the program reports a participant to a board as described
7.13 in section 214.33, subdivision 3, or upon request of a board if the board is conducting an
7.14 investigation of a regulated person and the person is participating in the program.

7.15 Sec. 8. Minnesota Statutes 2013 Supplement, section 364.09, is amended to read:

7.16 **364.09 EXCEPTIONS.**

7.17 (a) This chapter does not apply to the licensing process for peace officers; to law
7.18 enforcement agencies as defined in section 626.84, subdivision 1, paragraph (f); to fire
7.19 protection agencies; to eligibility for a private detective or protective agent license; to the
7.20 licensing and background study process under chapters 245A and 245C; to eligibility
7.21 for school bus driver endorsements; to eligibility for special transportation service
7.22 endorsements; to eligibility for a commercial driver training instructor license, which is
7.23 governed by section 171.35 and rules adopted under that section; to emergency medical
7.24 services personnel, or to the licensing by political subdivisions of taxicab drivers, if the
7.25 applicant for the license has been discharged from sentence for a conviction within the ten
7.26 years immediately preceding application of a violation of any of the following:

7.27 (1) sections 609.185 to 609.21, 609.221 to 609.223, 609.342 to 609.3451, or 617.23,
7.28 subdivision 2 or 3;

7.29 (2) any provision of chapter 152 that is punishable by a maximum sentence of
7.30 15 years or more; or

7.31 (3) a violation of chapter 169 or 169A involving driving under the influence, leaving
7.32 the scene of an accident, or reckless or careless driving.

8.1 This chapter also shall not apply to eligibility for juvenile corrections employment, where
8.2 the offense involved child physical or sexual abuse or criminal sexual conduct.

8.3 (b) This chapter does not apply to a school district or to eligibility for a license
8.4 issued or renewed by the Board of Teaching or the commissioner of education.

8.5 (c) Nothing in this section precludes the Minnesota Police and Peace Officers
8.6 Training Board or the state fire marshal from recommending policies set forth in this
8.7 chapter to the attorney general for adoption in the attorney general's discretion to apply to
8.8 law enforcement or fire protection agencies.

8.9 (d) This chapter does not apply to a license to practice medicine that has been denied
8.10 or revoked by the Board of Medical Practice pursuant to section 147.091, subdivision 1a.

8.11 (e) This chapter does not apply to any person who has been denied a license to
8.12 practice chiropractic or whose license to practice chiropractic has been revoked by the
8.13 board in accordance with section 148.10, subdivision 7.

8.14 (f) This chapter does not apply to any license, registration, or permit that has
8.15 been denied or revoked by the Board of Nursing in accordance with section 148.261,
8.16 subdivision 1a.

8.17 ~~(f)~~ (g) This chapter does not supersede a requirement under law to conduct a
8.18 criminal history background investigation or consider criminal history records in hiring
8.19 for particular types of employment.