

CHAPTER 347—H.F.No. 290

An act relating to occupations and professions; establishing an office of social work and mental health boards; establishing a board of social work; regulating and licensing social workers; establishing a board of marriage and family therapy; licensing and regulating marriage and family therapists; establishing a board of unlicensed mental health service providers; regulating unlicensed health service providers; providing penalties; appropriating money; amending Minnesota Statutes 1986, sections 144.335, subdivision 1; 148A.01, subdivision 5; 214.01, subdivision 2; 214.04, subdivision 3; and 609.341, subdivision 17; proposing coding for new law as Minnesota Statutes, chapter 148B.

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

ARTICLE 1

OFFICE OF SOCIAL WORK AND MENTAL HEALTH BOARDS

Section 1. [148B.01] DEFINITIONS.

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

Subd. 2. OFFICE. "Office" means the office of social work and mental health boards established in section 2.

Subd. 3. BOARD OF SOCIAL WORK. "Board of social work" means the board of social work established in article 2, section 2.

Subd. 4. BOARD OF MARRIAGE AND FAMILY THERAPY. "Board of marriage and family therapy" means the board of marriage and family therapy established in article 3, section 2.

Subd. 5. BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS. "Board of unlicensed mental health service providers" means the board of unlicensed mental health service providers established in article 4, section 2.

Subd. 6. SOCIAL WORK AND MENTAL HEALTH BOARDS. "Social work and mental health boards" or "boards" means the board of social work, the board of marriage and family therapy, and the board of unlicensed mental health service providers.

Subd. 7. REGULATED INDIVIDUAL. "Regulated individual" means a person licensed by the board of social work or the board of marriage and family therapy, or required to file with the board of unlicensed mental health service providers.

Sec. 2. [148B.02] OFFICE OF SOCIAL WORK AND MENTAL HEALTH BOARDS.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. CREATION. The office of social work and mental health boards is established to coordinate the administrative and staff functions of the boards of social work, marriage and family therapy, and unlicensed mental health service providers, and to collect and publish information as provided in this chapter. The office of social work and mental health boards consists of an executive secretary and other staff as provided in section 214.04.

Subd. 2. REPORTS. The office shall compile the report required by section 214.07 on behalf of the boards. The office shall present the information according to the category of educational credential held by the regulated individual, if any. Notwithstanding section 214.07, the office shall provide an interim report including this information to the commissioner of health on or before July 1, 1990.

Sec. 3. [148B.03] APPLICABILITY.

Sections 4 to 17 apply to all of the social work and mental health boards and the regulated individuals within their respective jurisdictions, unless superseded by an inconsistent law that relates specifically to a particular board.

Sec. 4. [148B.04] DISCLOSURE.

Subdivision 1. CLASSIFICATION OF DATA. Subject to the exceptions listed in this subdivision, all communications or information received by or disclosed to a board relating to any person or matter subject to its regulatory jurisdiction, and all records of any action or proceedings thereon, except a final decision of the board, are confidential and privileged and any disciplinary hearing must be closed to the public.

Subd. 2. CONTESTED CASE PROCEEDINGS. Upon application of a party in a contested case proceeding before a 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 ADVERSE ACTIONS. If a board imposes disciplinary measures or takes adverse action of any kind, the name and business address of the regulated individual, the nature of the misconduct, and the action taken by the board are public data.

Subd. 4. EXCHANGE OF INFORMATION. The boards shall exchange information with other boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (d), and may release information in the reports required under section 2.

Sec. 5. [148B.05] RIGHT TO PRACTICE.

Subdivision 1. ADVERSE ACTION BY A BOARD. A suspension, revocation, condition, limitation, qualification, or restriction of a regulated individual's license, filing, or right to practice is in effect pending determination of an

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appeal unless the court, upon petition and for good cause shown, orders otherwise. The right to provide services is automatically suspended if (1) a guardian of the person of a regulated individual is appointed by order of a probate court pursuant to sections 525.54 to 525.612, for reasons other than the minority of the individual, or (2) the individual is committed by order of a probate court pursuant to chapter 253B or sections 526.09 to 526.11. The right to provide services remains suspended until the individual is restored to capacity by a court and, upon petition by the individual, the suspension is terminated by the board after a hearing. In its discretion, a board may restore and reissue permission to provide services, but as a condition thereof may impose any disciplinary or corrective measure that it might originally have imposed.

Subd. 2. TEMPORARY SUSPENSION OF RIGHT OF PRACTICE. In addition to any other remedy provided by law, a board may, without a hearing, temporarily suspend the right of a regulated individual to provide services if the board finds that the regulated individual has violated a statute or rule that the board is empowered to enforce and continued practice would create a serious risk of harm to the public. The suspension is effective upon written notice to the individual specifying the statute or rule violated and remains in effect until the board issues a final order in the matter after a hearing. At the time it issues the suspension notice, the board shall schedule a disciplinary hearing to be held pursuant to the administrative procedure act. The individual must be provided with at least 20 days' notice of any hearing held pursuant to this subdivision. The hearing must be scheduled to begin no later than 30 days after the suspension order is issued.

Sec. 6. [148B.06] TAX CLEARANCE CERTIFICATE.

Subdivision 1. CERTIFICATE REQUIRED. A board may not issue or renew a filing if the commissioner of revenue notifies the board and the regulated individual or applicant for a license or filing that the individual 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 individual or applicant forwards a copy of the clearance to the board. The commissioner of revenue may issue a clearance certificate only if the individual 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 regulated individual 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 16, when a regulated individual or applicant is required to obtain a clearance certificate under this subdivision, a contested case hearing must be

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held if the individual 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 individual or applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the regulated individual or applicant. The notice may be served personally or by mail.

Subd. 3. INFORMATION REQUIRED. The boards shall require all regulated individuals or applicants to provide their social security number and Minnesota business identification number on all license or filing applications. Upon request of the commissioner of revenue, the board must provide to the commissioner of revenue a list of all regulated individuals and applicants, including the name and address, social security number, and business identification number. The commissioner of revenue may request a list of the individuals and applicants no more than once each calendar year. Notwithstanding sections 290.61 and 297A.43, the commissioner of revenue may release information necessary to accomplish the purpose of this subdivision.

Sec. 7. [148B.07] REPORTING OBLIGATIONS.

Subdivision 1. PERMISSION TO REPORT. A person who has knowledge of any conduct constituting grounds for discipline or adverse action relating to licensure or filing under this chapter may report the violation to the appropriate 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 appropriate 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 regulated individual'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 adverse action or disciplinary action for conduct that might constitute grounds for adverse action or disciplinary action by a board under this chapter. The institution or organization shall also report the resignation of any regulated individuals prior to the conclusion of any disciplinary or adverse action proceeding for conduct that might constitute grounds for disciplinary or adverse action under this chapter, or prior to the commencement of formal charges but after the individual had knowledge that formal charges were contemplated or in preparation.

Subd. 3. PROFESSIONAL SOCIETIES. A state or local professional society for regulated individuals shall report to the appropriate board any termination, revocation, or suspension of membership or any other disciplinary or adverse action taken against a regulated individual. If the society has received a complaint that might be grounds for discipline under this chapter against a

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member on which it has not taken any disciplinary or adverse 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 appropriate board.

Subd. 4. REGULATED INDIVIDUALS AND LICENSED PROFESSIONALS. A regulated individual or a licensed health professional shall report to the appropriate board personal knowledge of any conduct that the regulated individual or licensed health professional reasonably believes constitutes grounds for disciplinary or adverse action under this chapter by any regulated individual, 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 another regulated individual, 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 a board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to regulated individuals, or the medical joint underwriting association under chapter 62F, shall submit to the appropriate board a report concerning the regulated individuals 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 to the plaintiff;
- (2) the date the malpractice settlements or awards to the plaintiff were made;
- (3) the allegations contained in the claim or complaint leading to the settlements or awards made to the plaintiff;
- (4) the dollar amount of each malpractice settlement or award;
- (5) the regular address of the practice of the regulated individual against whom an award was made or with whom a settlement was made; and
- (6) the name of the regulated individual 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 regulated individual 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 regulated individual 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

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of an abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the regulated individual pursuant to sections 525.54 to 525.61 or commits a regulated individual pursuant to chapter 253B or sections 526.09 to 526.11.

Subd. 7. SELF-REPORTING. A regulated individual shall report to the appropriate board any personal action that would require that a report be filed with the board 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 boards 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 boards may issue subpoenas for the production of any reports required by subdivisions 2 to 7 or any related documents.

Sec. 8. [148B.08] 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 a board under section 7 or for otherwise reporting to the board violations or alleged violations of this chapter. All the reports are confidential and absolutely privileged communications.

Subd. 2. INVESTIGATION. Members of the boards of social work, marriage and family therapy, and unlicensed mental health professionals, and persons employed by the office or engaged in the investigation of violations and in the preparation and management of charges of violations of this chapter on behalf of the office or boards, 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.

Sec. 9. [148B.09] PROFESSIONAL COOPERATION.

A regulated individual 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 regulated individual 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.

Sec. 10. [148B.10] DISCIPLINARY RECORD ON JUDICIAL REVIEW.

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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.

Sec. 11. [148B.11] PROFESSIONAL ACCOUNTABILITY.

Subdivision 1. INVESTIGATION. Each board shall maintain and keep current a file containing the reports and complaints filed against regulated individuals 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 regulated individual as reported by insurers under section 7, 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 regulated individual'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 regulated individual, 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 regulated individual under review if the client signs a written consent permitting access. If no consent form has been signed, the hospital, clinic, or regulated individual shall first delete data in the record that identifies the client before providing it to the board.

Sec. 12. [148B.12] MALPRACTICE HISTORY.

Subdivision 1. SUBMISSION. Regulated individuals who have previously practiced in another state shall submit with their filing or application the following information:

(1) number, date, and disposition of any malpractice settlement or award made to the plaintiff or other claimant relating to the quality of services provided by the regulated individual; and

(2) number, date, and disposition of any civil litigations or arbitrations relating to the quality of services provided by the regulated individual in which the party complaining against the individual 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 regulated individual who willfully submits incorrect information is subject to disciplinary action under this chapter.

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Sec. 13. [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 adverse actions taken by the board. The publication must include, for each disciplinary measure or adverse action taken, the name and business address of the regulated individual, the nature of the misconduct, and the measure or action taken by the board.

Sec. 14. [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.

Sec. 15. [148B.15] DISPUTE RESOLUTION.

Subdivision 1. ARBITRATION. Each board shall encourage regulated individuals to submit all fee disputes to binding arbitration.

Subd. 2. MEDIATION. Each board shall encourage regulated individuals to submit all disputes that are not related to violations of a code of professional conduct to voluntary mediation.

Sec. 16. [148B.16] CONTESTED CASES.

Chapters 14 and 214 apply to any disciplinary proceeding or adverse action relating to filing taken under this chapter.

Sec. 17. [148B.17] FEES.

Each board shall by rule establish fees, including late fees, for licenses or filings 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.128, plus the prorated costs of the office of social work and mental health boards. Fees must be credited to the special revenue fund.

Sec. 18. Minnesota Statutes 1986, section 144.335, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meanings given them:

(a) "Patient" means a natural person who has received health care services from a provider for treatment of a medical, psychiatric or mental condition, or a person the patient designates in writing as a representative. Except for minors who have received health care services pursuant to sections 144.341 to 144.347,

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in the case of a minor, "patient" includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

(b) "Provider" means (1) any person who furnishes health care services and is licensed to furnish the services pursuant to chapters 147, 148, 148B, 150A, 151, or 153; and (2) a health care facility licensed pursuant to this chapter or chapter 144A.

Sec. 19. Minnesota Statutes 1986, section 148A.01, subdivision 5, is amended to read:

Subd. 5. **PSYCHOTHERAPIST.** "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Sec. 20. Minnesota Statutes 1986, section 214.01, subdivision 2, is amended to read:

Subd. 2. "Health-related licensing board" means the board of examiners of nursing home administrators established pursuant to section 144A.19, the board of medical examiners created pursuant to section 147.01, the board of nursing created pursuant to section 148.181, the board of chiropractic examiners established pursuant to section 148.02, the board of optometry established pursuant to section 148.52, the board of psychology established pursuant to section 148.90, the social work licensing board pursuant to article 2, section 2, the board of marriage and family therapy pursuant to article 3, section 2, the board of mental health service providers established pursuant to article 4, section 2, the board of dentistry established pursuant to section 150A.02, the board of pharmacy established pursuant to section 151.02, the board of podiatry established pursuant to section 153.02, and the board of veterinary medicine, established pursuant to section 156.01.

Sec. 21. Minnesota Statutes 1986, section 214.04, subdivision 3, is amended to read:

Subd. 3. The executive secretary of each health-related and non-health-related board shall be the chief administrative officer for the board but shall not be a member of the board. The executive secretary shall maintain the records of the board, account for all fees received by it, supervise and direct employees servicing the board, and perform other services as directed by the board. The executive secretaries and other employees of the following boards shall be hired by the board, and the executive secretaries shall be in the unclassified civil service, except as provided in this subdivision:

- (1) dentistry;
- (2) medical examiners;

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- (3) nursing;
- (4) pharmacy;
- (5) accountancy;
- (6) architecture, engineering, land surveying and landscape architecture;
- (7) barber examiners;
- (8) cosmetology;
- (9) electricity;
- (10) teaching; ~~and~~
- (11) peace officer standards and training;
- (12) social work;
- (13) marriage and family therapy;
- (14) unlicensed mental health service providers; and
- (15) office of social work and mental health boards.

The board of medical examiners shall set the salary of its executive director, which may not exceed 95 percent of the top of the salary range set for the commissioner of health in section 15A.081, subdivision 1. At least 30 days before the board of medical examiners adopts a salary increase for its executive director, the board shall submit the proposed salary increase to the legislative commission on employee relations for its review.

The executive secretaries serving the remaining boards shall be hired by those boards, and shall be in the unclassified civil service except for part-time executive secretaries, who are not required to be in the unclassified service. Boards not requiring a full-time executive secretary may employ such services on a part-time basis. To the extent practicable the sharing of part-time executive secretaries by boards being serviced by the same department is encouraged. Persons providing services to those boards not listed in this subdivision, except executive secretaries of the boards and employees of the attorney general, shall be classified civil service employees of the department servicing the board. To the extent practicable the commissioner shall insure that staff services are shared by the boards being serviced by the department. If necessary, a board may hire part-time, temporary employees to administer and grade examinations.

Sec. 22. Minnesota Statutes 1986, section 609.341, subdivision 17, is amended to read:

Subd. 17. "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, clergy, marriage and family therapist,

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mental health service provider, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Sec. 23. [148B.171] EMERGENCY RULES.

The office or boards may adopt emergency rules under sections 14.29 to 14.385 to carry out the provisions of this chapter. Notwithstanding contrary provisions of chapter 14, the authority to use sections 14.29 to 14.385 expires on December 31, 1988.

ARTICLE 2

BOARD OF SOCIAL WORK

Section 1. [148B.18] DEFINITIONS.

Subdivision 1. APPLICABILITY. For the purposes of sections 1 to 11, 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. 3. BOARD. "Board" means the social work licensing board created in section 2.

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 or clinical social work.

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 or clinical social work.

Subd. 6. PUBLIC AGENCY SOCIAL WORKER. "Public agency social worker" means an individual who is employed by the federal government or the state of Minnesota or any of its political subdivisions in social work practice or clinical social work.

Subd. 7. PRIVATE AGENCY SOCIAL WORKER. "Private agency social worker" means an individual who is employed by an entity not listed in subdivision 6 in the practice of social work or clinical social work.

Subd. 8. PRIVATE PRACTICE. "Private practice" means social work practice conducted by an individual 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.

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Subd. 9. PSYCHOTHERAPY. “Psychotherapy” means treatment of a person or persons who have cognitive, emotional, behavioral, or social dysfunctions through psychological or interpersonal methods. The treatment is a planned and structured program, conducted by a qualified mental health professional and based on information from a differential diagnostic examination, and is directed toward the accomplishment of goals provided in a plan of care. Social workers qualified to practice psychotherapy are licensed independent clinical social workers; or licensed graduate or licensed independent social workers who have training required by section 4, subdivision 6, and practice under the supervision of a 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 4, subdivision 6; or 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 postmaster’s supervised experience in direct clinical practice.

Subd. 11. SOCIAL WORK PRACTICE. “Social work practice” includes the application of psychosocial theory and methods in the prevention, treatment, or resolution of social and/or psychological dysfunction caused by environmental stress, interpersonal or intrapersonal conflict, physical or mental disorders, or a combination of these causes, with particular attention to the person-in-situation configuration.

Social work practice also includes but is not limited to psychotherapy, which is restricted to social workers qualified to practice psychotherapy as defined in subdivision 9. For the following four categories of licensure, social work practice also includes the following action:

(a) Licensed social workers evaluate and assess difficulties in psychosocial functioning, develop a treatment plan to alleviate those difficulties, and either carry it out themselves or refer clients to other qualified resources for assistance. Treatment interventions commonly include but are not limited to psychosocial evaluation; counseling of individuals, families, and groups; advocacy; referral to community resources; and facilitation of organizational change to meet social needs.

(b) Licensed graduate social workers and licensed independent social workers evaluate and treat more complex problems in psychosocial functioning. Treatment interventions include but are not limited to psychosocial evaluation; counseling of individuals, families, and groups; referral to community resources; advocacy; facilitation of organizational change to meet social needs; and psychotherapy when conducted under supervision as defined in subdivision 12.

(c) Licensed independent clinical social workers provide professional services for the diagnosis, treatment, and prevention of mental and emotional disorders

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in individuals, families, and groups, with the goal of restoring, maintaining, and enhancing social functioning. Treatment interventions include, but are not limited to, those listed for licensed graduate and licensed independent social workers plus individual, marital, and group psychotherapy without supervision. Independent clinical social work practice may be conducted by independent clinical social workers in private independent practice or in the employ of a public or private agency or corporation or other legal entity.

Social work practice is not medical care nor any other type of remedial care that may be reimbursed under medical assistance, chapter 256B, except to the extent such care is reimbursed under section 256B.02, subdivision 8, clause (5), or as provided under Minnesota Rules, parts 9500.1070, 9500.1020, or their successor parts.

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 social work licensing board. Supervision shall be provided:

(1) by a social worker licensed at least at the level of the worker being supervised and qualified under section 4 to practice without supervision; or

(2) when the social work licensing board determines that supervision by a social worker as required in clause (1) is unobtainable, and in other situations considered appropriate by the board of social work examiners, by another qualified professional.

Sec. 2. [148B.19] SOCIAL WORK LICENSING BOARD.

Subdivision 1. CREATION. The social work licensing board is created. The board consists of ten members appointed by the governor. The members are:

- (1) six social workers licensed under sections 1 to 11;
- (2) three public members as defined in section 214.02; and
- (3) one school social worker licensed by the board of teaching.

Subd. 2. QUALIFICATIONS OF BOARD MEMBERS. The six social worker members of the board shall be as follows: two licensed independent clinical social workers, two licensed independent social workers, and two licensed social workers.

Social worker members shall represent the following employment settings:

- (1) two members shall be public agency social workers;
- (2) two members shall be private agency social workers;
- (3) one member shall be engaged in private practice;

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

(5) in addition, at least two members shall be persons of color and at least four members shall reside outside of the seven-county metropolitan area.

Subd. 3. MEMBERS OF FIRST BOARD APPOINTED. Members of the first board appointed according to subdivision 1, clause (1), and subdivision 2, clauses (1) to (5), need not be licensed, but must meet all qualifications, other than payment of fees, to be eligible for licensure under sections 1 to 11.

Subd. 4. OFFICERS AND EXECUTIVE SECRETARY. 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 secretary who is not a member of the board.

Subd. 5. TERMS AND SALARIES. Chapter 214 applies to the social work licensing board unless superseded by sections 1 to 11.

Sec. 3. [148B.20] DUTIES OF THE BOARD.

Subdivision 1. GENERAL. The social work licensing board 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 4 to 6. 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 4 to practice social work. Examinations must minimize cultural bias and must be balanced in theory.

(d) Issue licenses to individuals qualified under sections 1 to 11.

(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) Establish initial and renewal application and examination fees sufficient to cover operating expenses of the board and its agents.

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(i) 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.

(j) 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. CONTINUING EDUCATION COMMITTEE. The board shall appoint a continuing education committee that shall advise the board on the administration of continuing education requirements in sections 1 to 11. The committee chair shall be appointed by the board and shall be a member of the board. Four additional committee members shall be appointed by the board and need not be board members. The committee members and chair shall consist of licensed social workers, licensed independent social workers, and licensed independent clinical social workers as defined in section 4, subdivision 6, and shall include:

(1) a social worker engaged in regular teaching duties at an accredited program of social work;

(2) a public agency social worker;

(3) a private agency social worker;

(4) a social worker engaged in private practice;

(5) a public member as defined in section 214.02; and

(6) in addition, at least one member shall be a person of color and at least one member shall reside outside of the seven-county metropolitan area.

Sec. 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 sections 4 to 6 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 general fund.

Subd. 3. SOCIAL WORKER. To be licensed as a social worker, an applicant must provide evidence satisfactory to the board that the applicant:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(1) has received a baccalaureate degree from an accredited program of social work;

(2) has passed the examination provided for in section 3, subdivision 1;

(3) will engage in social work practice only under supervision as defined in section 1, subdivision 12, for at least two years in full-time employment or 4,000 hours; and

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

Subd. 4. GRADUATE SOCIAL WORKER. To be licensed as a graduate social worker, an applicant must provide evidence satisfactory to the board that the applicant:

(1) has received a master's degree from an accredited program of social work or doctoral degree in social work;

(2) has passed the examination provided for in section 3, subdivision 1;

(3) will engage in social work practice only under supervision as defined in section 1, subdivision 12; and

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

Subd. 5. INDEPENDENT SOCIAL WORKER. To be licensed as an independent social worker, an applicant must provide evidence satisfactory to the board that the applicant:

(1) has received a master's degree from an accredited program of social work or doctoral degree in social work;

(2) has passed the examination provided for in section 3, subdivision 1;

(3) has practiced social work for at least two years in full-time employment or 4,000 hours under supervision as defined in section 1, subdivision 12, after receiving the master's or doctoral degree in social work; and

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

Subd. 6. INDEPENDENT CLINICAL SOCIAL WORKER. To be licensed as an independent clinical social worker, an applicant must provide evidence satisfactory to the board that the applicant:

(1) has received a master's degree from an accredited program of social work, or doctoral degree in social work, that included an advanced concentra-

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tion of clinically oriented course work as defined by the board and a supervised clinical field placement at the graduate level, or postmaster'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 under supervision as defined in section 1, subdivision 12, after receiving the master's or doctoral degree in social work;

(3) has passed the examination provided for in section 3, subdivision 1; and

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

Sec. 5. [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. 2. CONTINUING EDUCATION. At the time of renewal, each licensee shall provide evidence satisfactory to the board that the licensee has completed during each three-year period at least the equivalent of 45 clock hours of continuing professional post-degree education in programs approved by the board and continues to be qualified to practice under sections 1 to 11.

Sec. 6. [148B.23] LICENSES; TRANSITION PERIOD.

Subdivision 1. EXEMPTION FROM EXAMINATION. For two years from the effective date of sections 1 to 11, the board shall issue a license without examination to an applicant:

(1) for a licensed social worker, if the board determines that the applicant has received a baccalaureate degree from an accredited program of social work, or that the applicant has at least a baccalaureate degree from an accredited college or university and two years in full-time employment or 4,000 hours of experience in the supervised practice of social work within the five years before the effective date of sections 1 to 11;

(2) for a licensed graduate social worker, if the board determines that the applicant has received a master's degree from an accredited program of social work or doctoral degree in social work; or a master's or doctoral degree from a graduate program in a human service discipline, as approved by the board;

(3) for a licensed independent social worker, if the board determines that the applicant has received a master's degree from an accredited program of social work or doctoral degree in social work; or a master's or doctoral degree from a graduate program in a human service discipline, as approved by the board; and, after receiving the degree, has practiced social work for at least two years in full-time employment or 4,000 hours under the supervision of a social worker meeting these requirements, or of another qualified professional; and

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(4) for a licensed independent clinical social worker, if the board determines that the applicant has received a master's degree from an accredited program of social work or doctoral degree in social work; or a master's or doctoral degree from a graduate program in a human service discipline as approved by the board; and, after receiving the degree, has practiced clinical social work for at least two years in full-time employment or 4,000 hours under the supervision of a clinical social worker meeting these requirements, or of another qualified mental health professional.

Subd. 2. OTHER REQUIREMENTS. An applicant licensed under this section must also agree to:

(1) engage in social work practice only under the applicable supervision requirements provided in section 4 for each category of licensees; and

(2) to conduct all professional activities as a social worker in accordance with standards for professional conduct established by the board by rule.

Subd. 3. TEMPORARY RULEMAKING AUTHORITY. The board is authorized to adopt emergency and permanent rules to implement this section.

Sec. 7. [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 sections 4 to 6.

Sec. 8. [148B.25] NONTRANSFERABILITY OF LICENSES.

A social work license is not transferable.

Sec. 9. [148B.26] DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

Subdivision 1. GROUNDS. The board may refuse to renew or to grant a license to, or may suspend, revoke, or restrict the license of an individual whom the board, after a hearing under the contested case provisions of chapter 14, determines:

(1) is incompetent to engage in social work practice, or is found to be engaged in social work practice in a manner harmful or dangerous to a client or to the public;

(2) has violated the rules of the board or the statutes the board is empowered to enforce;

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

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

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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.

Sec. 10. [148B.27] PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES; PENALTY.

Subdivision 1. PRACTICE. After the board adopts rules, no individual shall engage in social work practice unless that individual holds a valid 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. After the board adopts rules, 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 license issued under sections 1 to 11. City, county, and state agency social workers who are not licensed under sections 1 to 11 may use the title city agency social worker or county agency social worker or state agency social worker.

Subd. 3. PENALTY. A person who violates sections 4 to 11 is guilty of a misdemeanor.

Sec. 11. [148B.28] EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. OTHER PROFESSIONALS. Nothing in sections 1 to 11 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; licensed psychologists; 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.

Subd. 2. STUDENTS. Nothing in sections 1 to 11 shall be construed to prevent students enrolled in an accredited program of social work to engage in the practice of social work, or to prevent social work practice by individuals preparing for licensed independent clinical social work practice under qualified supervision in a social work setting.

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 4, to practice social work.

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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, nor shall they require their social worker employees to be licensed.

Subd. 5. FEDERALLY RECOGNIZED TRIBES AND PRIVATE NON-PROFIT 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. HOSPITAL AND NURSING HOME SOCIAL WORKERS. The licensure of social workers employed by hospitals and nursing homes licensed under chapters 144 and 144A shall be voluntary. Hospitals and nursing homes employing social workers shall not be required to employ licensed social workers, nor shall they require their social work employees to be licensed.

ARTICLE 3

BOARD OF MARRIAGE AND FAMILY THERAPY

Section 1. [148B.29] DEFINITIONS.

Subdivision 1. APPLICABILITY For the purposes of sections 1 to 11, the following terms have the meanings given.

Subd. 2. BOARD. "Board" means the board of marriage and family therapy created in section 2.

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.

Sec. 2. [148B.30] BOARD OF MARRIAGE AND FAMILY THERAPY EXAMINERS.

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

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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 1 to 11, but shall meet all qualifications, other than payments of fees, so as to be eligible for licensure under sections 1 to 11.

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 proceedings. 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.

Sec. 3. [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 1 to 11;

(3) issue licenses to individuals who are qualified under sections 1 to 11;

(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

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

Sec. 4. [148B.32] PROHIBITIONS AND PENALTY.

Subdivision 1. UNLICENSED PRACTICE PROHIBITED. After adoption of rules by the board implementing sections 1 to 11, no individual shall engage in marriage and family therapy practice unless that individual holds a valid license issued under sections 1 to 11.

Marriage and family therapy practice is not medical care nor any other type of remedial care that may be reimbursed under medical assistance, chapter 256B, except to the extent such care is reimbursed under section 256B.02, subdivision 8, clause (5).

Subd. 2. APPEARANCE AS LICENSEE PROHIBITED. After adoption of rules by the board implementing sections 1 to 11, no individual shall be held out to be a marriage and family therapist unless that individual holds a valid license issued under sections 1 to 11.

Subd. 3. PENALTY. A person who violates a provision of sections 1 to 11 is guilty of a gross misdemeanor.

Sec. 5. [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 counseling satisfactory to the board;
- (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 commissioner on accreditations for marriage and family therapy education of the American association for marriage and family therapists; 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 counselor in accordance with a code of ethics for marriage and family therapists to be adopted by the board; and

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(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.

Sec. 6. [148B.34] LICENSES; TRANSITION PERIOD.

Notwithstanding section 5, clause (7), for two years from the effective date of sections 1 to 11, a license shall be issued to an applicant without examination if the board is satisfied that the applicant meets the requirements of section 5, subdivision 1, clauses (1) to (6).

Sec. 7. [148B.35] RECIPROCITY 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 1 to 11 and the rules of the board.

Sec. 8. [148B.36] NONTRANSFERABILITY OF LICENSES.

A marriage and family therapy license is not transferable.

Sec. 9. [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 1 to 11 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.

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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.

Sec. 10. [148B.38] EXCEPTIONS FROM LICENSE REQUIREMENT.

Subdivision 1. OTHER PROFESSIONALS. Nothing in sections 1 to 11 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 1 to 11 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 NON-PROFIT 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.

Sec. 11. [148B.39] PRIVILEGED COMMUNICATIONS; EXCEPTIONS.

A person licensed under sections 1 to 11 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

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privilege would violate the defendant's right to a compulsory process or the right to present testimony and witnesses in that persons 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.

ARTICLE 4

BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS

Section 1. [148B.40] DEFINITIONS.

Subdivision 1. TERMS. As used in sections 1 to 8, the following terms have the meanings given them in this section.

Subd 2. BOARD. "Board" means the board of mental health service providers established in section 2.

Subd. 3. MENTAL HEALTH SERVICE PROVIDER. "Mental health service provider" or "provider" means any person who provides, for a remuneration, mental health services as defined in subdivision 4. It does not include persons licensed by the board of medical examiners under chapter 147; the board of nursing under sections 148.171 to 148.285; or the board of psychology under sections 148.88 to 148.98; the board of social work under article 2, sections 1 to 13; the board of marriage and family therapy under article 3, sections 1 to 11; or another licensing board if the person is practicing within the scope of the license.

Subd. 4. MENTAL HEALTH SERVICES. "Mental health services" means the professional treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including intrapersonal or interpersonal dysfunctions.

Subd. 5. MENTAL HEALTH CLIENT. "Mental health client" or "client" means a person who receives the services of a mental health service provider.

Sec. 2. [148B.41] BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS.

Subdivision 1. COMPOSITION. The board of unlicensed mental health service providers consists of 17 members, including two chemical dependency counselors, two professional counselors, two pastoral counselors, five members representing other identifiable specialties and subgroups of providers subject to filing requirements, and six public members as defined in section 214.02. Within 90 days after the effective date of rules adopted by the board to implement sections 1 to 8, members of the board specified must be mental health service providers who have filed with the board pursuant to section 3.

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Subd. 2. APPOINTMENT. Members of the board are appointed by the governor and serve under section 214.09.

Subd. 3. BOARD ADMINISTRATION. The board shall elect from among its members a chair and a vice-chair to serve for one year or until a successor is elected and qualifies. The members of the board have authority to administer oaths and the board, in session, to take testimony as to matters pertaining to the duties of the board. Six members of the board constitute a quorum for the transaction of business.

Subd. 4. RULEMAKING. The board shall adopt rules necessary to implement, administer, or enforce sections 1 to 8 under chapter 14 and section 214.001, subdivisions 2 and 3. The board shall consult with the commissioner of health, the commissioner of human services, and the commissioner of employee relations in the development of rules. The board may not adopt rules that restrict or prohibit persons from providing mental health services on the basis of education, training, experience, or supervision; or that restrict the use of any title.

Sec. 3. [148B.42] FILING REQUIRED.

Subdivision 1. FILING. All mental health service providers shall file with the state, on a form provided by the board, their name; home and business address; telephone number; degrees held, if any, major field, and whether the degrees are from an accredited institution and how the institution is accredited; and any other relevant experience. An applicant for filing who has practiced in another state shall authorize, in writing, the licensing or regulatory entity in the other state or states to release to the board any information on complaints or disciplinary actions pending against that individual, as well as any final disciplinary actions taken against that individual. The board shall provide a form for this purpose. The board may reject a filing if there is evidence of a violation of or failure to comply with this chapter.

Subd. 2. ACKNOWLEDGMENT OF FILING. The board shall issue an acknowledgment of filing to each mental health service provider who files under subdivision 1 and relevant rules of the board, and who is determined by the board to be in compliance with this chapter. The acknowledgment of filing must not be displayed in any manner nor shall it be shown to mental health clients. The acknowledgment of filing shall contain, in bold print, the phrase: "This acknowledgment of filing does not imply or certify in any way that this mental health professional has met any standards or criteria of education or training."

Subd. 3. NONTRANSFERABILITY. Acknowledgments of filing are non-transferable.

Subd. 4. PENALTIES. Failure to file with the board, or supplying false or misleading information on the filing form, application for registration, or any accompanying statements shall constitute grounds for adverse action.

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Subd. 5. PROVISION OF MENTAL HEALTH SERVICES WITHOUT FILING. Except as otherwise provided in this chapter, it is unlawful for any person not filing with the board to provide mental health services in this state as defined in section 1, subdivision 4. Any person violating subdivision 1 is guilty of a gross misdemeanor.

Sec. 4. [148B.43] PROHIBITED USE OF ACKNOWLEDGMENT.

No mental health service provider may display the acknowledgment received under section 3, subdivision 2, or refer to it in any advertising, on stationary, or in any communication to a client or the public, or otherwise use the fact that the provider has filed with the state as an indication of state approval or endorsement or satisfaction of standards of conduct, training, or skill.

Sec. 5. [148B.44] PROHIBITED CONDUCT.

Subdivision 1. PROHIBITED CONDUCT. Notwithstanding any law to the contrary, the board may reject a filing or application, or may impose adverse action as described in section 6 against any mental health service provider for failure to comply with the provisions of this chapter. The following conduct is prohibited and is grounds for adverse action:

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

(c) Revocation, suspension, restriction, limitation, or other disciplinary action against the mental health professional'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, or failure to report to the board that charges regarding the person's license, certificate, registration, or right of practice have been brought in another state or jurisdiction.

(d) Advertising that is false or misleading.

(e) Filing with the board false or misleading statements of credentials, training, or experience.

(f) Conduct likely to deceive, defraud, or harm the public; or demonstrating

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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 has a psychopathic personality as defined in section 526.09, or who is dangerous to himself or herself, or adjudication pursuant to chapter 253B, as chemically dependent, mentally ill, mentally retarded, or mentally ill and dangerous to the public.

(h) Inability to provide mental health services with reasonable safety to clients by reason of physical, mental, or emotional illness; drunkenness; or use of legend drugs, chemicals, controlled substances, or any other similar materials or mood-altering substances.

(i) Revealing a communication from, or relating to, a client except when otherwise required or permitted by law.

(j) Failure to comply with a client's request made under section 144.335, or to furnish a client record or report required by law.

(k) 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.

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

(m) Engaging in sexual contact with a client or former client as defined in section 148A.01.

(n) Failure to make reports as required by section 5, or cooperate with an investigation of the board as required by section 7.

(o) 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.

(p) Undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.

(q) 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.

Subd. 2. EVIDENCE. In adverse actions alleging a violation of subdivision 1, paragraph (a), (b), or (c), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of its contents.

Subd. 3. MENTAL EXAMINATION; ACCESS TO MEDICAL DATA. (a)

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If the board has probable cause to believe that a mental health service provider comes under subdivision 1, paragraph (g) or (h), it may direct the provider to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision every mental health service provider is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians', psychologists', or mental health professional's testimony or examination reports on the ground that the same constitute a privileged communication. Failure of a mental health service provider to submit to an examination when directed constitutes an admission of the allegations against the provider, unless the failure was due to circumstance beyond the provider's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A mental health service provider affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the provider 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 board shall be used against a mental health service provider in any other proceeding.

(b) In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.42, 144.651, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a mental health service provider without the provider's consent if the board has probable cause to believe that a provider comes under subdivision 1, paragraph (g), (h), or (m). 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 board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision, unless the information is false and the 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 sections 13.01 to 13.87.

Sec. 6. [148B.45]. ADVERSE ACTIONS.

Subdivision 1. FORMS OF ADVERSE ACTION. When the board finds that a mental health service provider has violated a provision or provisions of this chapter, it may do one or more of the following:

- (1) deny or reject the filing;
- (2) revoke the right to practice;
- (3) suspend the right to practice;
- (4) impose limitations or conditions on the provider's provision of mental

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health services, the imposition of rehabilitation requirements, or the requirement of practice under supervision;

(5) 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 provider of any economic advantage gained by reason of the violation charged or to reimburse the board for all costs of the investigation and proceeding;

(6) order the provider to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution; or

(7) censure or reprimand the provider.

Subd. 2. PROCEDURES. The board shall adopt a written statement of internal operating procedures for receiving and investigating complaints reviewing misconduct cases, and imposing adverse actions.

Subd. 3. MANDATORY SUSPENSION OR REVOCATION OF RIGHT OF PRACTICE. The board shall suspend or revoke the right of a provider to provide mental health services for violations of section 4, subdivision 1, paragraphs (a), (b), and (m).

Sec. 7. [148B.46] MENTAL HEALTH CLIENT BILL OF RIGHTS.

Subdivision 1. SCOPE. All mental health service providers other than those providing services in a facility regulated under section 144.651 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 service provider. 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 provider.

(b) The degrees, training, experience, or other qualifications of the provider, followed by the following statement in bold print:

THE STATE OF MINNESOTA HAS NOT ADOPTED UNIFORM EDUCATIONAL AND TRAINING STANDARDS FOR MENTAL HEALTH SERVICE PROVIDERS. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATIONAL PURPOSES ONLY.

(c) The name, business address, and telephone number of the provider's supervisor, if any.

(d) Notice that a client has the right to file a complaint with the provider's supervisor, if any, and the procedure for filing complaints.

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(e) The name, address, and telephone number of the board and notice that a client may file complaints with the board.

(f) The provider's fees per unit of service, the provider's method of billing for such fees, the names of any insurance companies that have agreed to reimburse the provider, or health maintenance organizations with whom the provider contracts to provide service, whether the provider accepts Medicare, medical assistance, or general assistance medical care, and whether the provider 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 provider in treating patients.

(i) Notice that the client has a right to complete and current information concerning the provider'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 provider.

(k) A statement that client records and transactions with the provider 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 providers, and to change providers 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.

(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.

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Sec. 8. [148B.47] RENEWALS.

Notwithstanding any other law, the board shall adopt rules providing for the renewal of filings. The rules shall specify the period of time for which a filing is valid, procedures and information required for the renewal, and renewal fees.

Sec. 9. [148B.48] REPORTS.

Subdivision 1. COMMISSIONER OF HEALTH. The commissioner of health shall review the report of the office under sections 214.001, 214.13, and 214.141. The commissioner shall make recommendations to the legislature by January 15, 1991, on the need for registration or licensure of unlicensed mental health service providers and the need to retain the board of unlicensed mental health service providers.

Subd. 2. BOARD OF UNLICENSED MENTAL HEALTH SERVICE PROVIDERS. The board of unlicensed mental health service providers must report on the board's findings and activities to the commissioner of health and the legislature by July 1, 1990. The board shall report to the legislature on or before January 15, 1991, with recommendations on whether providers who are not trained should be allowed to continue to practice.

Subd. 3. LEGISLATIVE INTENT. Nothing in this section is intended to require the commissioner of health to delay review of applications for credentialing pursuant to sections 214.13 and 214.141 pending the outcome of the reports required under this section.

Sec. 10. APPROPRIATION.

\$835,000 is appropriated from the special revenue fund to the office of social work and mental health boards.

Sec. 11. SUNSET.

Article 4, sections 1 to 8, are repealed effective July 1, 1991.

Approved June 1, 1987

CHAPTER 348—H.F.No. 794

An act relating to waste management; regulating disposal of wastes; providing for a solid waste management policy; providing for recycling policy and marketing; managing household hazardous wastes; regulating the sale and disposal of motor oil and lead acid batteries; providing for waste pesticide collection; appropriating money; amending Minnesota Statutes 1986, sections 115A.03, subdivisions 9 and 21; 115A.06, subdivision 14; 115A.11, subdivision 2; 115A.15, subdivision 6; 115A.152; 115A.154; 115A.156, subdivisions 1, 2, and 5; 115A.158, subdivisions 1 and 2; 115A.42; 115A.45; 115A.49; 115A.51; 115A.52; 115A.53;

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