

CHAPTER 559—S.F.No. 2732

An act relating to public health; providing for the reporting and monitoring of certain licensed health care workers who are infected with the human immunodeficiency virus or hepatitis B virus; authorizing rulemaking for certain health-related licensing boards; providing penalties; providing licensing requirements for chemical dependency counselors; providing for denial, suspension, or revocation of licenses under certain circumstances; requiring the commissioner of human services to adopt rules for licensure of chemical dependency counselors; appropriating money; amending Minnesota Statutes 1990, sections 144.054; 144.55, subdivision 3; 147.091, subdivision 1; 148.261, subdivision 1; 150A.08, subdivision 1; 153.19, subdivision 1; 214.12; and 595.02, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 150A; and 214; proposing coding for new law as Minnesota Statutes, chapter 148C.

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

ARTICLE 1

Section 1. Minnesota Statutes 1990, section 144.054, is amended to read:

144.054 SUBPOENA POWER.

Subdivision 1. The commissioner may, as part of an investigation to determine whether a serious health threat exists or to locate persons who may have been exposed to an agent which can seriously affect their health, issue subpoenas to require the attendance and testimony of witnesses and production of books, records, correspondence, and other information relevant to any matter involved in the investigation. The commissioner or the commissioner's designee may administer oaths to witnesses or take their affirmation. The subpoenas may be served upon any person named therein anywhere in the state by any person authorized to serve subpoenas or other processes in civil actions of the district courts. If a person to whom a subpoena is issued does not comply with the subpoena, the commissioner may apply to the district court in any district and the court shall order the person to comply with the subpoena. Failure to obey the order of the court may be punished by the court as contempt of court. Except as provided in subdivision 2, no person may be compelled to disclose privileged information as described in section 595.02, subdivision 1. All information pertaining to individual medical records obtained under this section shall be considered health data under section 13.38. The fees for the service of a subpoena must be paid in the same manner as prescribed by law for a service of process issued out of a district court. Witnesses must receive the same fees and mileage as in civil actions.

Subd. 2. The commissioner may subpoena privileged medical information of patients who may have been exposed by a licensed dental hygienist, dentist, physician, nurse, podiatrist, a registered dental assistant, or a physician's assis-

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tant who is infected with the human immunodeficiency virus (HIV) or hepatitis B virus (HBV) when the commissioner has determined that it may be necessary to notify those patients that they may have been exposed to HIV or HBV.

Sec. 2. Minnesota Statutes 1990, section 144.55, subdivision 3, is amended to read:

Subd. 3. **STANDARDS FOR LICENSURE.** (a) Notwithstanding the provisions of section 144.56, for the purpose of hospital licensure, the commissioner of health shall use as minimum standards the hospital certification regulations promulgated pursuant to Title XVIII of the Social Security Act, United States Code, title 42, section 1395, et. seq. The commissioner may use as minimum standards changes in the federal hospital certification regulations promulgated after May 7, 1981 if the commissioner finds that such changes are reasonably necessary to protect public health and safety. The commissioner shall also promulgate in rules additional minimum standards for new construction.

(b) Each hospital shall establish policies and procedures to prevent the transmission of human immunodeficiency virus and hepatitis B virus to patients and within the health care setting. The policies and procedures shall be developed in conformance with the most recent recommendations issued by the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control. The commissioner of health shall evaluate a hospital's compliance with the policies and procedures according to subdivision 4.

Sec. 3. Minnesota Statutes 1990, section 147.091, subdivision 1, is amended to read:

Subdivision 1. **GROUND S LISTED.** The board may refuse to grant a license or may impose disciplinary action as described in section 147.141 against any physician. The following conduct is prohibited and is grounds for disciplinary action:

(a) Failure to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the board. The burden of proof shall be upon the applicant to demonstrate such qualifications or satisfaction of such requirements.

(b) Obtaining a license by fraud or cheating, or attempting to subvert the licensing examination process. Conduct which subverts or attempts to subvert the licensing examination process includes, but is not limited to: (1) conduct which violates the security of the examination materials, such as removing examination materials from the examination room or having unauthorized possession of any portion of a future, current, or previously administered licensing examination; (2) conduct which violates the standard of test administration, such as communicating with another examinee during administration of the examination, copying another examinee's answers, permitting another examinee to copy one's answers, or possessing unauthorized materials; or (3) impersonat-

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ing an examinee or permitting an impersonator to take the examination on one's own behalf.

(c) Conviction, during the previous five years, of a felony reasonably related to the practice of medicine or osteopathy. Conviction as used in this subdivision shall include 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 guilt is made or returned but the adjudication of guilt is either withheld or not entered thereon.

(d) Revocation, suspension, restriction, limitation, or other disciplinary action against the person's medical license in another state or jurisdiction, failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction, or having been refused a license by any other state or jurisdiction.

(e) Advertising which is false or misleading, which violates any rule of the board, or which claims without substantiation the positive cure of any disease, or professional superiority to or greater skill than that possessed by another physician.

(f) Violating a rule promulgated by the board or an order of the board, a state, or federal law which relates to the practice of medicine, or in part regulates the practice of medicine including without limitation sections 148A.02, 609.344, and 609.345, or a state or federal narcotics or controlled substance law.

(g) Engaging in any unethical conduct; conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare or safety of a patient; or medical practice which is professionally incompetent, in that it may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.

(h) Failure to supervise a physician's assistant or failure to supervise a physician under any agreement with the board.

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

(j) Adjudication as mentally incompetent, mentally ill or mentally retarded, or as a chemically dependent person, a person dangerous to the public, or a person who has a psychopathic personality by a court of competent jurisdiction, within or without this state. Such adjudication shall automatically suspend a license for the duration thereof unless the board orders otherwise.

(k) Engaging in unprofessional conduct. Unprofessional conduct shall

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include any departure from or the failure to conform to the minimal standards of acceptable and prevailing medical practice in which proceeding actual injury to a patient need not be established.

(l) Inability to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills.

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

(n) Failure by a doctor of osteopathy to identify the school of healing in the professional use of the doctor's name by one of the following terms: osteopathic physician and surgeon, doctor of osteopathy, or D.O.

(o) Improper management of medical records, including failure to maintain adequate medical records, to comply with a patient's request made pursuant to section 144.335 or to furnish a medical record or report required by law.

(p) Fee splitting, including without limitation:

(1) paying, offering to pay, receiving, or agreeing to receive, a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of patients or the prescription of drugs or devices;

(2) dividing fees with another physician or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional and the physician has disclosed the terms of the division;

(3) referring a patient to any health care provider as defined in section 144.335 in which the referring physician has a significant financial interest unless the physician has disclosed the physician's own financial interest; and

(4) dispensing for profit any drug or device, unless the physician has disclosed the physician's own profit interest.

The physician must make the disclosures required in this clause in advance and in writing to the patient and must include in the disclosure a statement that the patient is free to choose a different health care provider. This clause does not apply to the distribution of revenues from a partnership, group practice, non-profit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the physician or under a physician's direct supervision, or to the division or distribution of prepaid or capitated health care premiums, or fee-for-service withhold amounts paid under contracts established under other state law.

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

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(r) Becoming addicted or habituated to a drug or intoxicant.

(s) Prescribing a drug or device for other than medically accepted therapeutic or experimental or investigative purposes authorized by a state or federal agency or referring a patient to any health care provider as defined in section 144.335 for services or tests not medically indicated at the time of referral.

(t) Engaging in conduct with a patient which is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior which is seductive or sexually demeaning to a patient.

(u) Failure to make reports as required by section 147.111 or to cooperate with an investigation of the board as required by section 147.131.

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

Sec. 4. Minnesota Statutes 1990, section 148.261, subdivision 1, is amended to read:

Subdivision 1. **GROUND LISTED.** The board shall have power to deny, revoke, suspend, limit, or condition the license and registration of any person to practice professional or practical nursing pursuant to sections 148.171 to 148.285, or to otherwise discipline a licensee or applicant as described in section 148.262. The following are grounds for disciplinary action:

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

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

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

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

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

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(3) Conviction during the previous five years of a felony or gross misdemeanor reasonably related to the practice of professional or practical nursing. Conviction as used in this subdivision shall include a conviction of an offense that if committed in this state would be considered a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered.

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

(5) Failure to or inability to perform professional or practical nursing as defined in section 148.171, paragraph (3) or (5), with reasonable skill and safety, including failure of a registered nurse to supervise or a licensed practical nurse to monitor adequately the performance of acts by any person working at the nurse's direction.

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

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

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

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

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

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

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

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

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

(15) Improper management of patient records, including failure to maintain adequate patient records, to comply with a patient's request made pursuant to section 144.335, or to furnish a patient record or report required by law.

(16) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of professional or practical nursing.

(17) Violating a rule adopted by the board, an order of the board, or a state or federal law relating to the practice of professional or practical nursing, or a state or federal narcotics or controlled substance law.

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

Sec. 5. Minnesota Statutes 1990, section 150A.08, subdivision 1, is amended to read:

Subdivision 1. **GROUND.** The board may refuse or by order suspend or revoke, limit or modify by imposing conditions it deems necessary, any license to practice dentistry or dental hygiene or the registration of any dental assistant upon any of the following grounds:

(1) Fraud or deception in connection with the practice of dentistry or the securing of a license or annual registration certificate;

(2) Conviction, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court of a felony or gross misdemeanor reasonably related to the practice of dentistry as evidenced by a certified copy of the conviction;

(3) Conviction, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court of an offense involving moral turpitude as evidenced by a certified copy of the conviction;

(4) Habitual overindulgence in the use of intoxicating liquors;

(5) Improper or unauthorized prescription, dispensing, administering, or personal or other use of any legend drug as defined in chapter 151, of any chemical as defined in chapter 151, or of any controlled substance as defined in chapter 152;

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(6) Conduct unbecoming a person licensed to practice dentistry or dental hygiene or registered as a dental assistant, or conduct contrary to the best interest of the public, as such conduct is defined by the rules of the board;

(7) Gross immorality;

(8) Any physical, mental, emotional, or other disability which adversely affects a dentist's, dental hygienist's, or registered dental assistant's ability to perform the service for which the person is licensed or registered;

(9) Revocation or suspension of a license, registration, or equivalent authority to practice, or other disciplinary action or denial of a license or registration application taken by a licensing, registering, or credentialing authority of another state, territory, or country as evidenced by a certified copy of the licensing authority's order, if the disciplinary action or application denial was based on facts that would provide a basis for disciplinary action under this chapter and if the action was taken only after affording the credentialed person or applicant notice and opportunity to refute the allegations or pursuant to stipulation or other agreement;

(10) Failure to maintain adequate safety and sanitary conditions for a dental office in accordance with the standards established by the rules of the board;

(11) Employing, assisting, or enabling in any manner an unlicensed person to practice dentistry;

(12) Failure or refusal to attend, testify, and produce records as directed by the board under subdivision 7; or

(13) Violation of, or failure to comply with, any other provisions of sections 150A.01 to 150A.12, the rules of the board of dentistry, or any disciplinary order issued by the board or for any other just cause related to the practice of dentistry. Suspension, revocation, modification or limitation of any license shall not be based upon any judgment as to therapeutic or monetary value of any individual drug prescribed or any individual treatment rendered, but only upon a repeated pattern of conduct; or

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

Sec. 6. [150A.081] ACCESS TO MEDICAL DATA.

When the board has probable cause to believe that a licensee's or registrant's condition meets a ground listed in section 150A.08, subdivision 1, clause (4) or (8), it may, notwithstanding sections 13.42, 144.651, or any other law limiting access to medical data, obtain medical or health records relating to the licensee or registrant without the person's consent. The medical data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency. A provider, insurance company, or government agency shall comply with a written request of the board under this subdivision and is not liable in any action for damages for

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releasing the data requested by the board if the data are released under the written request, unless the information is false and the entity providing the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private data on individuals under chapter 13. Under this subdivision, the commissioner of health is not required to release health data collected and maintained under section 13.38.

Sec. 7. Minnesota Statutes 1990, section 153.19, subdivision 1, is amended to read:

Subdivision 1. **GROUNDINGS LISTED.** The board may refuse to grant a license or may impose disciplinary action as described in this section against any doctor of podiatric medicine. The following conduct is prohibited and is grounds for disciplinary action:

(1) failure to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the board; the burden of proof shall be upon the applicant to demonstrate the qualifications or satisfaction of the requirements;

(2) obtaining a license by fraud or cheating or attempting to subvert the licensing examination process;

(3) conviction, during the previous five years, of a felony reasonably related to the practice of podiatric medicine;

(4) revocation, suspension, restriction, limitation, or other disciplinary action against the person's podiatric medical license in another state or jurisdiction, failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction, or having been refused a license by any other state or jurisdiction;

(5) advertising that is false or misleading;

(6) violating a rule adopted by the board or an order of the board, a state, or federal law that relates to the practice of podiatric medicine, or in part regulates the practice of podiatric medicine, or a state or federal narcotics or controlled substance law;

(7) engaging in any unethical conduct; conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient; or podiatric medical practice that is professionally incompetent, in that it may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established;

(8) failure to supervise a preceptor or resident;

(9) aiding or abetting an unlicensed person in the practice of podiatric medicine, except that it is not a violation of this clause for a podiatrist to employ,

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supervise, or delegate functions to a qualified person who may or may not be required to obtain a license or registration to provide health services if that person is practicing within the scope of that person's license or registration or delegated authority;

(10) adjudication as mentally incompetent, or mentally ill, or as a chemically dependent person, a person dangerous to the public, or a person who has a psychopathic personality by a court of competent jurisdiction, within or without this state;

(11) engaging in unprofessional conduct that includes any departure from or the failure to conform to the minimal standards of acceptable and prevailing podiatric medical practice, but actual injury to a patient need not be established;

(12) inability to practice podiatric medicine with reasonable skill and safety to patients by reason of illness or chemical dependency or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills;

(13) revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law;

(14) improper management of medical records, including failure to maintain adequate medical records, to comply with a patient's request made under section 144.335 or to furnish a medical record or report required by law;

(15) accepting, paying, or promising to pay a part of a fee in exchange for patient referrals;

(16) engaging in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(17) becoming addicted or habituated to a drug or intoxicant;

(18) prescribing a drug for other than medically accepted therapeutic or experimental or investigative purposes authorized by a state or federal agency;

(19) engaging in sexual conduct with a patient or conduct that may reasonably be interpreted by the patient as sexual, or in verbal behavior which is seductive or sexually demeaning to a patient;

(20) failure to make reports as required by section 153.24 or to cooperate with an investigation of the board as required by section 153.20;

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

Sec. 8. Minnesota Statutes 1990, section 214.12, is amended to read:

214.12 CONTINUING EDUCATION.

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Subdivision 1. REQUIREMENTS. The health-related and non-health-related licensing boards may promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees. These requirements of continuing professional education or training shall be designed solely to improve professional skills and shall not exceed an average attendance requirement of 50 clock hours per year. All requirements promulgated by the boards shall be effective commencing January 1, 1977, or at a later date as the board may determine. The 50 clock hour limitation shall not apply to the board of teaching.

Subd. 2. INFECTION CONTROL. The boards listed in section 214.18, subdivision 1, shall require by rule that licensees obtain instruction or continuing education in the subject of infection control including blood-borne diseases.

Sec. 9. [214.17] HIV AND HBV PREVENTION PROGRAM; PURPOSE AND SCOPE.

Sections 214.17 to 214.25 are intended to promote the health and safety of patients and regulated persons by reducing the risk of infection in the provision of health care.

Sec. 10. [214.18] DEFINITIONS.

Subdivision 1. BOARD. "Board" means the boards of dentistry, medical practice, nursing, and podiatric medicine. For purposes of sections 214.19, subdivisions 4 and 5; 214.20, paragraph (a); and 214.24, board also includes the board of chiropractic examiners.

Subd. 2. COMMISSIONER. "Commissioner" means the commissioner of health.

Subd. 3. HBV. "HBV" means the hepatitis B virus with the e antigen present in the most recent blood test.

Subd. 4. HIV. "HIV" means the human immunodeficiency virus.

Subd. 5. REGULATED PERSON. "Regulated person" means a licensed dental hygienist, dentist, physician, nurse, podiatrist, a registered dental assistant, a physician's assistant, and for purposes of sections 214.19, subdivisions 4 and 5; 214.20, paragraph (a); and 214.24, a chiropractor.

Sec. 11. [214.19] REPORTING OBLIGATIONS.

Subdivision 1. PERMISSION TO REPORT. A person with actual knowledge that a regulated person has been diagnosed as infected with HIV or HBV may file a report with the commissioner.

Subd. 2. SELF-REPORTING. A regulated person who is diagnosed as infected with HIV or HBV shall report that information to the commissioner promptly, and as soon as medically necessary for disease control purposes but

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no more than 30 days after learning of the diagnosis or 30 days after becoming licensed or registered by the state.

Subd. 3. MANDATORY REPORTING. A person or institution required to report HIV or HBV status to the commissioner under Minnesota Rules, parts 4605.7030, subparts 1 to 4 and 6, and 4605.7040, shall, at the same time, notify the commissioner if the person or institution knows that the reported person is a regulated person.

Subd. 4. INFECTION CONTROL REPORTING. A regulated person shall, within ten days, report to the appropriate board personal knowledge of a serious failure or a pattern of failure by another regulated person to comply with accepted and prevailing infection control procedures related to the prevention of HIV and HBV transmission. In lieu of reporting to the board, the regulated person may make the report to a designated official of the hospital, nursing home, clinic, or other institution or agency where the failure to comply with accepted and prevailing infection control procedures occurred. The designated official shall report to the appropriate board within 30 days of receiving a report under this subdivision. The report shall include specific information about the response by the institution or agency to the report. A regulated person shall not be discharged or discriminated against for filing a complaint in good faith under this subdivision.

Subd. 5. IMMUNITY. A person is immune from civil liability or criminal prosecution for submitting a report in good faith to the commissioner or to a board under this section.

Sec. 12. [214.20] GROUND FOR DISCIPLINARY OR RESTRICTIVE ACTION.

A board may refuse to grant a license or registration or may impose disciplinary or restrictive action against a regulated person who:

(1) fails to follow accepted and prevailing infection control procedures, including a failure to conform to current recommendations of the Centers for Disease Control for preventing the transmission of HIV and HBV, or fails to comply with infection control rules promulgated by the board. Injury to a patient need not be established;

(2) fails to comply with any requirement of sections 214.17 to 214.24; or

(3) fails to comply with any monitoring or reporting requirement.

Sec. 13. [214.21] TEMPORARY SUSPENSION.

The board may, without hearing, temporarily suspend the right to practice of a regulated person if the board finds that the regulated person has refused to submit to or comply with monitoring under section 214.23. The suspension shall take effect upon written notice to the regulated person specifying the statute or rule violated. The suspension shall remain in effect until the board issues a final

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order based on a stipulation or after a hearing. At the time the board issues the suspension notice, the board shall schedule a disciplinary hearing to be held under chapter 14. The regulated person shall be provided with at least 20 days' notice of a hearing held under this section. The hearing shall be scheduled to begin no later than 30 days after the issuance of the suspension order.

Sec. 14. [214.22] NOTICE; ACTION.

If the board has reasonable grounds to believe a regulated person infected with HIV or HBV has done or omitted doing any act that would be grounds for disciplinary action under section 214.20, the board may take action after giving notice three business days before the action, or a lesser time if deemed necessary by the board. The board may:

(1) temporarily suspend the regulated person's right to practice under section 214.21;

(2) require the regulated person to appear personally at a conference with representatives of the board and to provide information relating to the regulated person's health or professional practice; and

(3) take any other lesser action deemed necessary by the board for the protection of the public.

Sec. 15. [214.23] MONITORING.

Subdivision 1. COMMISSIONER OF HEALTH. The board shall enter into a contract with the commissioner to perform the functions in subdivisions 2 and 3. The contract shall provide that:

(1) unless requested to do otherwise by a regulated person, a board shall refer all regulated persons infected with HIV or HBV to the commissioner;

(2) the commissioner may choose to refer any regulated person who is infected with HIV or HBV as well as all information related thereto to the person's board at any time for any reason, including but not limited to: the degree of cooperation and compliance by the regulated person; the inability to secure information or the medical records of the regulated person; or when the facts may present other possible violations of the regulated persons practices act. Upon request of the regulated person who is infected with HIV or HBV the commissioner shall refer the regulated person and all information related thereto to the person's board. Once the commissioner has referred a regulated person to a board, the board may not thereafter submit it to the commissioner to establish a monitoring plan unless the commissioner of health consents in writing;

(3) a board shall not take action on grounds relating solely to the HIV or HBV status of a regulated person until after referral by the commissioner; and

(4) notwithstanding sections 13.39 and 13.41 and chapters 147, 148, 150A, 153, and 214, a board shall forward to the commissioner any information on a regulated person who is infected with HIV or HBV that the department of health requests.

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Subd. 2. MONITORING PLAN. After receiving a report that a regulated person is infected with HIV or HBV, the board or the commissioner acting on behalf of the board shall evaluate the past and current professional practice of the regulated person to determine whether there has been a violation under section 214.20. After evaluation of the regulated person's past and current professional practice, the board or the commissioner, acting on behalf of the board, shall establish a monitoring plan for the regulated person. The monitoring plan may:

(1) address the scope of a regulated person's professional practice when the board or the commissioner, acting on behalf of the board, determines that the practice constitutes an identifiable risk of transmission of HIV or HBV from the regulated person to the patient;

(2) include the submission of regular reports at a frequency determined by the board or the commissioner, acting on behalf of the board, regarding the regulated person's health status; and

(3) include any other provisions deemed reasonable by the board or the commissioner of health, acting on behalf of the board.

The board or commissioner, acting on behalf of the board, may enter into agreements with qualified persons to perform monitoring on its behalf. The regulated person shall comply with any monitoring plan established under this subdivision.

Subd. 3. EXPERT REVIEW PANEL. The board or the commissioner acting on behalf of the board may appoint an expert review panel to assist in the performance of the responsibilities under this section. In consultations with the expert review panel, the commissioner or board shall, to the extent possible, protect the identity of the regulated person. When an expert review panel is appointed, it must contain at least one member appointed by the commissioner and one professional member appointed by the board. The panel shall provide expert assistance to the board, or to the commissioner acting on behalf of the board, in the subjects of infectious diseases, epidemiology, practice techniques used by regulated persons, and other subjects determined by the board or by the commissioner acting on behalf of the board. Members of the expert review panel are subject to those provisions of chapter 13 that restrict the commissioner or the board under this act.

Subd. 4. IMMUNITY. Members of the board or the commissioner acting on behalf of the board, and persons who participate on an expert review panel or who assist the board or the commissioner in monitoring the practice of a regulated person, are immune from civil liability or criminal prosecution for any actions, transactions, or publications made in good faith and in execution of, or relating to, their duties under sections 9 to 16 of this act, except that no immunity shall be available for persons who have knowingly violated any provision of chapter 13.

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Sec. 16. [214.24] INSPECTION OF PRACTICE.

Subdivision 1. AUTHORITY. The board is authorized to conduct inspections of the clinical practice of a regulated person to determine whether the regulated person is following accepted and prevailing infection control procedures. The board shall provide at least three business days' notice to the clinical practice prior to the inspection. The clinical practice of a regulated person includes any location where the regulated person practices that is not an institution licensed and subject to inspection by the commissioner of health. During the course of inspections the privacy and confidentiality of patients and regulated persons shall be maintained. The board may require on license renewal forms that regulated persons inform the board of all locations where they practice.

Subd. 2. ACCESS; RECORDS. An inspector from the board shall have access, during reasonable business hours for purposes of inspection, to all areas of the practice setting where patient care is rendered or drugs or instruments are held that come into contact with a patient. An inspector is authorized to interview employees and regulated persons in the performance of an inspection, to observe infection control procedures, test equipment used to sterilize instruments, and to review and copy all relevant records, excluding patient health records. In performing these responsibilities, inspectors shall make reasonable efforts to respect and preserve patient privacy and the privacy of the regulated person. Boards are authorized to conduct joint inspections and to share information obtained under this section. The boards shall contract with the commissioner to perform the duties under this subdivision.

Subd. 3. BOARD ACTION. If accepted and prevailing infection control techniques are not being followed, the board may educate the regulated person or take other actions. The board and the inspector shall maintain patient confidentiality in any action resulting from the inspection.

Subd. 4. RULEMAKING. A board is authorized to adopt rules setting standards for infection control procedures. Boards shall engage in joint rulemaking. Boards must seek and consider the advice of the commissioner of health before adopting rules. No inspections shall be conducted under this section until after infection control rules have been adopted. Each board is authorized to provide educational information and training to regulated persons regarding infection control. All regulated persons who are employers shall make infection control rules available to employees who engage in functions related to infection control.

Sec. 17. [214.25] DATA PRIVACY.

Subdivision 1. BOARD DATA. (a) All data collected or maintained as part of the board's duties under sections 214.19, 214.23, and 214.24 shall be classified as investigative data under section 13.39 except that inactive investigative data shall be classified as private data under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9, in the case of data not on individuals.

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(b) Notwithstanding section 13.05, subdivision 9, data addressed in this subdivision shall not be disclosed except as provided in this subdivision or section 13.04; except that the board may disclose to the commissioner under section 214.23.

Subd. 2. COMMISSIONER OF HEALTH DATA. (a) All data collected or maintained as part of the commissioner of health's duties under sections 214.19, 214.23, and 214.24 shall be classified as investigative data under section 13.39, except that inactive investigative data shall be classified as private data under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9, in the case of data not on individuals.

(b) Notwithstanding section 13.05, subdivision 9, data addressed in this subdivision shall not be disclosed except as provided in this subdivision or section 13.04; except that the commissioner may disclose to the boards under section 214.23.

(c) The commissioner may disclose data addressed under this subdivision as necessary; to identify, establish, implement, and enforce a monitoring plan; to investigate a regulated person; to alert persons who may be threatened by illness as evidenced by epidemiologic data; to control or prevent the spread of HIV or HBV disease; or to diminish an imminent threat to the public health.

Sec. 18. EFFECTIVE DATE.

Subdivision 1. Section 11 is effective July 1, 1992.

Subd. 2. All other provisions of this article are effective the day following final enactment.

ARTICLE 2

Section 1. [148C.01] DEFINITIONS.

Subdivision 1. APPLICABILITY. For the purposes of sections 1 to 13, the following terms have the meanings given them.

Subd. 2. LICENSED CHEMICAL DEPENDENCY COUNSELOR. "Licensed chemical dependency counselor" means a person who:

(1) represents herself or himself to the public by any title or description of services incorporating the words "licensed chemical dependency counselor";

(2) offers to render professional chemical dependency counseling services to the general public or groups, organizations, corporations, institutions, or government agencies for compensation, implying that she or he is licensed and trained, experienced or expert in chemical dependency counseling; and

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(3) holds a valid license issued under sections 1 to 12 to engage in the practice of chemical dependency counseling.

Subd. 3. OTHER TITLES. For the purposes of sections 1 to 13, all individuals who practice, as their main vocation, chemical dependency counseling as defined in subdivision 2, regardless of their titles, shall be covered by sections 1 to 12. This includes, but is not limited to, individuals who may refer to themselves as "alcoholism counselor," "drug abuse therapist," "chemical dependency recovery counselor," "chemical dependency relapse prevention planner," "addiction therapist," "chemical dependency intervention specialist," "family chemical dependency counselor," "chemical health specialist," "chemical health coordinator," and "substance abuse counselor."

Subd. 4. CHEMICAL DEPENDENCY. "Chemical dependency" means a condition in which a person pathologically uses alcohol or a controlled substance as defined in chapter 152, accompanied by physical manifestation of increased tolerance to the chemical or chemicals being used, or withdrawal syndrome following cessation of chemical use.

Subd. 5. CHEMICAL ABUSE. "Chemical abuse" means a pattern of inappropriate and harmful use of alcohol or a controlled substance governed by chapter 152. Chemical abuse includes inappropriate and harmful patterns of chemical use that are linked to specific situations in an individual's life such as loss of a job, death of a loved one, or a sudden change in life circumstances. Chemical abuse does not involve a pattern of pathological use, but it may progress to pathological use.

Subd. 6. COMMISSIONER. "Commissioner" means the commissioner of human services.

Subd. 7. ACCREDITED SCHOOL OR EDUCATIONAL PROGRAM OF CHEMICAL DEPENDENCY COUNSELING. "Accredited school or educational program of chemical dependency counseling" means a school of chemical dependency counseling or other educational program that has been recognized by the commissioner.

Subd. 8. PRIVATE PRACTICE. "Private practice" means chemical dependency counseling practice conducted by an individual who is either self-employed or a member of a partnership or a group practice, rather than being employed by a public agency or an agency licensed under chapter 245A.

Subd. 9. TWELVE CORE FUNCTIONS. "Twelve core functions" means the following services provided in chemical dependency treatment:

- (1) screening;
- (2) intake;
- (3) orientation;

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- (4) assessment;
- (5) treatment planning;
- (6) counseling;
- (7) case management;
- (8) crisis intervention;
- (9) client education;
- (10) referral;
- (11) reports and record keeping; and
- (12) consultation with other professionals regarding client treatment and services.

Sec. 2. **[148C.02] CHEMICAL DEPENDENCY COUNSELING LICENSING ADVISORY COUNCIL.**

Subdivision 1. MEMBERSHIP. The chemical dependency licensing advisory council consists of 13 members. The governor shall appoint:

- (1) seven members who must be licensed chemical dependency counselors;
- (2) three members who must be public members as defined by section 214.02;
- (3) one member who must be a director or coordinator of an accredited chemical dependency training program; and
- (4) one member who must be a former consumer of chemical dependency counseling service and who must have received the service more than three years before the person's appointment.

The American Indian advisory committee to the department of human services chemical dependency office shall appoint the remaining member.

Subd. 2. DUTIES. The council shall study the provision of chemical dependency counseling and advise the commissioner, the profession, and the public.

Sec. 3. **[148C.03] DUTIES OF THE COMMISSIONER.**

Subdivision 1. GENERAL. The commissioner shall:

- (a) adopt and enforce rules for licensure of chemical dependency counselors and for regulation of 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 section 5. The rules must provide

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for examinations and must establish standards for professional conduct, including adoption of a professional code of ethics;

(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 commissioner or by a nonprofit agency under contract with the commissioner to administer the licensing examinations. Examinations must minimize cultural bias and must be balanced in various theories relative to practice of chemical dependency;

(d) issue licenses to individuals qualified under sections 1 to 12;

(e) issue copies of the rules for licensure to all applicants;

(f) establish and implement procedures, including a standard disciplinary process and a code of ethics, to ensure that individuals licensed as chemical dependency counselors will comply with the commissioner'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 commissioner;

(i) educate the public about the existence and content of the rules for chemical dependency counselor licensing to enable consumers to file complaints against licensees who may have violated the rules; and

(j) evaluate the rules in order to refine and improve the methods used to enforce the commissioner's standards.

Subd. 2. CONTINUING EDUCATION COMMITTEE. The commissioner shall appoint a continuing education committee of five persons, including a chair, which shall advise the commissioner on the administration of continuing education requirements in section 6, subdivision 2.

Subd. 3. RESTRICTIONS ON MEMBERSHIP. A member or an employee of the department that carries out the functions under this section may not be an officer, employee, or paid consultant of a trade association in the counseling services industry.

Sec. 4. [148C.035] FEE COLLECTION; REPORTS.

Subdivision 1. FEE COLLECTION. The commissioner shall, by rule, with the approval of the commissioner of finance, set and adjust license fees for chemical dependency counselors so that the total fees collected will as closely as possible equal anticipated expenditures during the fiscal biennium, as provided in Minnesota Statutes, section 16A.128. The fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for the adoption of the rules providing for the licensure of chemical dependency counselors. All fees received shall be deposited in the state treasury and credited to the special revenue fund.

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Subd. 2. REPORTS. The commissioner shall prepare reports on activities related to the licensure of chemical dependency counselors according to this subdivision by October 1 of each even-numbered year. Copies of the reports shall be delivered to the legislature in accordance with Minnesota Statutes, section 3.195, and to the governor. The reports shall contain the following information on the commissioner's activities relating to the licensure of chemical dependency counselors, for the two-year period ending the previous June 30:

- (1) a general statement of these activities;
- (2) the number of staff hours spent on these activities;
- (3) the receipts and disbursements of funds;
- (4) the names of advisory council members and their addresses, occupations, and dates of appointment and reappointment;
- (5) the names and job classifications of employees;
- (6) a brief summary of rules proposed or adopted during the reporting period with appropriate citations to the State Register and published rules;
- (7) the number of persons having each type of license issued by the commissioner as of June 30 in the year of the report;
- (8) the locations and dates of the administration of examinations by the commissioner;
- (9) the number of persons examined by the commissioner with the persons subdivided into groups showing age categories, sex, and states of residency;
- (10) the number of persons licensed by the commissioner after taking the examinations referred to in clause (8) with the persons subdivided by age categories, sex, and states of residency;
- (11) the number of persons not licensed by the commissioner after taking the examinations referred to in clause (8) with the persons subdivided by age categories, sex, and states of residency;
- (12) the number of persons not taking the examinations referred to in clause (8) who were licensed by the board or who were denied licensing with the reasons for the licensing or denial thereof and with the persons subdivided by age categories, sex, and states of residency;
- (13) the number of persons previously licensed by the commissioner whose licenses were revoked, suspended, or otherwise altered in status with brief statements of the reasons for the revocation, suspension, or alteration;
- (14) the number of written and oral complaints and other communications received by the commissioner which allege or imply a violation of a statute or rule which the commissioner is empowered to enforce;

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(15) a summary, by specific category, of the substance of the complaints and communications referred to in clause (14) and, for each specific category, the responses or dispositions thereof; and

(16) any other objective information which the commissioner believes will be useful in reviewing the commissioner's activities.

Sec. 5. [148C.04] REQUIREMENTS FOR LICENSURE.

Subdivision 1. GENERAL REQUIREMENTS. The commissioner shall issue licenses to the individuals qualified under sections 1 to 12 to practice chemical dependency counseling.

Subd. 2. FEE. Each applicant shall pay a nonrefundable fee set by the commissioner. Fees paid to the commissioner shall be deposited in the general fund.

Subd. 3. LICENSING REQUIREMENTS FOR CHEMICAL DEPENDENCY COUNSELOR; EVIDENCE. (a) To be licensed as a chemical dependency counselor, an applicant must meet the requirements in clauses (1) to (3).

(1) Except as provided in subdivision 4, the applicant must have received an associate degree including 270 clock hours of chemical dependency education and 880 clock hours of chemical dependency practicum.

(2) The applicant must have completed a written and oral case presentation that demonstrates competence in the 12 core functions.

(3) The applicant must have satisfactorily passed a written examination as established by the commissioner.

(b) To be licensed as a chemical dependency counselor, an applicant must furnish evidence satisfactory to the commissioner that the applicant has met the requirements of paragraph (a).

Subd. 4. ADDITIONAL LICENSING REQUIREMENTS. Beginning five years after the effective date of sections 1 to 12, an applicant for licensure must have received a bachelor's degree in a human services area, and must have completed 480 clock hours of chemical dependency education and 880 clock hours of chemical dependency practicum.

Sec. 6. [148C.05] LICENSE RENEWAL REQUIREMENTS.

Subdivision 1. RENEWAL. Licensees shall renew licenses at the time and in the manner established by the commissioner.

Subd. 2. CONTINUING EDUCATION. At the time of renewal, each licensee shall furnish evidence satisfactory to the commissioner that the licensee has completed annually at least the equivalent of 40 clock hours of continuing professional postdegree education every two years, in programs approved by the commissioner, and that the licensee continues to be qualified to practice under sections 1 to 12.

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Sec. 7. [148C.06] LICENSE WITHOUT EXAMINATION; TRANSITION PERIOD.

For two years from the effective date of sections 1 to 12, the commissioner shall issue a license without examination to an applicant if the applicant meets one of the following qualifications:

(a) is credentialed as a certified chemical dependency counselor (CCDC) or certified chemical dependency counselor reciprocal (CCDCR) by the Institute for Chemical Dependency Professionals of Minnesota, Inc.;

(b) has three years or 6,000 hours of supervised chemical dependency counselor experience, 270 clock hours of chemical dependency training, 300 hours of chemical dependency practicum, and has successfully completed a written and oral test;

(c) has five years or 10,000 hours of chemical dependency counselor experience as defined by the 12 core functions, 270 clock hours of chemical dependency training, and has successfully completed a written or oral test or is credentialed as a certified chemical dependency practitioner (CCDP) by the Institute for Chemical Dependency Professionals of Minnesota, Inc.; or

(d) has seven years or 14,000 hours of supervised chemical dependency counselor experience as defined by the 12 core functions and 270 clock hours of chemical dependency training with 60 hours of this training occurring within the past five years.

After July 1, 1995, no person may be licensed without passing the examination.

Sec. 8. [148C.07] RECIPROCITY.

The commissioner shall issue an appropriate license to an individual who holds a current license or other credential from another jurisdiction if the commissioner finds that the requirements for that credential are substantially similar to the requirements in sections 1 to 12.

Sec. 9. [148C.08] NONTRANSFERABILITY OF LICENSES.

A chemical dependency counselor license is not transferable.

Sec. 10. [148C.09] DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

Subdivision 1. GROUNDS. The commissioner may refuse to grant a license to, or may suspend, revoke, or restrict the license of an individual if the commissioner, after a hearing under the contested case provisions of chapter 14, determines that a licensee or applicant:

(1) is incompetent to engage in chemical dependency counseling practice or

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is found to be engaged in chemical dependency counseling practice in a manner harmful or dangerous to a client or the public;

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

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

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

(5) has failed to obtain continuing education credits required by the commissioner.

Subd. 2. RESTORING A LICENSE. For reasons it finds sufficient, the commissioner 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. ANNUAL REVIEW. Suspension, revocation, or restriction of a license shall be reviewed by the commissioner at the request of the licensee against whom the disciplinary action was taken.

Sec. 11. [148C.10] PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES; PENALTY.

Subdivision 1. PRACTICE. After the commissioner adopts rules, no individual shall engage in chemical dependency counseling practice unless that individual holds a valid license as a chemical dependency counselor.

Subd. 2. USE OF TITLES. After the commissioner adopts rules, no individual shall be presented to the public by any title incorporating the words "chemical dependency counselor" unless that individual holds a valid license. City, county, and state agency chemical dependency counselors who are not licensed under sections 1 to 12 may use the title "city agency chemical dependency counselor," "county agency chemical dependency counselor," or "state agency chemical dependency counselor." Hospital chemical dependency counselors who are not licensed under sections 1 to 12 may use the title "hospital chemical dependency counselor" while acting within the scope of their employment.

Subd. 3. PENALTY. A person who violates sections 1 to 12 is guilty of a misdemeanor.

Sec. 12. [148C.11] EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. OTHER PROFESSIONALS. Nothing in sections 1 to 11 shall 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, members of the clergy, attorneys, probation officers, mar-

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riage and family therapists, social workers, professional counselors, school counselors, and registered occupational therapists or certified occupational therapist assistants. These persons must not, however, use a title incorporating the words "chemical dependency counselor" or "licensed chemical dependency counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed to engage in the practice of chemical dependency counseling.

Subd. 2. STUDENTS. Nothing in sections 1 to 11 shall prevent students enrolled in an accredited school of chemical dependency counseling from engaging in the practice of chemical dependency counseling under qualified supervision in an accredited school of chemical dependency counseling.

Subd. 3. FEDERALLY RECOGNIZED TRIBES AND PRIVATE NON-PROFIT AGENCIES WITH A MINORITY FOCUS. (a) The licensing of chemical dependency counselors who are employed by federally recognized tribes shall be voluntary.

(b) The commissioner shall develop special licensing criteria for issuance of a license to chemical dependency counselors who: (1) are members of ethnic minority groups; and (2) are employed by private, nonprofit agencies, including agencies operated by private, nonprofit hospitals, whose primary agency service focus addresses ethnic minority populations. These licensing criteria may differ from the licensing criteria specified in section 5. To develop these criteria, the commissioner shall establish a committee comprised of representatives from the council on hearing impaired, the council on affairs of Spanish-speaking people, the council on Asian-Pacific Minnesotans, the council on Black Minnesotans, and the Indian affairs council.

Subd. 4. HOSPITAL CHEMICAL DEPENDENCY COUNSELORS. Except as provided in subdivision 4, paragraph (b), the licensing of hospital chemical dependency counselors shall be voluntary. Hospitals employing chemical dependency counselors shall not be required to employ licensed chemical dependency counselors, nor shall they require their chemical dependency counselors to be licensed.

Sec. 13. Minnesota Statutes 1990, section 595.02, subdivision 1, is amended to read:

Subdivision 1. **COMPETENCY OF WITNESSES.** Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(a) A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. This exception does not apply to a civil action or proceeding by one against the

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other, nor to a criminal action or proceeding for a crime committed by one against the other or against a child of either or against a child under the care of either spouse, nor to a criminal action or proceeding in which one is charged with homicide or an attempt to commit homicide and the date of the marriage of the defendant is subsequent to the date of the offense, nor to an action or proceeding for nonsupport, neglect, dependency, or termination of parental rights.

(b) An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

(d) A licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

(e) A public officer shall not be allowed to disclose communications made to the officer in official confidence when the public interest would suffer by the disclosure.

(f) Persons of unsound mind and persons intoxicated at the time of their production for examination are not competent witnesses if they lack capacity to remember or to relate truthfully facts respecting which they are examined.

(g) A registered nurse, psychologist or consulting psychologist shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity, and which was necessary to enable the professional to act in that capacity.

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(h) An interpreter for a person handicapped in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a "person handicapped in communication" means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

(i) Licensed chemical dependency counselors shall not disclose information or an opinion based on the information which they acquire from persons consulting them in their professional capacities, and which was necessary to enable them to act in that capacity, except that they may do so:

(1) when informed consent has been obtained in writing, except in those circumstances in which not to do so would violate the law or would result in clear and imminent danger to the client or others;

(2) when the communications reveal the contemplation or ongoing commission of a crime; or

(3) when the consulting person waives the privilege by bringing suit or filing charges against the licensed professional whom that person consulted.

(j) A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons not members of the child's immediate family living in the same household. This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication or by failure of the child or parent to object when the contents of a communication are demanded. This exception does not apply to a civil action or proceeding by one spouse against the other or by a parent or child against the other, nor to a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition, nor to a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse, or in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent, nor to an action or proceeding for termination of parental rights, nor any other action or proceeding on a petition alleging child abuse, child neglect, abandonment or nonsupport by a parent.

(k) Sexual assault counselors may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of

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parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

“Sexual assault counselor” for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling, or assistance to victims of sexual assault.

(*) (l) A person cannot be examined as to any communication or document, including worknotes, made or used in the course of or because of mediation pursuant to an agreement to mediate. This does not apply to the parties in the dispute in an application to a court by a party to have a mediated settlement agreement set aside or reformed. A communication or document otherwise not privileged does not become privileged because of this paragraph. This paragraph is not intended to limit the privilege accorded to communication during mediation by the common law.

(*) (m) A child under ten years of age is a competent witness unless the court finds that the child lacks the capacity to remember or to relate truthfully facts respecting which the child is examined. A child describing any act or event may use language appropriate for a child of that age.

Sec. 14. APPROPRIATION.

\$217,000 is appropriated from the state government special revenue fund to the commissioner of human services for the purposes of sections 1 to 13. The complement of the department of human services is increased by four positions.

Sec. 15. EFFECTIVE DATE.

Sections 2 and 3 are effective the day following final enactment.

Sections 1 and 4 to 14 are effective July 1, 1993.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 2:06 p.m.

CHAPTER 560—H.F.No. 2147

An act relating to the environment; banning placement of mercury in solid waste; regulating the sale and use of mercury; requiring recycling of mercury in certain products; requiring a report on fluorescent and high intensity discharge lamps; amending Minnesota Statutes

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