

Subd. 7. GENERAL EVALUATION. The commission must evaluate the effectiveness of all plans approved under this section and submit its findings to the legislature by January 1, 1999.

Subd. 8. EXPIRATION. This section expires January 1, 2000. All plans must expire no later than December 31, 1999.

Sec. 2. Minnesota Statutes 1994, section 216B.16, is amended by adding a subdivision to read:

Subd. 7a. PERFORMANCE-BASED GAS PURCHASING ADJUSTMENTS. The commission may permit a public utility to file rate schedules providing for annual adjustments reflecting rewards or penalties provided for in performance-based gas purchasing plans approved by the commission under section 216B.167.

Sec. 3. EFFECTIVE DATE.

Sections 1 and 2 are effective the day following final enactment.

Presented to the governor March 24, 1995

Signed by the governor March 27, 1995, 2:21 p.m.

#### CHAPTER 18—H.F.No. 231

*An act relating to occupations and professions; board of medical practice; changing licensing requirements for foreign applicants; changing certain disciplinary procedures; amending Minnesota Statutes 1994, sections 147.037, subdivision 1; 147.091, subdivisions 1, 2, 6, and by adding subdivisions; 147.121, subdivision 2; 148.70; 148.72, subdivision 1; and 364.09; proposing coding for new law in Minnesota Statutes, chapter 147.*

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

Section 1. [147.011] DEFINITION.

For the purpose of this chapter, "regulated person" or "person regulated by the board" means a person licensed, registered, or regulated in any other manner by the board of medical practice.

Sec. 2. Minnesota Statutes 1994, section 147.037, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS.** The board shall issue a license to practice medicine to any person who satisfies the requirements in paragraphs (a) to (g).

(a) The applicant shall satisfy all the requirements established in section 147.02, subdivision 1, paragraphs (a), (e), (f), (g), and (h).

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(b) The applicant shall present evidence satisfactory to the board that the applicant is a graduate of a medical or osteopathic school approved by the board as equivalent to accredited United States or Canadian schools based upon its faculty, curriculum, facilities, accreditation, or other relevant data.

(c) The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates, and the applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.

(d) The applicant shall present evidence satisfactory to the board of the completion of two years of graduate, clinical medical training in a program located in the United States, its territories, or Canada and accredited by a national accrediting organization approved by the board ~~or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization.~~ This requirement does not apply:

(1) to an applicant who is admitted as a permanent immigrant to the United States as a person of exceptional ability in the sciences;

(2) to an applicant holding a valid license to practice medicine in another country and issued a permanent immigrant visa after October 1, 1991, as a person of extraordinary ability or as an outstanding professor or researcher provided that a person under clause (1) or (2) is admitted pursuant to rules of the United States Department of Labor ~~and has completed one year of the graduate, clinical medical training required by this paragraph;~~ or meeting standards similar to those of a national accrediting organization; or

(3) to an applicant who is licensed in another state, has practiced five years without disciplinary action in the United States, its territories, or Canada, has completed one year of the graduate, clinical medical training required by this paragraph, and has passed the Special Purpose Examination of the Federation of State Medical Boards within three attempts in the 24 months before licensing.

(e) The applicant must:

(1) within ten years prior to application have passed an examination prepared and graded by the Federation of State Medical Boards, the United States Medical Licensing Examination program, or the Medical Council of Canada; or

(2) have a current license from the equivalent licensing agency in another state or Canada; and

(i) pass the Special Purpose Examination of the Federation of State Medical Boards with a score of 75 or better within three attempts; or

(ii) have a current certification by a specialty board of the American Board of Medical Specialties, of the American Osteopathic Association Bureau of Professional Education, ~~or~~ of the Royal College of Physicians and Surgeons of Canada, or of the College of Family Physicians of Canada.

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(f) The applicant must not be under license suspension or revocation by the licensing board of the state or jurisdiction in which the conduct that caused the suspension or revocation occurred.

(g) The applicant must not have engaged in conduct warranting disciplinary action against a licensee, or have been subject to disciplinary action other than as specified in paragraph (f). If an applicant does not satisfy the requirements stated in this paragraph, the board may issue a license only on the applicant's showing that the public will be protected through issuance of a license with conditions or limitations the board considers appropriate.

### Sec. 3. [147.0381] CANCELLATION OF CREDENTIALS UNDER DISCIPLINARY ORDER.

Subdivision 1. BOARD APPROVAL; REPORTING. A person regulated by the board, whose right to practice is under suspension, condition, limitation, qualification, or restriction by the board may be granted cancellation of credentials by approval of the board. Such action by the board shall be reported as cancellation while under discipline.

Credentials, for purposes of this section, means board authorized documentation of the privilege to practice a board-regulated profession.

Subd. 2. FEES NONREFUNDABLE. A person regulated by the board who receives board approval for credential cancellation is not entitled to a refund of any fees paid for the credentialing year in which cancellation of the credential occurred.

Subd. 3. NEW CREDENTIAL AFTER CANCELLATION. If a person regulated by the board, who has been granted board approval for credential cancellation, desires to resume the practice of the regulated profession in Minnesota, that person must obtain a new credential by applying to the board and fulfilling the requirements then in existence for obtaining an initial credential to practice the regulated profession in Minnesota.

Sec. 4. Minnesota Statutes 1994, section 147.091, subdivision 1, is amended to read:

Subdivision 1. **GROUND 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

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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) impersonating 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.

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(j) Adjudication as mentally incompetent, mentally ill or mentally retarded, or as a chemically dependent person, a person dangerous to the public, a sexually dangerous person, or a person who has a sexual 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 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-

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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.

(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.

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

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

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

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

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

(x) Practice of a board regulated profession under lapsed or nonrenewed credentials.

(y) Failure to repay a state or federally secured student loan in accordance with the provisions of the loan.

Sec. 5. Minnesota Statutes 1994, section 147.091, is amended by adding a subdivision to read:

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Subd. 1a. CONVICTION OF A FELONY-LEVEL CRIMINAL SEXUAL CONDUCT OFFENSE. (a) The board may not grant a license to practice medicine to any person who has been convicted of a felony-level criminal sexual conduct offense.

(b) A license to practice medicine is automatically revoked if the licensee is convicted of a felony-level criminal sexual conduct offense.

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

(d) For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court, and "criminal sexual conduct offense" means a violation of sections 609.342 to 609.345 or a similar statute in another jurisdiction.

Sec. 6. Minnesota Statutes 1994, section 147.091, subdivision 2, is amended to read:

Subd. 2. EFFECTIVE DATES AUTOMATIC SUSPENSION. ~~A suspension, revocation, condition, limitation, qualification or restriction of a license shall be in effect pending determination of an appeal unless the court, upon petition and for good cause shown, shall otherwise order.~~

(a) A license to practice medicine is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a court pursuant to sections 525.54 to 525.61, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a court pursuant to chapter 253B. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

(b) Upon notice to the board of a judgment of, or a plea of guilty to, a felony reasonably related to the practice of patient care, the credentials of the regulated person shall be automatically suspended by the board. The credentials shall remain suspended until, upon petition by the regulated person and after a hearing, the suspension is terminated by the board.

The board shall indefinitely suspend or revoke the credentials of the regulated person, if after a hearing, the board finds that the felonious conduct would cause a serious risk of harm to the public.

For credentials that have been suspended or revoked pursuant to this subdivision, the regulated person may be reinstated to practice, either with or without restrictions, by demonstrating clear and convincing evidence of rehabilitation, as provided in section 364.03. If the regulated person's conviction is subsequently overturned by court decision, the board shall conduct a hearing to review the suspension within 30 days after receipt of the court decision. The regulated person is not required to prove rehabilitation if the subsequent court decision overturns previous court findings of public risk.

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Sec. 7. Minnesota Statutes 1994, section 147.091, is amended by adding a subdivision to read:

Subd. 2a. EFFECTIVE DATES. A suspension, revocation, condition, limitation, qualification or restriction of a license or registration shall be in effect pending determination of an appeal unless the court, upon petition and for good cause shown, shall otherwise order. A revocation of a license pursuant to subdivision 1a is not appealable and shall remain in effect indefinitely.

Sec. 8. Minnesota Statutes 1994, section 147.091, subdivision 6, is amended to read:

**Subd. 6. MENTAL EXAMINATION; ACCESS TO MEDICAL DATA.**  
(a) If the board has probable cause to believe that a physician regulated person comes under subdivision 1, paragraph (1), it may direct the physician person to submit to a mental or physical examination. For the purpose of this subdivision every ~~physician licensed under this chapter~~ regulated person is deemed to have consented to submit to a mental or physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that the same constitute a privileged communication. Failure of a physician regulated person to submit to an examination when directed constitutes an admission of the allegations against the physician person, unless the failure was due to circumstance beyond the ~~physician's~~ person's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A physician regulated person affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the physician person can resume the competent practice of medicine the regulated profession with reasonable skill and safety to ~~patients~~ the public.

In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the board shall be used against a physician regulated person 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 ~~licensee~~ regulated person or applicant without the ~~licensee's~~ person's or applicant's consent if the board has probable cause to believe that a physician regulated person comes under subdivision 1, paragraph (1). 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, including the department of human services. A provider, 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 provider giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private under sections 13.01 to 13.87.

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Sec. 9. Minnesota Statutes 1994, section 147.121, subdivision 2, is amended to read:

Subd. 2. **INVESTIGATION; INDEMNIFICATION.** (a) Members of the board, persons employed by the board, ~~and~~ consultants retained by the board for the purpose of investigation of violations ~~or~~, the preparation ~~and~~ management of charges ~~of violations of sections 147.01 to 147.22~~ and management of board orders on behalf of the board are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under sections 147.01 to 147.22.

(b) For purposes of this section, a member of the board or a consultant described in paragraph (a) is considered a state employee under section 3.736, subdivision 9.

Sec. 10. Minnesota Statutes 1994, section 148.70, is amended to read:

**148.70 APPLICANTS, QUALIFICATIONS.**

It shall be the duty of the board of medical practice with the advice and assistance of the physical therapy council to pass upon the qualifications of applicants for registration, continuing education requirements for reregistration, provide for and conduct all examinations following satisfactory completion of all didactic requirements, determine the applicants who successfully pass the examination, and duly register such applicants after the applicant has presented evidence satisfactory to the board that the applicant has completed a program of education or continuing education approved by the board.

The passing score for examinations taken after July 1, 1995, shall be based on objective, numerical standards, as established by a nationally recognized board approved testing service.

Sec. 11. Minnesota Statutes 1994, section 148.72, subdivision 1, is amended to read:

Subdivision 1. **ISSUANCE OF REGISTRATION WITHOUT EXAMINATION.** On payment to the board of a fee in the amount set by the board and on submission of a written application on forms provided by the board, the board shall issue registration without examination to a person who is licensed or otherwise registered as a physical therapist by another state of the United States of America, its possessions, or the District of Columbia, if the requirements for licensure or registration in the state, possession, or District ~~were at the date of license or registration by the state~~ substantially are equal to, or greater than, the requirements set forth in sections 148.65 to 148.78.

Sec. 12. Minnesota Statutes 1994, section 364.09, is amended to read:

**364.09 EXCEPTIONS.**

(a) This chapter does not apply to the licensing process for peace officers; to

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law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (h); to fire protection agencies; to eligibility for a private detective or protective agent license; to eligibility for a family day care license, a family foster care license, or a home care provider license; to eligibility for school bus driver endorsements; or to eligibility for special transportation service endorsements. This chapter also shall not apply to eligibility for a license issued or renewed by the board of teaching or state board of education or to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) This chapter does not apply to a school district.

(c) Nothing in this section precludes the Minnesota police and peace officers training board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

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

#### Sec. 13. EFFECTIVE DATE.

Section 5 is effective for a conviction entered on or after the day following final enactment. This does not prevent the board from refusing to grant a license to a person or revoking the license of a licensee who has been convicted of a felony-level criminal sexual conduct offense prior to the effective date of this section.

Presented to the governor March 24, 1995

Signed by the governor March 27, 1995, 2:23 p.m.

### CHAPTER 19—S.F.No. 50

*An act relating to highways; designating a bridge as the Betty Adkins Bridge; amending Minnesota Statutes 1994, section 161.14, by adding a subdivision.*

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

Section 1. Minnesota Statutes 1994, section 161.14, is amended by adding a subdivision to read:

Subd. 30. BETTY ADKINS BRIDGE. The bridge over the Mississippi River in or near the city of Elk River connecting trunk highway marked No. 101 in Wright county with trunk highway marked No. 169 in Sherburne county is named and designated "Betty Adkins Bridge." The commissioner of transportation shall furnish and erect plaques or signs to mark and memorialize this

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