

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 1904

(SENATE AUTHORS: JENSEN, Sheran and Lourey)

DATE	D-PG	OFFICIAL STATUS
02/25/2014	5846	Introduction and first reading Referred to Health, Human Services and Housing
02/27/2014	5901	Author added Lourey
03/04/2014	5953a	Comm report: To pass as amended and re-refer to Judiciary
03/17/2014	6258a	Comm report: To pass as amended and re-refer to Finance

A bill for an act

1.1 relating to health occupations; changing provisions for licensing of optometrists,
 1.2 doctors, and chiropractors; amending Minnesota Statutes 2012, sections 147.091,
 1.3 subdivision 1a; 148.10, subdivision 7; 148.52; 148.54; 148.57; 148.574; 148.575;
 1.4 148.577; 148.59; 148.603; Minnesota Statutes 2013 Supplement, section 364.09;
 1.5 proposing coding for new law in Minnesota Statutes, chapter 148; repealing
 1.6 Minnesota Statutes 2012, sections 148.571; 148.572; 148.573, subdivision 1;
 1.7 148.576, subdivisions 1, 2; 151.37, subdivision 11.
 1.8

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

1.10 Section 1. Minnesota Statutes 2012, section 147.091, subdivision 1a, is amended to read:

1.11 Subd. 1a. **Conviction of a felony-level criminal sexual conduct offense.** (a) ~~The~~
 1.12 ~~board may not grant a license to practice medicine to any person who has been convicted~~
 1.13 ~~of a felony-level criminal sexual conduct offense~~ Except as provided in paragraph (e),
 1.14 the board may not grant or renew a license to practice medicine to any person who has
 1.15 been convicted of any of the provisions of sections 609.342, subdivision 1, 609.343,
 1.16 subdivision 1, 609.344, subdivision 1, paragraphs (c) to (o), or 609.345, subdivision 1,
 1.17 paragraphs (c) to (o), or a similar statute in another jurisdiction.

1.18 (b) ~~A license to practice medicine is automatically revoked if the licensee is~~
 1.19 ~~convicted of a felony-level criminal sexual conduct offense~~ A license to practice medicine
 1.20 is automatically revoked if the licensee is convicted of an offense listed in paragraph
 1.21 (a) of this section.

1.22 (c) ~~A license that has been denied or revoked pursuant to this subdivision is not~~
 1.23 ~~subject to chapter 364~~ A license to practice medicine that has been denied or revoked
 1.24 under this subdivision is not subject to chapter 364.

1.25 (d) ~~For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of~~
 1.26 ~~guilty by a jury, or a finding of guilty by the court, and "criminal sexual conduct offense"~~

2.1 ~~means a violation of sections 609.342 to 609.345 or a similar statute in another jurisdiction~~
 2.2 For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of guilty by
 2.3 a jury, or a finding of guilty by the court, unless the court stays imposition or execution of
 2.4 the sentence and final disposition of the case is accomplished at a nonfelony level.

2.5 (e) The board may establish criteria whereby an individual convicted of an offense
 2.6 listed in paragraph (a) of this subdivision may become licensed provided that the criteria:

2.7 (1) utilize a rebuttable presumption that the applicant is not suitable for licensing;

2.8 (2) provide a standard for overcoming the presumption; and

2.9 (3) require that a minimum of ten years has elapsed since the applicant's sentence
 2.10 was discharged.

2.11 The board shall not consider an application under this paragraph if the board
 2.12 determines that the victim involved in the offense was a patient or a client of the applicant
 2.13 at the time of the offense.

2.14 Sec. 2. Minnesota Statutes 2012, section 148.10, subdivision 7, is amended to read:

2.15 Subd. 7. **Conviction of a felony-level criminal sexual conduct offense.** (a) Except
 2.16 as provided in paragraph (e), the board shall not grant or renew a license to practice
 2.17 chiropractic to any person who has been convicted on or after August 1, 2010, of any
 2.18 of the provisions of sections 609.342, subdivision 1, 609.343, subdivision 1, 609.344,
 2.19 subdivision 1, paragraphs (c) to (o), or 609.345, subdivision 1, paragraphs ~~(b)~~ (c) to (o),
 2.20 or a similar statute in another jurisdiction.

2.21 (b) A license to practice chiropractic is automatically revoked if the licensee is
 2.22 convicted of an offense listed in paragraph (a) of this section.

2.23 (c) A license to practice chiropractic that has been denied or revoked under this
 2.24 subdivision is not subject to chapter 364.

2.25 (d) For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of
 2.26 guilty by a jury, or a finding of guilty by the court, unless the court stays imposition or
 2.27 execution of the sentence and final disposition of the case is accomplished at a nonfelony
 2.28 level.

2.29 (e) The board may establish criteria whereby an individual convicted of an offense
 2.30 listed in paragraph (a) of this subdivision may become licensed provided that the criteria:

2.31 (1) utilize a rebuttable presumption that the applicant is not suitable for licensing or
 2.32 credentialing;

2.33 (2) provide a standard for overcoming the presumption; and

3.1 (3) require that a minimum of ten years has elapsed since the ~~applicant was released~~
 3.2 ~~from any incarceration or supervisory jurisdiction related to the offense~~ applicant's
 3.3 sentence was discharged.

3.4 The board shall not consider an application under this paragraph if the board
 3.5 determines that the victim involved in the offense was a patient or a client of the applicant
 3.6 at the time of the offense.

3.7 Sec. 3. Minnesota Statutes 2012, section 148.52, is amended to read:

3.8 **148.52 BOARD OF OPTOMETRY.**

3.9 The Board of Optometry shall consist of two public members as defined by section
 3.10 214.02 and five ~~qualified~~ Minnesota licensed optometrists appointed by the governor.
 3.11 Membership terms, compensation of members, removal of members, the filling of
 3.12 membership vacancies, and fiscal year and reporting requirements shall be as provided in
 3.13 sections 214.07 to 214.09.

3.14 The provision of staff, administrative services and office space; the review and
 3.15 processing of complaints; the setting of board fees; and other provisions relating to board
 3.16 operations shall be as provided in chapter 214.

3.17 Sec. 4. Minnesota Statutes 2012, section 148.54, is amended to read:

3.18 **148.54 BOARD; SEAL.**

3.19 The Board of Optometry shall elect from among its members a president, vice
 3.20 president, and secretary and may adopt a seal.

3.21 Sec. 5. Minnesota Statutes 2012, section 148.57, is amended to read:

3.22 **148.57 LICENSE.**

3.23 Subdivision 1. **Examination.** (a) A person not authorized to practice optometry in
 3.24 the state and desiring to do so shall apply to the state Board of Optometry by filling out
 3.25 and swearing to an application for a license granted by the board ~~and accompanied by a~~
 3.26 ~~fee in an amount of \$87.~~ With the submission of the application form, the candidate shall
 3.27 prove that the candidate:

3.28 (1) is of good moral character;

3.29 (2) has obtained a clinical doctorate degree from a board-approved school or college
 3.30 of optometry, or is currently enrolled in the final year of study at such an institution; and

3.31 (3) has passed all parts of an examination.

4.1 (b) The examination shall include both a written portion and a clinical practical
4.2 portion and shall thoroughly test the fitness of the candidate to practice in this state. In
4.3 regard to the written and clinical practical examinations, the board may:

4.4 (1) prepare, administer, and grade the examination itself;

4.5 (2) recognize and approve in whole or in part an examination prepared, administered
4.6 and graded by a national board of examiners in optometry; or

4.7 (3) administer a recognized and approved examination prepared and graded by or
4.8 under the direction of a national board of examiners in optometry.

4.9 (c) The board shall issue a license to each applicant who satisfactorily passes the
4.10 examinations and fulfills the other requirements stated in this section ~~and section 148.575~~
4.11 ~~for board certification for the use of legend drugs. Applicants for initial licensure do not~~
4.12 ~~need to apply for or possess a certificate as referred to in sections 148.571 to 148.574. The~~
4.13 ~~fees mentioned in this section are for the use of the board and in no case shall be refunded.~~

4.14 Subd. 2. **Endorsement.** (a) An optometrist who holds a current license from another
4.15 state, and who has practiced in that state not less than three years immediately preceding
4.16 application, may apply for licensure in Minnesota by filling out and swearing to an
4.17 application for license by endorsement furnished by the board. The completed application
4.18 with all required documentation shall be filed at the board office ~~along with a fee of \$87.~~
4.19 ~~The application fee shall be for the use of the board and in no case shall be refunded.~~

4.20 (b) To verify that the applicant possesses the knowledge and ability essential to the
4.21 practice of optometry in this state, the applicant must provide evidence of:

4.22 (1) having obtained a clinical doctorate degree from a board-approved school
4.23 or college of optometry;

4.24 (2) successful completion of both written and practical examinations for licensure in
4.25 the applicant's original state of licensure that thoroughly tested the fitness of the applicant
4.26 to practice;

4.27 (3) successful completion of an examination of Minnesota state optometry laws;

4.28 (4) compliance with the requirements ~~for board certification~~ in section 148.575;

4.29 (5) compliance with all continuing education required for license renewal in every
4.30 state in which the applicant currently holds an active license to practice; and

4.31 (6) being in good standing with every state board from which a license has been
4.32 issued.

4.33 (c) Documentation from a national certification system or program, approved by
4.34 the board, which supports any of the listed requirements, may be used as evidence. The
4.35 applicant may then be issued a license if the requirements for licensure in the other state
4.36 are deemed by the board to be equivalent to those of sections 148.52 to 148.62.

5.1 ~~Subd. 3. **Revocation, suspension.** The board may revoke the license or suspend~~
 5.2 ~~or restrict the right to practice of any person who has been convicted of any violation of~~
 5.3 ~~sections 148.52 to 148.62 or of any other criminal offense, or who violates any provision~~
 5.4 ~~of sections 148.571 to 148.576 or who is found by the board to be incompetent or guilty~~
 5.5 ~~of unprofessional conduct. "Unprofessional conduct" means any conduct of a character~~
 5.6 ~~likely to deceive or defraud the public, including, among other things, free examination~~
 5.7 ~~advertising, the loaning of a license by any licensed optometrist to any person; the~~
 5.8 ~~employment of "cappers" or "steerers" to obtain business; splitting or dividing a fee with~~
 5.9 ~~any person; the obtaining of any fee or compensation by fraud or misrepresentation;~~
 5.10 ~~employing directly or indirectly any suspended or unlicensed optometrist to perform any~~
 5.11 ~~work covered by sections 148.52 to 148.62; the advertising by any means of optometric~~
 5.12 ~~practice or treatment or advice in which untruthful, improbable, misleading, or impossible~~
 5.13 ~~statements are made. After one year, upon application and proof that the disqualification~~
 5.14 ~~has ceased, the board may reinstate such person.~~

5.15 ~~Subd. 4. **Peddling or canvassing forbidden.** Every licensed optometrist who~~
 5.16 ~~shall temporarily practice optometry outside or away from the regular registered place~~
 5.17 ~~of business shall display the license and deliver to each customer or person there~~
 5.18 ~~fitted or supplied with glasses a receipt or record which shall contain the signature,~~
 5.19 ~~permanent registered place of business or post office address, and number of license of~~
 5.20 ~~the optometrist, together with the amount charged therefor, but nothing contained in this~~
 5.21 ~~section shall be construed as to permit peddling or canvassing by licensed optometrists.~~

5.22 ~~Subd. 5. **Change of address.** A person regulated by the board shall maintain a~~
 5.23 ~~current name and address with the board and shall notify the board in writing within 30~~
 5.24 ~~days of any change in name or address. If a name change only is requested, the regulated~~
 5.25 ~~person must request revised credentials and return the current credentials to the board.~~
 5.26 ~~The board may require the regulated person to substantiate the name change by submitting~~
 5.27 ~~official documentation from a court of law or agency authorized under law to receive and~~
 5.28 ~~officially record a name change. If an address change only is requested, no request for~~
 5.29 ~~revised credentials is required. If the regulated person's current credentials have been lost,~~
 5.30 ~~stolen, or destroyed, the person shall provide a written explanation to the board.~~

5.31 Sec. 6. Minnesota Statutes 2012, section 148.574, is amended to read:

5.32 **148.574 PROHIBITIONS RELATING TO LEGEND DRUGS;**
 5.33 **~~AUTHORIZING SALES BY PHARMACISTS UNDER CERTAIN CONDITIONS.~~**

5.34 ~~An optometrist shall not purchase, possess, administer, prescribe or give any legend~~
 5.35 ~~drug as defined in section 151.01 or 152.02 to any person except as is expressly authorized~~

6.1 ~~by sections 148.571 to 148.577. Nothing in chapter 151 shall prevent a pharmacist from~~
 6.2 ~~selling topical ocular drugs to an optometrist authorized to use such drugs according to~~
 6.3 ~~sections 148.571 to 148.577. Notwithstanding sections 151.37 and 152.12, an optometrist~~
 6.4 ~~is prohibited from dispensing legend drugs at retail, unless the legend drug is within the~~
 6.5 ~~scope designated in section 148.56, subdivision 1, and is administered to the eye through~~
 6.6 ~~an ophthalmic good as defined in section 145.711, subdivision 4.~~

6.7 Sec. 7. Minnesota Statutes 2012, section 148.575, is amended to read:

6.8 **148.575 ~~CERTIFICATE REQUIRED~~ REQUIREMENT FOR USE OF**
 6.9 **TOPICAL LEGEND DRUGS.**

6.10 ~~Subdivision 1. **Certificate required for use of legend drugs.** A licensed optometrist~~
 6.11 ~~must be board certified to use legend drugs for therapy under section 148.576.~~

6.12 ~~Subd. 2. **Board certified** Requirements defined. "Board certified" means that A~~
 6.13 ~~licensed optometrist has been issued a certificate by the Board of Optometry certifying~~
 6.14 ~~that the optometrist has complied shall comply with the following requirements for the use~~
 6.15 ~~of legend drugs described in section 148.576:~~

6.16 ~~(1) successful completion of at least 60 hours of study in general and ocular~~
 6.17 ~~pharmacology emphasizing drugs used for examination or treatment purposes, their~~
 6.18 ~~systemic effects and management or referral of adverse reactions;~~

6.19 ~~(2) (1) successful completion of at least 100 hours of study in the examination,~~
 6.20 ~~diagnosis, and treatment of conditions of the human eye with legend drugs;~~

6.21 ~~(3) (2) successful completion of two years of supervised clinical experience in~~
 6.22 ~~differential diagnosis of eye disease or disorders as part of optometric training or one year~~
 6.23 ~~of that experience and ten years of actual clinical experience as a licensed optometrist; and~~

6.24 ~~(4) (3) successful completion of a nationally standardized examination approved or~~
 6.25 ~~administered by the board on the subject of treatment and management of ocular disease.~~

6.26 ~~Subd. 3. **Display of certificate required.** A certificate issued under this section~~
 6.27 ~~to a licensed optometrist by the Board of Optometry supersedes any previously issued~~
 6.28 ~~certificate limited to topical ocular drugs described in sections 148.571 to 148.574 and~~
 6.29 ~~must be displayed in a prominent place in the licensed optometrist's office.~~

6.30 ~~Subd. 4. **Accreditation of courses.** The Board of Optometry may approve courses~~
 6.31 ~~of study in general or ocular pharmacology and examination, diagnosis, and treatment~~
 6.32 ~~of conditions of the human eye only if they are taught by an institution that meets the~~
 6.33 ~~following criteria:~~

6.34 ~~(1) the institution has facilities for both didactic and clinical instruction in~~
 6.35 ~~pharmacology and ocular disease treatment;~~

7.1 (2) the institution certifies to the Board of Optometry that the course of instruction is
 7.2 comparable in content to courses of instruction required by other health-related licensing
 7.3 boards whose license holders or registrants are permitted to administer pharmaceutical
 7.4 agents in their professional practice for either diagnostic or therapeutic purposes or
 7.5 both; and

7.6 (3) the institution is accredited by a regional or professional accrediting organization
 7.7 recognized by the Council for Higher Education Accreditation or its successor agency.

7.8 ~~Subd. 5. **Notice to Board of Pharmacy.** The Board of Optometry shall notify the~~
 7.9 ~~Board of Pharmacy of each licensed optometrist who meets the certification requirements~~
 7.10 ~~in this section.~~

7.11 ~~Subd. 6. **Board certification required.** Optometrists who were licensed in this state~~
 7.12 ~~prior to August 1, 2007, must have met the board certification requirements under this~~
 7.13 ~~section by August 1, 2012, in order to renew their license.~~

7.14 Sec. 8. Minnesota Statutes 2012, section 148.577, is amended to read:

7.15 **148.577 STANDARD OF CARE.**

7.16 A licensed optometrist ~~who is board certified under section 148.575~~ is held to the
 7.17 same standard of care in the use of those legend drugs as physicians licensed by the state
 7.18 of Minnesota.

7.19 Sec. 9. Minnesota Statutes 2012, section 148.59, is amended to read:

7.20 **148.59 LICENSE RENEWAL; FEE LICENSE AND REGISTRATION FEES.**

7.21 ~~A licensed optometrist shall pay to the state Board of Optometry a fee as set by the~~
 7.22 ~~board in order to renew a license as provided by board rule.~~

7.23 Listed fees may not exceed the following amounts but may be adjusted lower per
 7.24 board direction and are for the exclusive use of the board. No fees shall be refunded.

7.25 (1) Optometry licensure application, \$160.

7.26 (2) Optometry annual licensure renewal, \$135.

7.27 (3) Optometry late penalty fee, \$75.

7.28 (4) Annual license renewal card, \$10.

7.29 (5) CE provider application, \$45.

7.30 (6) Emeritus registration, \$10.

7.31 (7) Endorsement/reciprocity application, \$160.

7.32 (8) Replacement of initial license, \$12.

7.33 (9) License verification, \$50.

8.1 Sec. 10. Minnesota Statutes 2012, section 148.603, is amended to read:

8.2 **148.603 FORMS OF GROUNDS FOR DISCIPLINARY ACTIONS ACTION.**

8.3 Subdivision 1. Grounds listed. ~~When grounds exist under section 148.57,~~
 8.4 ~~subdivision 3, or other statute or rule which the board is authorized to enforce, the board~~
 8.5 ~~may take one or more of the following disciplinary actions, provided that disciplinary or~~
 8.6 ~~corrective action may not be imposed by the board on any regulated person except after a~~
 8.7 ~~contested case hearing conducted pursuant to chapter 14 or by consent of the parties:~~

8.8 (1) ~~deny an application for a credential;~~

8.9 (2) ~~revoke the regulated person's credential;~~

8.10 (3) ~~suspend the regulated person's credential;~~

8.11 (4) ~~impose limitations on the regulated person's credential;~~

8.12 (5) ~~impose conditions on the regulated person's credential;~~

8.13 (6) ~~censure or reprimand the regulated person;~~

8.14 (7) ~~impose a civil penalty not exceeding \$10,000 for each separate violation, the~~
 8.15 ~~amount of the civil penalty to be fixed so as to deprive the person of any economic~~
 8.16 ~~advantage gained by reason of the violation or to discourage similar violations or to~~
 8.17 ~~reimburse the board for the cost of the investigation and proceeding. For purposes of~~
 8.18 ~~this section, the cost of the investigation and proceeding may include, but is not limited~~
 8.19 ~~to, fees paid for services provided by the Office of Administrative Hearings, legal and~~
 8.20 ~~investigative services provided by the Office of the Attorney General, court reporters,~~
 8.21 ~~witnesses, reproduction of records, board members' per diem compensation, board staff~~
 8.22 ~~time, and travel costs and expenses incurred by board staff and board members; or~~

8.23 (8) ~~when grounds exist under section 148.57, subdivision 3, or a board rule, enter~~
 8.24 ~~into an agreement with the regulated person for corrective action which may include~~
 8.25 ~~requiring the regulated person:~~

8.26 (i) ~~to complete an educational course or activity;~~

8.27 (ii) ~~to submit to the executive director or designated board member a written~~
 8.28 ~~protocol or reports designed to prevent future violations of the same kind;~~

8.29 (iii) ~~to meet with a board member or board designee to discuss prevention of future~~
 8.30 ~~violations of the same kind; or~~

8.31 (iv) ~~to perform other action justified by the facts.~~

8.32 ~~Listing the measures in clause (8) does not preclude the board from including~~
 8.33 ~~them in an order for disciplinary action. The board may refuse to grant a license or~~
 8.34 ~~may impose disciplinary action as described in section 148.607 against any optometrist~~
 8.35 ~~for the following:~~

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

9.4 (2) obtaining a license by fraud or cheating, or attempting to subvert the licensing
9.5 examination process. Conduct which subverts or attempts to subvert the licensing
9.6 examination process includes, but is not limited to: (i) conduct which violates the
9.7 security of the examination materials, such as removing examination materials from the
9.8 examination room or having unauthorized possession of any portion of a future, current, or
9.9 previously administered licensing examination; (ii) conduct which violates the standard of
9.10 test administration, such as communicating with another examinee during administration
9.11 of the examination, copying another examinee's answers, permitting another examinee
9.12 to copy one's answers, or possessing unauthorized materials; or (iii) impersonating an
9.13 examinee or permitting an impersonator to take the examination on one's own behalf;

9.14 (3) conviction, during the previous five years, of a felony or gross misdemeanor,
9.15 reasonably related to the practice of optometry. Conviction as used in this subdivision
9.16 shall include a conviction of an offense which if committed in this state would be deemed
9.17 a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal
9.18 proceeding where a finding or verdict of guilt is made or returned but the adjudication of
9.19 guilt is either withheld or not entered thereon;

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

9.24 (5) advertising which is false or misleading, which violates any rule of the board,
9.25 or which claims without substantiation the positive cure of any disease, or professional
9.26 superiority to or greater skill than that possessed by another optometrist;

9.27 (6) violating a rule promulgated by the board or an order of the board, a state or
9.28 federal law, which relates to the practice of optometry, or a state or federal narcotics or
9.29 controlled substance law;

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

9.35 (8) failure to supervise an optometrist's assistant or failure to supervise an
9.36 optometrist under any agreement with the board;

10.1 (9) aiding or abetting an unlicensed person in the practice of optometry, except that
10.2 it is not a violation of this paragraph for an optometrist to employ, supervise, or delegate
10.3 functions to a qualified person who may or may not be required to obtain a license or
10.4 registration to provide health services if that person is practicing within the scope of that
10.5 person's license or registration or delegated authority;

10.6 (10) adjudication as mentally incompetent, mentally ill, or developmentally
10.7 disabled, or as a chemically dependent person, a person dangerous to the public, a sexually
10.8 dangerous person, or a person who has a sexual psychopathic personality by a court of
10.9 competent jurisdiction, within or without this state. Such adjudication shall automatically
10.10 suspend a license for the duration thereof unless the board orders otherwise;

10.11 (11) engaging in unprofessional conduct which includes any departure from or the
10.12 failure to conform to the minimal standards of acceptable and prevailing practice in which
10.13 proceeding actual injury to a patient need not be established;

10.14 (12) inability to practice optometry with reasonable skill and safety to patients
10.15 by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of
10.16 material or as a result of any mental or physical condition, including deterioration through
10.17 the aging process or loss of motor skills;

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

10.20 (14) improper management of medical records, including failure to maintain
10.21 adequate medical records, to comply with a patient's request made pursuant to sections
10.22 144.291 to 144.298 or to furnish a medical record or report required by law;

10.23 (15) fee splitting, including without limitation:

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

10.27 (ii) dividing fees with another optometrist, other health care provider, or a
10.28 professional corporation, unless the division is in proportion to the services provided
10.29 and the responsibility assumed by each professional and the optometrist has disclosed
10.30 the terms of the division;

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

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

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

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

11.4 (20) failure to make reports as required by section 148.604 or to cooperate with an
11.5 investigation of the board as required by section 148.606;

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

11.9 (22) practice of a board-regulated profession under lapsed or nonrenewed credentials.

11.10 Subd. 2. **Conviction of a felony-level criminal sexual offense.** (a) Except as
11.11 provided in paragraph (e), the board may not grant or renew a license to practice optometry
11.12 to any person who has been convicted of any of the provisions of sections 609.342,
11.13 subdivision 1, 609.343, subdivision 1, 609.344, subdivision 1, paragraphs (c) to (o), or
11.14 609.345, subdivision 1, paragraphs (c) to (o), or a similar statute in another jurisdiction.

11.15 (b) A license to practice optometry is automatically revoked if the licensee is
11.16 convicted of an offense listed in paragraph (a) of this section.

11.17 (c) A license to practice optometry that has been denied or revoked under this
11.18 subdivision is not subject to chapter 364.

11.19 (d) For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of
11.20 guilty by a jury, or a finding of guilty by the court, unless the court stays imposition or
11.21 execution of the sentence and final disposition of the case is accomplished at a nonfelony
11.22 level.

11.23 (e) The board may establish criteria whereby an individual convicted of an offense
11.24 listed in paragraph (a) of this subdivision may become licensed provided that the criteria:

11.25 (1) utilize a rebuttable presumption that the applicant is not suitable for licensing;

11.26 (2) provide a standard for overcoming the presumption; and

11.27 (3) require that a minimum of ten years has elapsed since the applicant's sentence
11.28 was discharged.

11.29 The board shall not consider an application under this paragraph if the board
11.30 determines that the victim involved in the offense was a patient or a client of the applicant
11.31 at the time of the offense.

11.32 Subd. 3. **Automatic suspension.** (a) A license to practice optometry is
11.33 automatically suspended if (1) a guardian of a licensee is appointed by order of a court
11.34 pursuant to sections 524.5-101 to 524.5-502, for reasons other than the minority of the
11.35 licensee; or (2) the licensee is committed by order of a court pursuant to chapter 253B.

12.1 The license remains suspended until the licensee is restored to capacity by a court and,
12.2 upon petition by the licensee, the suspension is terminated by the board after a hearing.

12.3 (b) Upon notice to the board of a judgment of, or a plea of guilty to, a felony
12.4 reasonably related to the practice of optometry, the license of the regulated person shall be
12.5 automatically suspended by the board. The license shall remain suspended until, upon
12.6 petition by the regulated person and after a hearing, the suspension is terminated by the
12.7 board. The board shall indefinitely suspend or revoke the credentials of the regulated
12.8 person if, after a hearing, the board finds that the felonious conduct would cause a serious
12.9 risk of harm to the public.

12.10 (c) For licenses that have been suspended or revoked pursuant to paragraphs (a) and
12.11 (b), the regulated person may be reinstated to practice, either with or without restrictions,
12.12 by demonstrating clear and convincing evidence of rehabilitation, as provided in section
12.13 364.03. If the regulated person's conviction is subsequently overturned by court decision,
12.14 the board shall conduct a hearing to review the suspension within 30 days after receipt
12.15 of the court decision. The regulated person is not required to prove rehabilitation if the
12.16 subsequent court decisions overturns previous court findings of public risk.

12.17 (d) The board may, upon majority vote of a quorum of its members, suspend the
12.18 license of a regulated person without a hearing if the regulated person fails to maintain a
12.19 current name and address with the board, as described in paragraph (e), while the regulated
12.20 person is: (1) under board investigation, and a notice of conference has been issued by the
12.21 board; (2) party to a contested case with the board; (3) party to an agreement for corrective
12.22 action with the board; or (4) under a board order for disciplinary action. The suspension
12.23 shall remain in effect until lifted by the board pursuant to the board's receipt of a petition
12.24 from the regulated person, along with the regulated person's current name and address.

12.25 Subd. 4. **Effective dates.** A suspension, revocation, condition, limitation,
12.26 qualification, or restriction of a license or registration shall be in effect pending
12.27 determination of an appeal unless the court, upon petition and for good cause shown,
12.28 shall otherwise order.

12.29 Subd. 5. **Conditions on reissued license.** In its discretion, the board may restore
12.30 and reissue a license to practice optometry, but as a condition may impose any disciplinary
12.31 or corrective measure that the board might originally have imposed.

12.32 Subd. 6. **Temporary suspension of license.** In addition to any other remedy
12.33 provided by law, the board may, without a hearing, temporarily suspend the license of an
12.34 optometrist if the board finds that the optometrist has violated a statute or rule which the
12.35 board is empowered to enforce and continued practice by the optometrist would create a
12.36 serious risk of harm to the public. The suspension shall take effect upon written notice to

13.1 the optometrist, specifying the statute or rule violated. The suspension shall remain in
13.2 effect until the board issues a final order in the matter after a hearing. At the time it issues
13.3 the suspension notice, the board shall schedule a disciplinary hearing to be held according
13.4 to sections 14.57 to 14.62. The optometrist shall be provided with at least 20 days' notice
13.5 of any hearing held pursuant to this subdivision. The hearing shall be scheduled to begin
13.6 no later than 90 days after the issuance of the suspension order.

13.7 Subd. 7. **Evidence.** In disciplinary actions alleging a violation of subdivision
13.8 1, clause (3) or (4), a copy of the judgment or proceeding under the seal of the court
13.9 administrator or of the administrative agency which entered the same shall be admissible
13.10 into evidence without further authentication and shall constitute prima facie evidence
13.11 of the contents thereof.

13.12 Subd. 8. **Mental examination; access to medical data.** (a) If the board has
13.13 probable cause to believe that a regulated person comes under subdivision 1, clause (10),
13.14 (12), or (17), it may direct the person to submit to a mental or physical examination. For
13.15 the purpose of this subdivision, every regulated person is deemed to have consented
13.16 to submit to a mental or physical examination when directed in writing by the board
13.17 and further to have waived all objections to the admissibility of the examining health
13.18 professionals' testimony or examination reports on the grounds that the same constitute
13.19 a privileged communication. Failure of a regulated person to submit to an examination
13.20 when directed constitutes an admission of the allegations against the person, unless the
13.21 failure was due to circumstances beyond the person's control, in which case a default and
13.22 final order may be entered without the taking of testimony or presentation of evidence.
13.23 A regulated person affected under this paragraph shall at reasonable intervals be given
13.24 an opportunity to demonstrate that the person can resume the competent practice of the
13.25 regulated profession with reasonable skill and safety to the public.

13.26 In any proceeding under this paragraph, neither the record of proceedings nor the
13.27 orders entered by the board shall be used against a regulated person in any other proceeding.

13.28 (b) In addition to ordering a physical or mental examination, the board may,
13.29 notwithstanding section 13.384, 144.651, or any other law limiting access to medical or
13.30 other health data, obtain medical data and health records relating to a regulated person
13.31 or applicant without the person's or applicant's consent if the board has probable cause
13.32 to believe that a regulated person comes under subdivision 1, clause (10), (12), or (17).
13.33 The medical data may be requested from a provider, as defined in section 144.291,
13.34 subdivision 2, paragraph (h), an insurance company, or a government agency, including
13.35 the Department of Human Services. A provider, insurance company, or government
13.36 agency shall comply with any written request of the board under this subdivision and is not

14.1 liable in any action for damages for releasing the data requested by the board if the data
14.2 are released pursuant to a written request under this subdivision, unless the information
14.3 is false and the provider giving the information knew, or had reason to believe, the
14.4 information was false. Information obtained under this subdivision is classified as private
14.5 data under sections 13.01 to 13.87.

14.6 Sec. 11. **[148.604] REPORTING OBLIGATIONS.**

14.7 Subdivision 1. **Permission to report.** A person who has knowledge of any conduct
14.8 constituting grounds for discipline under sections 148.52 to 148.62 may report the
14.9 violation to the board.

14.10 Subd. 2. **Institutions.** Any hospital, clinic, prepaid medical plan, or other health
14.11 care institution or organization located in this state shall report to the board any action
14.12 taken by the institution or organization or any of its administrators or medical or other
14.13 committees to revoke, suspend, restrict, or condition an optometrist's privilege to practice
14.14 or treat patients in the institution, or as part of the organization, any denial of privileges,
14.15 or any other disciplinary action. The institution or organization shall also report the
14.16 resignation of any optometrist prior to the conclusion of any disciplinary proceeding, or
14.17 prior to the commencement of formal charges but after the optometrist had knowledge
14.18 that formal charges were contemplated or in preparation. Each report made under this
14.19 subdivision must state the nature of the action taken, state in detail the reasons for the
14.20 action, and identify the specific patient medical records upon which the action was based.
14.21 No report shall be required of an optometrist voluntarily limiting the practice of the
14.22 optometrist at a hospital provided that the optometrist notifies all hospitals at which the
14.23 optometrist has privileges of the voluntary limitation and the reasons for it.

14.24 Subd. 3. **Licensed professionals.** A licensed health professional shall report
14.25 to the board personal knowledge of any conduct which the person reasonably believes
14.26 constitutes grounds for disciplinary action under sections 148.52 to 148.62 by any
14.27 optometrist, including any conduct indicating that the person may be incompetent, may
14.28 have engaged in unprofessional conduct, or may be physically unable to engage safely in
14.29 the practice of optometry.

14.30 Subd. 4. **Self-reporting.** An optometrist shall report to the board any personal
14.31 action which would require that a report be filed with the board by any person, health care
14.32 facility, business, or organization pursuant to subdivisions 2 and 3.

14.33 Subd. 5. **Deadlines; forms.** Reports required by subdivisions 2 to 4 must be
14.34 submitted not later than 30 days after the occurrence of the reportable event or transaction.
14.35 The board may provide forms for the submission of reports required by this section, may

15.1 require that reports be submitted on the forms provided, and may adopt rules necessary
 15.2 to ensure prompt and accurate reporting.

15.3 Subd. 6. **Subpoenas.** The board may issue subpoenas for the production of any
 15.4 reports required by subdivisions 2 to 4 or any related documents.

15.5 Sec. 12. **[148.605] IMMUNITY.**

15.6 Subdivision 1. **Reporting.** Any person, health care facility, business, or organization
 15.7 is immune from civil liability or criminal prosecution for submitting a report to the board
 15.8 pursuant to section 148.604 or for otherwise reporting to the board violations or alleged
 15.9 violations of section 148.603, if they are acting in good faith.

15.10 Subd. 2. **Investigation; indemnification.** (a) Members of the board, persons
 15.11 employed by the board, consultants retained by the board for the purpose of investigation
 15.12 of violations, the preparation of charges, and management of board orders on behalf
 15.13 of the board, are immune from civil liability and criminal prosecution for any actions,
 15.14 transactions, or publications in the execution of, or relating to, their duties under sections
 15.15 148.52 to 148.62, if they are acting in good faith.

15.16 (b) Members of the board and persons employed by the board or engaged in
 15.17 maintaining records and making reports regarding adverse health care events are immune
 15.18 from civil liability and criminal prosecution for any actions, transactions, or publications
 15.19 in the execution of, or relating to, their duties under sections 148.52 to 148.62, if they
 15.20 are acting in good faith.

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

15.23 Sec. 13. **[148.606] OPTOMETRIST COOPERATION.**

15.24 An optometrist who is the subject of an investigation by or on behalf of the board
 15.25 shall cooperate fully with the investigation. Cooperation includes responding fully and
 15.26 promptly to any question raised by or on behalf of the board relating to the subject of the
 15.27 investigation and providing copies of patient medical records, as reasonably requested
 15.28 by the board, to assist the board in its investigation. If the board does not have written
 15.29 consent from a patient permitting access to the patient's records, the optometrist shall
 15.30 delete any data in the record which identifies the patient before providing it to the board.
 15.31 The board shall maintain any records obtained pursuant to this section as investigative
 15.32 data pursuant to chapter 13.

15.33 Sec. 14. **[148.607] DISCIPLINARY ACTIONS.**

16.1 When the board finds that a licensed optometrist under section 148.57 has violated a
 16.2 provision or provisions of sections 148.52 to 148.62, it may do one or more of the following:

16.3 (1) revoke the license;

16.4 (2) suspend the license;

16.5 (3) impose limitations or conditions on the optometrist's practice of optometry,
 16.6 including the limitation of scope of practice to designated field specialties; the imposition
 16.7 of retraining or rehabilitation requirements; the requirement of practice under supervision;
 16.8 or the conditioning of continued practice on demonstration of knowledge or skills by
 16.9 appropriate examination or other review of skill and competence;

16.10 (4) impose a civil penalty not exceeding \$10,000 for each separate violation, the
 16.11 amount of the civil penalty to be fixed so as to deprive the optometrist of any economic
 16.12 advantage gained by reason of the violation charged or to reimburse the board for the cost
 16.13 of the investigation and proceeding; and

16.14 (5) censure or reprimand the licensed optometrist.

16.15 Sec. 15. Minnesota Statutes 2013 Supplement, section 364.09, is amended to read:

16.16 **364.09 EXCEPTIONS.**

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

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

16.29 (2) any provision of chapter 152 that is punishable by a maximum sentence of
 16.30 15 years or more; or

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

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

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

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

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

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

17.12 (f) This chapter does not apply to a license to practice optometry that has been
17.13 denied or revoked by the Board of Optometry pursuant to section 148.603, subdivision 2.

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

17.17 Sec. 16. **REPEALER.**

17.18 Minnesota Statutes 2012, sections 148.571; 148.572; 148.573, subdivision 1;
17.19 148.576, subdivisions 1 and 2; and 151.37, subdivision 11, are repealed.

148.571 USE OF TOPICAL OCULAR DRUGS.

Subdivision 1. **Authority.** Subject to the provisions of sections 148.571 to 148.574, optometrists who are currently licensed on August 1, 2007, and are not board certified under section 148.575 may possess a valid topical ocular drug certificate, referred to in sections 148.571 to 148.574, allowing them to administer topical ocular drugs to the anterior segment of the human eye during an eye examination in the course of practice in their normal practice setting, solely for the purposes of determining the refractive, muscular, or functional origin of sources of visual discomfort or difficulty, and detecting abnormalities which may be evidence of disease. Authority granted under sections 148.571 to 148.574 is granted to optometrists who are board certified under section 148.575.

Subd. 2. **Drugs specified.** For purposes of sections 148.571 to 148.574, "topical ocular drugs" means:

- (1) commercially prepared topical anesthetics as follows: proparacaine HC1 0.5 percent, tetracaine HC1 0.5 percent, and benoxinate HC1 0.4 percent;
- (2) commercially prepared mydriatics as follows: phenylephrine HC1 in strength not greater than 2.5 percent and hydroxyamphetamine HBr in strength not greater than 1 percent; and
- (3) commercially prepared cycloplegics/mydriatics as follows: tropicamide in strength not greater than 1 percent and cyclopentolate in strength not greater than 1 percent.

148.572 ADVICE TO SEEK DIAGNOSIS AND TREATMENT.

Whether or not topical ocular drugs have been used, if any licensed optometrist is informed by a patient or determines from examining a patient, using judgment and that degree of skill, care, knowledge and attention ordinarily possessed and exercised by optometrists in good standing under like circumstances, that there are present in that patient signs or symptoms which may be evidence of disease that requires treatment that is beyond the practice of optometry permitted by law, then the licensed optometrist shall (1) promptly advise that patient to seek evaluation by an appropriate licensed physician for diagnosis and possible treatment and (2) not attempt to treat such condition by the use of drugs or any other means.

148.573 TOPICAL OCULAR DRUG USE.

Subdivision 1. **Certificate required.** A licensed optometrist shall not purchase, possess or administer any topical ocular drugs unless the optometrist has obtained a topical ocular drug certificate from the Board of Optometry certifying that the optometrist has complied with the requirements in paragraphs (a) and (b).

(a) Successful completion of 60 classroom hours of study in general and clinical pharmacology as it relates to the practice of optometry, with particular emphasis on the use of topical ocular drugs for examination purposes. At least 30 of the 60 classroom hours shall be in ocular pharmacology and shall emphasize the systemic effects of and reactions to topical ocular drugs, including the emergency management and referral of any adverse reactions that may occur. The course of study shall be approved by the Board of Optometry, and shall be offered by an institution which is accredited by a regional or professional accreditation organization recognized or approved by the Council on Postsecondary Education or the United States Department of Education or their successors. The course shall be completed prior to entering the examination required by this section.

(b) Successful completion of an examination approved by the Board of Optometry on the subject of general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular drugs, including emergency management and referral of any adverse reactions that may occur.

148.576 USE OF LEGEND DRUGS; LIMITATIONS; REPORTS.

Subdivision 1. **Authority to prescribe or administer.** A licensed optometrist who is board certified under section 148.575 may prescribe or administer legend drugs to aid in the diagnosis, cure, mitigation, prevention, treatment, or management of disease, deficiency, deformity, or abnormality of the human eye and adnexa included in the curricula of accredited schools or colleges of optometry. Nothing in this section shall allow (1) legend drugs to be administered intravenously, intramuscularly, or by injection except for treatment of anaphylaxis, (2) invasive surgery including, but not limited to, surgery using lasers, (3) Schedule II and III oral legend drugs and oral steroids to be administered or prescribed, (4) oral antivirals to be prescribed or

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administered for more than ten days, or (5) oral carbonic anhydrase inhibitors to be prescribed or administered for more than seven days.

Subd. 2. **Adverse reaction reports.** An optometrist certified to prescribe legend drugs shall file with the Board of Optometry within ten working days of its occurrence a report on any adverse reaction resulting from the optometrist's administration of a drug. The report must include the optometrist's name, address, and license number; the patient's name, address, and age; the patient's presenting problem; the diagnosis; the agent administered and the method of administration; the reaction; and the subsequent action taken.

151.37 LEGEND DRUGS, WHO MAY PRESCRIBE, POSSESS.

Subd. 11. **Complaint reporting.** The Board of Pharmacy shall report on a quarterly basis to the Board of Optometry any complaints received regarding the prescription or administration of legend drugs under section 148.576.