

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 3003

(SENATE AUTHORS: BOLDON)

DATE	D-PG	OFFICIAL STATUS
03/20/2023	2120	Introduction and first reading Referred to Health and Human Services

1.1 A bill for an act

1.2 relating to health occupations; amending grounds for issuing licenses or imposing

1.3 discipline against a physician; amending Minnesota Statutes 2022, section 147.091,

1.4 subdivisions 1, 6.

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

1.6 Section 1. Minnesota Statutes 2022, section 147.091, subdivision 1, is amended to read:

1.7 Subdivision 1. **Grounds listed.** The board may refuse to grant a license, may refuse to

1.8 grant registration to perform interstate telehealth services, or may impose disciplinary action

1.9 as described in section 147.141 against any physician. The following conduct is prohibited

1.10 and is grounds for disciplinary action:

1.11 (a) Failure to demonstrate the qualifications or satisfy the requirements for a license

1.12 contained in this chapter or rules of the board. The burden of proof shall be upon the applicant

1.13 to demonstrate such qualifications or satisfaction of such requirements.

1.14 (b) Obtaining a license by fraud or cheating, or attempting to subvert the licensing

1.15 examination process. Conduct which subverts or attempts to subvert the licensing examination

1.16 process includes, but is not limited to: (1) conduct which violates the security of the

1.17 examination materials, such as removing examination materials from the examination room

1.18 or having unauthorized possession of any portion of a future, current, or previously

1.19 administered licensing examination; (2) conduct which violates the standard of test

1.20 administration, such as communicating with another examinee during administration of the

1.21 examination, copying another examinee's answers, permitting another examinee to copy

1.22 one's answers, or possessing unauthorized materials; or (3) impersonating an examinee or

1.23 permitting an impersonator to take the examination on one's own behalf.

2.1 (c) Conviction, during the previous five years, of a felony reasonably related to the
2.2 practice of medicine or osteopathic medicine. Conviction as used in this subdivision shall
2.3 include a conviction of an offense which if committed in this state would be deemed a felony
2.4 without regard to its designation elsewhere, or a criminal proceeding where a finding or
2.5 verdict of guilt is made or returned but the adjudication of guilt is either withheld or not
2.6 entered thereon.

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

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

2.14 (f) Violating a rule promulgated by the board or an order of the board, a state, or federal
2.15 law which relates to the practice of medicine, or in part regulates the practice of medicine
2.16 including without limitation sections 604.201, 609.344, and 609.345, or a state or federal
2.17 narcotics or controlled substance law.

2.18 (g) Engaging in any unethical or improper conduct, including but not limited to:

2.19 (1) conduct likely to deceive or defraud the public;

2.20 (2) conduct likely to harm the public;

2.21 (3) conduct that demonstrates a willful or careless disregard for the health, welfare, or
2.22 safety of a patient;

2.23 (4) medical practice that is professionally incompetent; and

2.24 (5) conduct that may create unnecessary danger to any patient's life, health, or safety,
2.25 in any of which cases, proof of actual injury need not be established.

2.26 (h) Failure to provide proper supervision, including but not limited to supervision of a:

2.27 (1) licensed or unlicensed health care provider; and

2.28 (2) physician under any agreement with the board.

2.29 (i) Aiding or abetting an unlicensed person in the practice of medicine, except that it is
2.30 not a violation of this paragraph for a physician to employ, supervise, or delegate functions
2.31 to a qualified person who may or may not be required to obtain a license or registration to

3.1 provide health services if that person is practicing within the scope of that person's license
3.2 or registration or delegated authority.

3.3 (j) Adjudication by a court of competent jurisdiction, within or outside this state, as:

3.4 (1) mentally incompetent;

3.5 (2) mentally ill;

3.6 (3) developmentally disabled;

3.7 (4) a chemically dependent person;

3.8 (5) a person dangerous to the public;

3.9 (6) a sexually dangerous person; or

3.10 (7) a person who has a sexual psychopathic personality.

3.11 Such adjudication shall automatically suspend a license for the duration of the
3.12 adjudication unless the board orders otherwise.

3.13 (k) Conduct that departs from or fails to conform to the minimal standards of acceptable
3.14 and prevailing medical practice in which case proof of actual injury need not be established.

3.15 (l) Inability to practice medicine with reasonable skill and safety to patients by reason
3.16 of the following, including but not limited to:

3.17 (1) illness;

3.18 (2) intoxication;

3.19 (3) use of drugs, narcotics, chemicals, or any other type of substance;

3.20 (4) mental condition, except that seeking or receiving care for a mental condition by
3.21 itself does not constitute inability to practice medicine with reasonable skill and safety to
3.22 patients;

3.23 (5) physical condition;

3.24 (6) diminished cognitive ability;

3.25 (7) loss of motor skills; or

3.26 (8) deterioration through the aging process.

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

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

4.4 (o) Improper management of medical records, including failure to maintain adequate
4.5 medical records, to comply with a patient's request made pursuant to sections 144.291 to
4.6 144.298 or to furnish a medical record or report required by law.

4.7 (p) Fee splitting, including without limitation:

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

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

4.14 (3) referring a patient to any health care provider as defined in sections 144.291 to
4.15 144.298 in which the referring physician has a "financial or economic interest," as defined
4.16 in section 144.6521, subdivision 3, unless the physician has disclosed the physician's financial
4.17 or economic interest in accordance with section 144.6521; and

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

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

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

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

4.31 (s) Inappropriate prescribing of or failure to properly prescribe a drug or device, including
4.32 prescribing a drug or device for other than medically accepted therapeutic or experimental
4.33 or investigative purposes authorized by a state or federal agency.

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

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

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

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

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

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

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

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

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

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

5.23 (z) Providing interstate telehealth services other than according to section 147.032.

5.24 Sec. 2. Minnesota Statutes 2022, section 147.091, subdivision 6, is amended to read:

5.25 Subd. 6. **Mental examination; access to medical data.** (a) If the board has probable
5.26 cause to believe that a regulated person comes under subdivision 1, paragraph (1), it may
5.27 direct the person to submit to a mental or physical examination. For the purpose of this
5.28 subdivision every regulated person is deemed to have consented to submit to a mental or
5.29 physical examination when directed in writing by the board and further to have waived all
5.30 objections to the admissibility of the examining physicians' testimony or examination reports
5.31 on the ground that the same constitute a privileged communication. Failure of a regulated
5.32 person to submit to an examination when directed constitutes an admission of the allegations

6.1 against the person, unless the failure was due to circumstance beyond the person's control,
6.2 in which case a default and final order may be entered without the taking of testimony or
6.3 presentation of evidence. A regulated person affected under this paragraph shall at reasonable
6.4 intervals be given an opportunity to demonstrate that the person can resume the competent
6.5 practice of the regulated profession with reasonable skill and safety to the public.

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

6.8 (b) In addition to ordering a physical or mental examination, the board may,
6.9 notwithstanding section 13.384, 144.651, or any other law limiting access to medical or
6.10 other health data, obtain medical data and health records relating to a regulated person or
6.11 applicant without the person's or applicant's consent if the board has probable cause to
6.12 believe that a regulated person comes under subdivision 1, paragraph (1). The medical data
6.13 may be requested from a provider, as defined in section 144.291, subdivision 2, paragraph
6.14 (i), an insurance company, or a government agency, including the Department of Human
6.15 Services. A provider, insurance company, or government agency shall comply with any
6.16 written request of the board under this subdivision and is not liable in any action for damages
6.17 for releasing the data requested by the board if the data are released pursuant to a written
6.18 request under this subdivision, unless the information is false and the provider giving the
6.19 information knew, or had reason to believe, the information was false. Information obtained
6.20 under this subdivision is classified as private under sections 13.01 to 13.87.

6.21 (c) Notwithstanding paragraphs (a) and (b), the board must not direct a person to submit
6.22 to a mental examination or obtain medical data and health records based solely on the fact
6.23 that the person has sought out or received care for a mental health condition.