

Examining and Licensing Boards

CHAPTER 214

EXAMINING AND LICENSING BOARDS

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214.001 POLICY. Subdivision 1. The legislature finds that the interests of the people of the state are served by the regulation of certain occupations. The legislature further finds: (1) that it is desirable for boards composed primarily of members of the occupations so regulated to be charged with formulating the policies and standards governing the occupation; (2) that economical and efficient administration of the regulation activities can be achieved through the provision of administrative services by departments of state government; and (3) that procedural fairness in the disciplining of persons regulated by the boards requires a separation of the investigative and prosecutorial functions from the board's judicial responsibility.

Subd. 2. The legislature declares that no regulation shall hereafter be imposed upon any occupation unless required for the safety and well being of the citizens of the state. In evaluating whether an occupation shall hereafter be regulated, the following factors shall be considered:

- (a) Whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;
- (b) Whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability; and
- (c) Whether the citizens of this state are or may be effectively protected by other means.

Subd. 3. If the legislature finds after evaluation of the factors identified in subdivision 2 that it is necessary to regulate an occupation not heretofore credentialed or regulated, then regulation should be implemented consistent with the policy of this section, in modes in the following order:

- (a) Creation or extension of common law or statutory causes of civil action, and the creation or extension of criminal prohibitions;
- (b) Imposition of inspection requirements and the ability to enforce violations by injunctive relief in the courts;
- (c) Implementation of a system of registration whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications; or
- (d) Implementation of a system of licensing whereby a practitioner must receive recognition by the state that he has met predetermined qualifications, and persons not so licensed are prohibited from practicing.

Two or more of these modes may be simultaneously implemented if necessary and appropriate.

[1976 c 222 s 1]

214.01 DEFINITIONS. Subdivision 1. The words defined in this section for purposes of this chapter have the meanings given them unless the context clearly requires otherwise.

Subd. 2. "Health related licensing board" means the board of examiners of nursing home administrators established pursuant to section 144A.19, the board of medical examiners created pursuant to section 147.01, the board of nursing created pursuant

to section 148.181, the board of chiropractic examiners established pursuant to section 148.02, the board of optometry established pursuant to section 148.52, the board of psychology established pursuant to section 148.90, the board of dentistry established pursuant to section 150A.02, the board of pharmacy established pursuant to section 151.02, the board of podiatry established pursuant to section 153.02, and the board of veterinary medicine, established pursuant to section 156.01.

Subd. 3. "Non-health related licensing board" means the board of teaching established pursuant to section 125.183, the board of barber examiners established pursuant to section 154.22, the board of cosmetology examiners established pursuant to section 155.04, the board of assessors established pursuant to section 270.41, the board of architecture, engineering, land surveying and landscape architecture established pursuant to section 326.04, the board of accountancy established pursuant to section 326.17, the board of electricity established pursuant to section 326.241, the private detective and protective agent licensing board established pursuant to section 326.33, the board of examiners in watchmaking established pursuant to section 326.541, the board of boxing established pursuant to section 341.01, the board of abstracters established pursuant to section 386.63, and the peace officer standards and training board established pursuant to section 626.841.

[1973 c 638 s 63; 1974 c 406 s 82,83; 1975 c 136 s 46,47; 1975 c 271 s 6; 1976 c 173 s 54; 1976 c 222 s 27,203,204; 1977 c 433 s 14; 1978 c 674 s 20]

214.02 PUBLIC MEMBER, DEFINED. "Public member" means a person who is not, or never was, a member of the profession or occupation being licensed or regulated or the spouse of any such person, or a person who does not have or has never had, a material financial interest in either the providing of the professional service being licensed or regulated or an activity directly related to the profession or occupation being licensed or regulated.

[1973 c 638 s 61]

214.03 STANDARDIZED TESTS. All state examining and licensing boards, other than the state board of law examiners, the state board of professional responsibility or any other board established by the supreme court to regulate the practice of law and judicial functions, shall use national standardized tests for the objective, nonpractical portion of any examination given to prospective licensees to the extent that such national standardized tests are appropriate, except when the subject matter of the examination relates to the application of Minnesota law to the profession or calling being licensed.

[1973 c 638 s 62; 1974 c 406 s 81]

214.04 SERVICES. Subdivision 1. The commissioner of administration with respect to the board of electricity, the commissioner of education with respect to the board of teaching, the commissioner of public safety with respect to the board of private detective and protective agent services, and the commissioner of revenue with respect to the board of assessors, shall provide suitable offices and other space, joint conference and hearing facilities, examination rooms, and the following administrative support services: purchasing service, accounting service, advisory personnel services, consulting services relating to evaluation procedures and techniques, data processing, duplicating, mailing services, automated printing of license renewals, and such other similar services of a housekeeping nature as are generally available to other agencies of state government. Investigative services shall be provided the boards by employees of the office of attorney general. The commissioner of health with respect to the health related licensing boards and the chairman of the commerce commission with respect to the remaining non-health related licensing boards shall provide the above facilities and services at a central location for the health related and remaining non-health related licensing boards. The legal and investigative services for the boards shall be provided by employees of the attorney general assigned to the departments servicing the boards. Notwithstanding the foregoing, the attorney general shall not be precluded by this section from assigning other attorneys to service a board if necessary in order to insure competent and consistent legal representation. Persons providing legal and investigative services shall to the extent practicable provide the services on a regular basis to the same board or boards.

Subd. 2. The health related licensing boards and the non-health related licensing boards shall be required to provide compensation for the reasonable costs associated with providing the services and staff required by subdivisions 1 and 3. Transfers of

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funds to the account of the appropriate department as specified in subdivision 1 or the office of attorney general shall be made on the first day of each quarter of the biennium for services furnished during the preceding quarter, and all funds so transferred shall be deposited to the account of the appropriate department or office.

Subd. 3. The executive secretary of each health related and non-health related board shall be the chief administrative officer for the board but he shall not be a member of the board. He shall maintain the records of the board, account for all fees received by it, supervise and direct employees servicing the board, and perform other services as directed by the board. The executive secretaries and other employees of the following boards shall be hired by the board, and the executive secretaries shall be in the unclassified civil service: dentistry; medical examiners; nursing; pharmacy; accountancy; architecture, engineering, land surveying and landscape architecture; barber examiners; cosmetology; electricity; and teaching. The executive secretaries serving the remaining boards shall be hired by those boards, and shall be in the unclassified civil service except for part-time executive secretaries, who are not required to be in the unclassified service. Boards not requiring a full-time executive secretary may employ such services on a part-time basis. To the extent practicable the sharing of part-time executive secretaries by boards being serviced by the same department is encouraged. Persons providing services to those boards not listed in this subdivision, except executive secretaries of the boards and employees of the attorney general, shall be classified civil service employees of the department servicing the board. To the extent practicable the commissioner shall insure that staff services are shared by the boards being serviced by the department. If necessary, a board may hire part-time, temporary employees to administer and grade examinations.

Subd. 4. Two or more health related licensing boards or two or more nonhealth related licensing boards may hold joint rule making proceedings on proposed rules relating to similar subject matters.

[1973 c 638 s 64; 1975 c 136 s 48; 1975 c 271 s 6; 1976 c 222 s 2,27; 1977 c 444 s 13,14]

214.05 [Repealed, 1977 c 444 s 21]

214.06 FEES; LICENSE RENEWALS. Subdivision 1. Notwithstanding any law to the contrary, the commissioner of health as authorized by section 214.13, all health related licensing boards and all non-health related licensing boards may by rule, with the approval of the commissioner of finance, adjust any fee which the board is empowered to assess a sufficient amount so that the total fees collected by each board will as closely as possible equal anticipated expenditures during the fiscal biennium. Examination fees, if any, shall be set by rule so that the total amount of annual examination fee income approximately meets the anticipated cost of administering the examinations during the fiscal biennium. All fees received shall be deposited with the state treasurer and credited to the general fund.

Subd. 2. Notwithstanding any law to the contrary, each health related and non-health related licensing board shall promulgate rules providing for the renewal of licenses. The rules shall specify the period of time for which a license is valid, procedures and information required for renewal, and renewal fees to be set pursuant to subdivision 1.

[1973 c 638 s 67; 1974 c 406 s 85; 1976 c 222 s 3; 1977 c 305 s 45; 1977 c 444 s 15]

214.07 REPORTS. Subdivision 1. **Board reports.** The health related licensing boards and the non-health related licensing boards shall prepare reports by October 1 of each even numbered year on forms prepared by the commissioner of administration. Copies of the reports shall be delivered to the legislature in accordance with section 3.195, the governor and the commissioner of administration. Copies of the reports of the health related licensing boards shall be delivered to the commissioner of health. The reports shall contain the following information relating to the two year period ending the previous June 30:

- (a) A general statement of board activities;
- (b) The number of meetings and approximate total number of hours spent by all board members in meetings and on other board activities;
- (c) The receipts and disbursements of board funds;

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(d) The names of board members and their addresses, occupations, and dates of appointment and reappointment to the board;

(e) The names and job classifications of board employees;

(f) A brief summary of board rules proposed or adopted during the reporting period with appropriate citations to the state register and published rules;

(g) The number of persons having each type of license and registration issued by the board as of June 30 in the year of the report;

(h) The locations and dates of the administration of examinations by the board;

(i) The number of persons examined by the board with the persons subdivided into groups showing age categories, sex, and states of residency;

(j) The number of persons licensed or registered by the board after taking the examinations referred to in clause (h) with the persons subdivided by age categories, sex, and states of residency;

(k) The number of persons not licensed or registered by the board after taking the examinations referred to in clause (h) with the persons subdivided by age categories, sex, and states of residency;

(l) The number of persons not taking the examinations referred to in clause (h) who were licensed or registered by the board or who were denied licensing or registration with the reasons for the licensing or registration or denial thereof and with the persons subdivided by age categories, sex, and states of residency;

(m) The number of persons previously licensed or registered by the board whose licenses or registrations were revoked, suspended, or otherwise altered in status with brief statements of the reasons for the revocation, suspension or alteration;

(n) The number of written and oral complaints and other communications received by the executive secretary of the board, a board member, or any other person performing services for the board (1) which allege or imply a violation of a statute or rule which the board is empowered to enforce and (2) which are forwarded to other agencies as required by section 214.10;

(o) A summary by category of the substance of the complaints and communications referred to in clause (n) and the responses or dispositions thereof pursuant to sections 214.10 or 214.11;

(p) Any other objective information which the board members believe will be useful in reviewing board activities.

Subd. 2. Summary of board reports. Not later than December 15 of each even numbered year, the commissioner of health with respect to the health related licensing boards and the commissioner of administration with respect to the non-health related boards shall prepare summary reports compiling the information required by subdivision 1, clauses (b) and (g) to (p) and contained in the reports submitted by the boards the preceding year pursuant to subdivision 1. The summary reports shall also specify the staff and services provided by the departments to each board. The summary reports shall be distributed to the legislature pursuant to section 3.195 and to the governor.

[1975 c 136 s 49; 1976 c 222 s 4; 1977 c 305 s 45]

214.08 FISCAL YEAR. All health related boards and all non-health related boards shall adopt the fiscal year system employed by the state.

[1975 c 136 s 50]

214.09 MEMBERSHIP; COMPENSATION; REMOVAL; VACANCIES. Subdivision 1. **General.** The following standard provisions shall apply to the health related and non-health related licensing boards and to agencies created after July 1, 1975 in the executive branch, other than departments, whose primary functions include licensing, registration or certification of persons in specified professions or occupations.

Subd. 2. Membership terms. The terms of the members shall be four years with the terms ending on the first Monday in January. The appointing authority shall appoint as nearly as possible one-fourth of the members to terms expiring each year. If the number of members is not evenly divisible by four, the greater number of members, as necessary, shall be appointed to terms expiring in the year of commencement of the governor's term and the year or years immediately thereafter. If the membership is composed of categories of members from occupations, industries, political sub-

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divisions, the public or other groupings of persons, and if the categories have two or more members each, the appointing authority shall appoint as nearly as possible one-fourth of the members in each category at each appointment date. Members may serve until their successors are appointed and qualify. If the appointing authority fails to appoint a successor by July 1 of the year in which the term expires, the term of the member for whom a successor has not been appointed shall extend until the first Monday in January four years after the scheduled end of the original term.

Subd. 3. Compensation. Members of the boards shall be compensated at the rate of \$35 per day spent on board activities, when authorized by the board, plus expenses in the same manner and amount as received by state employees. Members who are full time state employees or employees of the political subdivisions of the state shall not receive the \$35 per day, if the major part of their activities occur during normal working hours for which they are also compensated by the state or political subdivision. A board member who is an employee of the state or political subdivision shall suffer no loss in compensation or benefits as a result of their service on the board. Members who are state employees or employees of the political subdivisions of the state may receive the expenses provided for in this subdivision unless the expenses are reimbursed by another source. A state employee who serves on a board as a representative of a specific state department or agency shall not receive the \$35 per day.

Subd. 4. Removal; vacancies. A member may be removed by the appointing authority at any time (1) for cause after notice and hearing, (2) if the board fails to prepare and submit the report required by section 214.07, or (3) after missing three consecutive meetings. The chairman of the board shall inform the appointing authority of a member missing the three consecutive meetings. After the second consecutive missed meeting and before the next meeting, the secretary of the board shall notify the member in writing that he may be removed if he misses the next meeting. In the case of a vacancy on the board, the appointing authority shall appoint a person to fill the vacancy for the remainder of the unexpired term.

[1975 c 136 s 51; 1976 c 222 s 205]

214.10 COMPLAINTS; INVESTIGATION AND HEARING. Subdivision 1. **Receipt of complaint.** The executive secretary of a board, a board member or any other person who performs services for the board who receives a complaint or other communication, whether oral or written, which complaint or communication alleges or implies a violation of a statute or rule which the board is empowered to enforce, shall promptly forward the substance of the communication on a form prepared by the attorney general to the designee of the attorney general responsible for providing legal services to the board. Before proceeding further with the communication, the designee of the attorney general may require the complaining party to state his complaint in writing on a form prepared by the attorney general. Complaints which relate to matters within the jurisdiction of another governmental agency shall be forwarded to that agency by the executive secretary. An officer of that agency shall advise the executive secretary of the disposition of that complaint. A complaint received by another agency which relates to a statute or rule which a licensing board is empowered to enforce shall be forwarded to the executive secretary of the board to be processed in accordance with this section.

Subd. 2. Investigation and hearing. The designee of the attorney general providing legal services to a board shall evaluate the communications forwarded to him by the board or its members or staff. If the communication alleges a violation of statute or rule which the board is to enforce, the designee is empowered to investigate the facts alleged in the communication. In the process of evaluation and investigation, he shall consult with or seek the assistance of the executive secretary or, if the board determines, a member of the board who has been designated by the board to assist the designee. He may also consult with or seek the assistance of any other qualified persons who are not members of the board who the designee believes will materially aid in the process of evaluation or investigation. The executive secretary or the consulted board member may attempt to correct improper activities and redress grievances through education, conference, conciliation and persuasion, and in these attempts he may be assisted by the designee of the attorney general. If the attempts at correction or redress do not produce satisfactory results in the opinion of the executive secretary or the consulted board member, or if after investigation the designee providing legal services to the board, the executive secretary or the consulted board member believes

that the communication and the investigation suggest illegal or unauthorized activities warranting board action, he shall inform the executive secretary of the board who shall schedule a disciplinary hearing in accordance with chapter 15. Before the designee of the attorney general or the executive secretary may direct the holding of a disciplinary hearing, he shall have considered the recommendations of the consulted board member. Before scheduling a disciplinary hearing, the executive secretary must have received a verified written complaint from the complaining party. A board member who was consulted during the course of an investigation may participate at the hearing but may not vote on any matter pertaining to the case. The executive secretary of the board shall promptly inform the complaining party of the final disposition of the complaint. Nothing in this section shall preclude the board from scheduling, on its own motion, a disciplinary hearing based upon the findings or report of the board's executive secretary, a board member or the designee of the attorney general assigned to the board. Nothing in this section shall preclude a member of the board or its executive secretary from initiating a complaint.

Subd. 2a. Proceedings. A board shall initiate proceedings to suspend or revoke a license or shall refuse to renew a license of a person licensed by the board who is convicted in a court of competent jurisdiction of violating sections 609.23, 609.231, 609.465, 609.466, 609.52, or 626.555.

Subd. 3. Discovery; subpoenas. In all matters pending before it relating to its lawful regulation activities, a board may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to appear or testify regarding any matter about which he may be lawfully questioned or produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so may, upon application to the district court in any district, be ordered to comply therewith. The chairman of the board acting on behalf of the board may issue subpoenas and any board member may administer oaths to witnesses, or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon any person named therein, anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions, with the same fees and mileage and in the same manner as prescribed by law for service of process issued out of the district court of this state. Fees and mileage and other costs shall be paid as the board directs.

[1976 c 222 s 5; 1977 c 326 s 10]

214.11 ADDITIONAL REMEDY. In addition to any other remedy provided by law, a licensing board may in its own name bring an action in district court for injunctive relief to restrain any unauthorized practice or violation or threatened violation of any statute or rule which the board is empowered to regulate or enforce. A temporary restraining order may be granted in the proceeding if continued activity by a person would create an imminent risk of harm to others. Injunctive relief granted pursuant to this section shall not relieve a person enjoined from criminal prosecution by any competent authority or from disciplinary action by the board in respect to the person's license or application for license or renewal.

[1976 c 222 s 6]

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

[1976 c 222 s 7]

214.13 HUMAN SERVICES OCCUPATIONS. Subdivision 1. The commissioner of health shall promote the recognition of human services occupations useful in the effective delivery of human services. The commissioner shall coordinate the development of a credentials policy among the health related licensing boards consistent with section 214.001. The commissioner shall, consistent with section 214.001, establish

procedures for the identification of human services occupations not now credentialed by the state, recommend appropriate regulatory modes, and promulgate by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations. If the commissioner determines that credentialing of an occupation is appropriate, the commissioner is empowered only to register the occupation. Before promulgating any rules resulting in registration for an occupation the commissioner shall consult with state boards or agencies charged with regulating similar occupations in order to define the scope and range of practice for the registered occupation and the degree of supervision required. As used in this section and section 214.14 registration shall be defined as in section 214.001, subdivision 3, clause (c).

Subd. 2. Before promulgating any rules regulating a specific occupation under this section, the commissioner shall determine whether a substantial number of persons in that occupation will be employed by an employer who is regulated by or funded through another state agency. If the commissioner so determines, then he must submit the proposed rules to the head or governing board of that agency for review and approval. The agency shall review the rules to insure compliance with laws which are administered or enforced by that agency. The rules must have received the approval of that agency before promulgation.

Subd. 3. Rules promulgated by the commissioner pursuant to subdivision 1 may include procedures and standards relating to the registration requirement, the scope of authorized practice, fees, supervision required, continuing education, career progression and disciplinary matters. These rules shall not be in conflict with provisions of chapter 214 and Laws 1976, Chapter 222, Sections 1 to 7.

Subd. 4. The commissioner of health shall wherever possible delegate the administration of regulation activities to a health related licensing board with the concurrence of that board. If the commissioner of health delegates this function, the licensing board shall regularly bill the commissioner of health for the cost of performing this function. The commissioner of health may establish an advisory council to advise him or the appropriate health related licensing board on matters relating to the registration and regulation of an occupation. A council shall have seven members appointed by the commissioner of which five are members of the registered occupation or related registered or licensed occupations, and two are public members. A council shall expire, and the terms, compensation and removal of members shall be as provided in section 15.059.

Subd. 5. The commissioner of health shall exercise care to prevent the proliferation of unessential registered human services occupations. If in evaluating a currently unregistered occupation the commissioner determines that registration of the occupation is not appropriate, but that implementation of another mode as set forth in section 214.001, subdivision 3, is appropriate the commissioner shall promptly so report to the legislature.

[1976 c 222 s 8; 1977 c 305 s 45]

214.14 ADVISORY COUNCIL. Subdivision 1. There is established a human services occupations advisory council to assist the commissioner of health in formulating policies and rules pursuant to section 214.13. The commissioner shall determine the duties of the council, shall establish procedures for the proper functioning of the council including, but not limited to the following: the method of selection of membership, the selection of a committee chairman and methods of communicating recommendations and advice to the commissioner for his consideration. Each of the health related licensing boards, the state examining committee for physical therapists, the advisory council for hospital administrator's registration, the consumer services section of the department of commerce, the state comprehensive health planning advisory council and the higher education coordinating board shall have a representative selected by the boards or section. The governor shall appoint the remaining members who shall not exceed 11 and shall include six persons broadly representative of human services, particularly human services professions not presently credentialed pursuant to existing law, and five public members. The committee shall expire and the terms of the appointed members and the compensation and removal of all members shall be as provided in section 15.059.

Subd. 2. The commissioner or his designee shall serve as secretary to the council and shall provide the additional assistance necessary to facilitate the work of the council.

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Subd. 3. The advisory council shall review all rules and policies promulgated by the health related licensing boards and recommend any appropriate changes to the commissioner of health or the relevant licensing board.

[1975 c 271 s 6; 1976 c 222 s 9; 1977 c 305 s 45]