

CHAPTER 148

PUBLIC HEALTH OCCUPATIONS, LICENSING

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CHIROPRACTORS

148.01 CHIROPRACTIC.

Subdivision 1. For the purposes of sections 148.01 to 148.10, "chiropractic" is defined as the science of adjusting any abnormal articulations of the human body, especially those of the spinal column, for the purpose of giving freedom of action to impinged nerves that may cause pain or deranged function.

Subd. 2. The practice of chiropractic is not the practice of medicine, surgery, or osteopathy.

Subd. 3. Chiropractic practice includes those noninvasive means of clinical, physical, and laboratory measures and analytical X-ray of the bones of the skeleton which

are necessary to make a determination of the presence or absence of a chiropractic condition. The practice of chiropractic may include procedures which are used to prepare the patient for chiropractic adjustment or to complement the chiropractic adjustment. The procedures may not be used as independent therapies or separately from chiropractic adjustment. No device which utilizes heat or sound shall be used in the treatment of a chiropractic condition unless it has been approved by the Federal Communications Commission. No device shall be used above the neck of the patient. Any chiropractor who utilizes procedures in violation of this subdivision shall be guilty of unprofessional conduct and subject to disciplinary procedures according to section 148.10.

History: (5725, 5731(c)) 1919 c 64 s 2,8; 1927 c 230; 1975 c 362 s 1; 1983 c 346 s 1

148.02 CHIROPRACTORS; STATE BOARD OF EXAMINERS.

There is hereby created and established a board to be known by the name and style of state board of chiropractic examiners.

History: (5724) 1919 c 64 s 1

148.03 APPOINTMENT.

The governor shall appoint a board of chiropractic examiners consisting of two public members as defined by section 214.02 and five resident chiropractors who shall have practiced chiropractic in this state for at least three years immediately prior to the time of appointment, all of whom shall be graduates of a course of chiropractic, but no more than two of whom shall be graduates of the same school or college of chiropractic. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09. The provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in chapter 214 and Laws 1976, chapter 222, sections 2 to 7. The board shall have the authority to prescribe rules relative to the examination of applicants for license to practice chiropractic and for the annual renewal of licenses. Vacancies caused by death or otherwise shall be filled by the governor within 60 days. No member of the board shall be financially interested in any chiropractic school or college or be in any way affiliated with the practice of other methods of healing as are now regulated by law in this state.

History: (5726) 1919 c 64 s 3; 1943 c 155 s 1; 1959 c 186 s 1; 1973 c 638 s 10; 1975 c 136 s 8; 1976 c 222 s 45; 1976 c 239 s 54

148.031 CONTINUING EDUCATION.

The board shall adopt rules requiring continuing education for chiropractors licensed under this chapter who regularly practice in the area of workers' compensation. These rules shall include rules relating to continuing education designed to assure the coordination of treatment, rehabilitation, and other chiropractic services provided to injured employees under chapter 176. Rules relative to education under chapter 176 shall be adopted jointly with the commissioner of labor and industry. These rules shall be consistent with section 214.12.

History: 1983 c 290 s 18

148.04 PROCEDURE.

The officers of the board of chiropractic examiners shall have power to administer oaths, summon witnesses, and take testimony as to matters pertaining to its duties. It shall adopt a minimum of educational requirements not inconsistent with the provisions of sections 148.01 to 148.10, which shall be without prejudice, partiality, or discrimination as to the different schools or colleges of chiropractic. The board shall meet at such times as the majority of the board may deem proper. A majority of the board shall constitute a quorum for the transaction of business. The secretary shall keep a

record of its proceedings. This report shall be prima facie evidence of all matters therein recorded.

History: (5727) 1919 c 64 s 4; 1967 c 149 s 1; 1973 c 638 s 11; 1975 c 136 s 9

148.05 LICENSE AND FEE.

At its first meeting the state board of chiropractic examiners shall issue to each member a license to practice chiropractic, for which the member shall pay a fee set by the board. The board shall have a common seal and promulgate rules to govern its actions.

History: (5728) 1919 c 64 s 5; 1976 c 222 s 46; 1986 c 444

148.06 APPLICATION; EXAMINATION; LICENSE; FEE.

Subdivision 1. License required; qualifications. No person shall practice chiropractic in this state without first being licensed by the state board of chiropractic examiners. The applicant shall have earned at least one-half of all academic credits required for awarding of a baccalaureate degree from the University of Minnesota, or other university, college, or community college of equal standing, in subject matter determined by the board, and taken a four-year resident course of at least eight months each in a school or college of chiropractic that is fully accredited by the council on chiropractic education or fully accredited by an agency approved by the United States Office of Education or their successors as of January 1, 1988. The board may issue licenses to practice chiropractic without compliance with prechiropractic or academic requirements listed above if in the opinion of the board the applicant has the qualifications equivalent to those required of other applicants, the applicant satisfactorily passes written and practical examinations as required by the board of chiropractic examiners, and the applicant is a graduate of a college of chiropractic with a reciprocal recognition agreement with the council on chiropractic education as of January 1, 1988. The board may recommend a two-year prechiropractic course of instruction to any university, college, or community college which in its judgment would satisfy the academic prerequisite for licensure as established by this section.

An examination for a license shall be in writing and shall include testing in:

- (a) The basic sciences including but not limited to anatomy, physiology, bacteriology, pathology, hygiene, and chemistry as related to the human body or mind;
- (b) The clinical sciences including but not limited to the science and art of chiropractic, chiropractic physiotherapy, diagnosis, roentgenology, and nutrition; and
- (c) Professional ethics and any other subjects that the board may deem advisable.

The board may consider a valid certificate of examination from the National Board of Chiropractic Examiners as evidence of compliance with the written examination requirements of this subdivision. The applicant shall be required to give practical demonstration in vertebral palpation, neurology, adjusting and any other subject that the board may deem advisable. A license, countersigned by the members of the board and authenticated by the seal thereof, shall be granted to each applicant who correctly answers 75 percent of the questions propounded in each of the subjects required by this subdivision and meets the standards of practical demonstration established by the board. Each application shall be accompanied by a fee set by the board. The fee shall not be returned but the applicant may, within one year, apply for examination without the payment of an additional fee. The board may grant a license to an applicant who holds a valid license to practice chiropractic issued by the appropriate licensing board of another state, provided the applicant meets the other requirements of this section and satisfactorily passes the practical examination before the board. The burden of proof is on the applicant to demonstrate these qualifications or satisfaction of these requirements.

Subd. 2. [Repealed, 1976 c 222 s 209]

History: (5729) 1919 c 64 s 6; 1927 c 230; 1959 c 186 s 2; 1967 c 706 s 1; 1974 c 564 s 1; 1976 c 222 s 47; 1977 c 193 s 1; 1983 c 346 s 2; 1986 c 444; 1987 c 345 s 1; 1988 c 642 s 6

148.07 RENEWAL FEES; EXPENSES.

Subdivision 1. **Renewal fees.** All persons practicing chiropractic within this state, or licensed so to do, shall pay, on or before the date of expiration of their licenses, to the board of chiropractic examiners a renewal fee set by the board, with a penalty set by the board for each month or portion thereof for which a license fee is in arrears and upon payment of the renewal and upon compliance with all the rules of the board, shall be entitled to renewal of their license.

Subd. 2. **Expenses.** The expenses of administering sections 148.01 to 148.105 shall be paid from the appropriation made to the state board of chiropractic examiners. Expenditures and revenues must be managed in accordance with the statewide accounting principles and requirements of the commissioner of finance.

Subd. 3. [Repealed, 1975 c 136 s 77]

History: (5730) 1919 c 64 s 7; 1927 c 230 s 1; 1943 c 155 s 2; 1955 c 847 s 12; 1959 c 186 s 3; 1965 c 64 s 1; 1967 c 149 s 2; 1969 c 399 s 1; 1973 c 638 s 12,13; 1976 c 222 s 48; 1983 c 346 s 3; 1987 c 345 s 2

148.08 RULES.

Subdivision 1. [Repealed, 1976 c 222 s 209]

Subd. 2. **How regulated.** Chiropractors shall be subject to the same rules and regulations, both municipal and state, that govern other licensed doctors or physicians in the control of contagious and infectious diseases, and shall be entitled to sign health and death certificates, and to all rights and privileges of other doctors or physicians in all matters pertaining to the public health, except prescribing internal drugs or the practice of medicine, physical therapy, surgery and obstetrics.

Subd. 3. **Rules.** The board of chiropractic examiners shall promulgate rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic and defining any terms, whether or not used in sections 148.01 to 148.105, if the definitions are not inconsistent with the provisions of sections 148.01 to 148.105.

History: (5731) 1919 c 64 s 8; 1927 c 230; 1975 c 362 s 2; 1983 c 346 s 4; 1985 c 248 s 70; 1987 c 345 s 3

148.09 INDEPENDENT EXAMINATION.

A doctor of chiropractic conducting a physical examination of a patient or a review of records by a doctor of chiropractic, for the purpose of generating a report or opinion to aid a reparation obligor under chapter 65B in making a determination regarding the condition or further treatment of the patient, shall meet the following requirements:

(1) the doctor of chiropractic must either be an instructor at an accredited school of chiropractic or have devoted not less than 50 percent of practice time to direct patient care during the two years immediately preceding the examination;

(2) the doctor of chiropractic must have completed any annual continuing education requirements for chiropractors prescribed by the board of chiropractic examiners;

(3) the doctor of chiropractic must not accept a fee of more than \$500 for each independent exam conducted; and

(4) the doctor of chiropractic must register with the board of chiropractic examiners as an independent examiner and adhere to all rules governing the practice of chiropractic.

History: 1990 c 611 s 1

148.10 LICENSES REVOKED; NEW LICENSES.

Subdivision 1. **Grounds.** The state board of chiropractic examiners may refuse to grant, or may revoke, suspend, condition, limit, restrict or qualify a license to practice chiropractic, or may cause the name of a person licensed to be removed from the records in the office of the court administrator of the district court for:

(1) Advertising that is false or misleading; that violates a rule of the board; or that claims the cure of any condition or disease.

(2) The employment of fraud or deception in applying for a license or in passing the examination provided for in section 148.06 or conduct which subverts or attempts to subvert the licensing examination process.

(3) The practice of chiropractic under a false or assumed name or the impersonation of another practitioner of like or different name.

(4) The conviction of a crime involving moral turpitude.

(5) The conviction, during the previous five years, of a felony reasonably related to the practice of chiropractic.

(6) Habitual intemperance in the use of alcohol or drugs.

(7) Failure to pay the annual renewal license fee.

(8) Advanced physical or mental disability.

(9) The revocation or suspension of a license to practice chiropractic; or other disciplinary action against the licensee; or the denial of an application for a license by the proper licensing authority of another state, territory or country; or failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction.

(10) The violation of, or failure to comply with, the provisions of sections 148.01 to 148.105, the rules of the state board of chiropractic examiners, or a lawful order of the board.

(11) Unprofessional conduct.

(12) Being unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, professional incompetence, senility, drunkenness, use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills. If the board has probable cause to believe that a person comes within this clause, it shall direct the person to submit to a mental or physical examination. For the purpose of this clause, every person licensed under this chapter shall be deemed to have given consent to submit to a mental or physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that the same constitute a privileged communication. Failure of a person to submit to such examination when directed shall constitute an admission of the allegations, unless the failure was due to circumstances beyond the person's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A person affected under this clause shall at reasonable intervals be afforded an opportunity to demonstrate that the person can resume the competent practice of chiropractic with reasonable skill and safety to patients.

In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.42, 144.651, or any other law limiting access to health data, obtain health data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that a doctor of chiropractic comes under this clause. The health data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision, unless the information is false and the provider or entity giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private under sections 13.01 to 13.87.

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

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

(14) Improper management of health records, including failure to maintain adequate health records as described in clause (18), to comply with a patient's request made under section 144.335 or to furnish a health record or report required by law.

(15) Failure to make reports required by section 148.102, subdivisions 2 and 5, or to cooperate with an investigation of the board as required by section 148.104, or the submission of a knowingly false report against another doctor of chiropractic under section 148.10, subdivision 3.

(16) Splitting fees, or promising to pay a portion of a fee or a commission, or accepting a rebate.

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

(18) Failing to keep written chiropractic records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results, test results, and X-rays. Unless otherwise required by law, written records need not be retained for more than seven years and X-rays need not be retained for more than four years.

(19) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party which shall include, but not be limited to, the promotion or sale of services, goods, or appliances.

(20) Gross or repeated malpractice or the failure to practice chiropractic at a level of care, skill, and treatment which is recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(21) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that the person is not qualified by training, experience, or licensure to perform them.

For the purposes of clause (2), conduct that subverts or attempts to subvert the licensing examination process includes, but is not limited to: (a) conduct that violates the security of the examination materials, such as removing examination materials from the examination room or having unauthorized possession of any portion of a future, current, or previously administered licensing examination; (b) conduct that violates the standard of test administration, such as communicating with another examinee during administration of the examination, copying another examinee's answers, permitting another examinee to copy one's answers, or possessing unauthorized materials; or (c) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

For the purposes of clauses (4) and (5), conviction as used in these subdivisions includes a conviction of an offense that if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is made or returned but the adjudication of guilt is either withheld or not entered.

For the purposes of clauses (4), (5), and (6), a copy of the judgment or proceeding under seal of the administrator of the court or of the administrative agency which entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of its contents.

For the purposes of clause (11), unprofessional conduct means any unethical, deceptive or deleterious conduct or practice harmful to the public, any departure from or the failure to conform to the minimal standards of acceptable chiropractic practice, or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:

- (a) Gross ignorance of, or incompetence in, the practice of chiropractic;
- (b) Engaging in conduct with a patient that is sexual or may reasonably be interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient;
- (c) Performing unnecessary services;
- (d) Charging a patient an unconscionable fee or charging for services not rendered;
- (e) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;
- (f) Perpetrating fraud upon patients, third party payers, or others, relating to the practice of chiropractic, including violations of the Medicare or Medicaid laws or state medical assistance laws;
- (g) Advertising that the licensee will accept for services rendered assigned payments from any third-party payor as payment in full, if the effect is to give the impression of eliminating the need of payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan; or advertising a fee or charge for a service or treatment different from the fee or charge the licensee submits to a third-party payor for that service or treatment. As used in this clause, "advertise" means solicitation by the licensee by means of handbills, posters, circulars, motion pictures, radio, newspapers, television, or in any other manner. In addition to the board's power to punish for violations of this clause, violation of this clause is also a misdemeanor;
- (h) Accepting for services rendered assigned payments from any third-party payor as payment in full, if the effect is to eliminate the need of payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan, except as hereinafter provided; or collecting a fee or charge for a service or treatment different from the fee or charge the licensee submits to a third-party payor for that service or treatment, except as hereinafter provided. This clause is intended to prohibit offerings to the public of the above listed practices and those actual practices as well, except that in instances where the intent is not to collect an excessive remuneration from the third-party payor but rather to provide services at a reduced rate to a patient unable to afford the deductible or copayment, the services may be performed for a lesser charge or fee. The burden of proof for establishing that this is the case shall be on the licensee; and
- (i) Any other act that the board by rule may define.

Subd. 2. Issuance following refusal, revocation or cancellation. The state board of chiropractic examiners may, at any time within two years of the refusal or revocation or cancellation of a license under this section, by a majority vote, issue a new license or grant a license to the person affected, restoring to, or conferring upon the person, all the rights and privileges of, and pertaining to, the practice of chiropractic, as defined and regulated by sections 148.01 to 148.10. Any person to whom such have been restored shall pay a fee set by the board upon issuance of a new license.

Subd. 3. Reprimand; penalties; probation. In addition to the other powers granted to the board under this chapter, the board may, in connection with any person whom the board, after a hearing, adjudges unqualified or whom the board, after a hearing, finds to have performed one or more of the acts described in subdivision 1:

- (a) Publicly reprimand or censure the person;
- (b) Place the person on probation for the period and upon the terms and conditions that the board may prescribe; and
- (c) Require payment of all costs of proceedings resulting in the disciplinary action; and
- (d) Impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the doctor of chiropractic of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding.

Subd. 4. Temporary suspension. In addition to any other remedy provided by law,

the board may, without a hearing, temporarily suspend a license for not more than 60 days if the board finds that a person has violated a statute or rule which the board is empowered to enforce and continued practice by the person would create an imminent risk of harm to others. The suspension shall take effect upon written notice to the person, specifying the statute or rule violated. At the time it issues the suspension notice, the board shall schedule a disciplinary hearing to be held pursuant to the Administrative Procedure Act. The person shall be provided with at least 20 days notice of any hearing held pursuant to this subdivision.

Subd. 5. Tax clearance certificate. (a) In addition to the grounds provided in subdivision 1, the board may not issue or renew a license to practice chiropractic if the commissioner of revenue notifies the board and the licensee or applicant for a license that the licensee or applicant owes the state delinquent taxes in the amount of \$500 or more. The board may issue or renew the license only if (1) the commissioner of revenue issues a tax clearance certificate and (2) the commissioner of revenue or the licensee or applicant forwards a copy of the clearance to the board. The commissioner of revenue may issue a clearance certificate only if the licensee or applicant does not owe the state any uncontested delinquent taxes.

(b) For purposes of this subdivision, the following terms have the meanings given.

(1) "Taxes" are all taxes payable to the commissioner of revenue, including penalties and interest due on those taxes.

(2) "Delinquent taxes" do not include a tax liability if (i) an administrative or court action that contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired, or (iii) the licensee or applicant has entered into a payment agreement to pay the liability and is current with the payments.

(c) In lieu of the notice and hearing requirements of subdivisions 3 and 4, when a licensee or applicant is required to obtain a clearance certificate under this subdivision, a contested case hearing must be held if the licensee or applicant requests a hearing in writing to the commissioner of revenue within 30 days of the date of the notice provided in paragraph (a). The hearing must be held within 45 days of the date the commissioner of revenue refers the case to the office of administrative hearings. Notwithstanding any law to the contrary, the licensee or applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the licensee or applicant. The notice may be served personally or by mail.

(d) The board shall require all licensees or applicants of a license to practice chiropractic to provide their social security number and Minnesota business identification number on all license applications. Upon request of the commissioner of revenue, the board must provide to the commissioner of revenue a list of all licensees and applicants for a license to practice chiropractic, including the name and address, social security number, and business identification number. The commissioner of revenue may request a list of the licensees and applicants no more than once each calendar year.

Subd. 6. Effect of appeal. A suspension, revocation, condition, limitation, qualification, or restriction of a license shall be in effect pending determination of an appeal unless the court, upon petition and for good cause shown, shall otherwise order.

A license to practice chiropractic is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a probate court under sections 525.54 to 525.61, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a probate court under chapter 253B or sections 526.09 to 526.11. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

History: (5733) 1919 c 64 s 10; 1927 c 230; 1957 c 154 s 1; 1959 c 186 s 4; 1976 c 222 s 49; 1977 c 193 s 2,3; 1983 c 346 s 5-7; 1986 c 444; 1Sp1986 c 1 art 7 s 8; 1Sp1986 c 3 art 1 s 82; 1987 c 345 s 4-6; 1989 c 184 art 2 s 4

148.101 [Repealed, 1987 c 345 s 14]

148.102 REPORTS OF STATE OR LOCAL SOCIETIES.

Subdivision 1. Requirement. If a state or local chiropractic society receives a complaint which might be grounds for discipline under section 148.10 against a member doctor of chiropractic, the society shall report the complaint or shall direct the complainant to the board of chiropractic examiners.

Subd. 2. Licensed professionals. A licensed health professional shall report to the board personal knowledge of any conduct which the professional reasonably believes constitutes grounds for disciplinary action under section 148.10 by any doctor of chiropractic including any conduct indicating that the doctor of chiropractic may be incompetent, or may have engaged in unprofessional conduct, or may be physically unable to engage safely in the practice of chiropractic. No report shall be required if the information was obtained in the course of a patient relationship if the patient is a doctor of chiropractic and the treating health professional successfully counsels the doctor of chiropractic to limit or withdraw from practice to the extent required by the impairment; or (2) is a patient or former patient of the doctor of chiropractic and the treating professional is a psychologist from whom the patient is receiving psychotherapeutic services.

Subd. 3. Insurers. Two times each year each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to chiropractors shall submit to the board a report concerning the chiropractors against whom malpractice settlements or awards have been made to the plaintiff. The report must contain at least the following information:

- (1) the total number of malpractice settlements or awards made to the plaintiff;
- (2) the date the malpractice settlements or awards to the plaintiff were made;
- (3) the allegations contained in the claim or complaint leading to the settlements or awards made to the plaintiff;
- (4) the dollar amount of each malpractice settlement or award;
- (5) the regular address of the practice of the doctor of chiropractic against whom an award was made or with whom a settlement was made; and
- (6) the name of the doctor of chiropractic against whom an award was made or with whom a settlement was made.

The insurance company shall, in addition to the above information, report to the board any information it possesses which tends to substantiate a charge that a doctor of chiropractic may have engaged in conduct violating section 148.10 and this section.

Subd. 4. Courts. The clerk of district court or any other court of competent jurisdiction shall report to the board any judgment or other determination of the court which adjudges or includes a finding that a doctor of chiropractic is mentally ill, mentally incompetent, guilty of a felony, guilty of an abuse or fraud, appoints a guardian of the doctor of chiropractic under sections 525.54 to 525.61 or commits a doctor of chiropractic under chapter 253B or sections 526.09 to 526.11.

Subd. 5. Self-reporting. A doctor of chiropractic shall report to the board any action concerning that doctor which would require that a report be filed with the board by any person, health care facility, business, or organization under subdivision 4.

Subd. 6. Deadlines; forms. Reports required by subdivisions 1 to 5 must be submitted not later than 30 days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

Subd. 7. Subpoenas. The board may issue subpoenas for the production of any reports required by subdivisions 1 to 5 or any related documents.

History: 1987 c 345 s 7

148.103 IMMUNITY FOR REPORTING OR INVESTIGATING.

Subdivision 1. Reporting. Any person, health care facility, business, or organiza-

tion is immune from civil liability or criminal prosecution for submitting a report to the board under section 148.102 or for otherwise reporting to the board violations or alleged violations of section 148.10. The reports are private.

Subd. 2. Investigation. Members of the board and persons employed by the board or engaged in the investigation or prosecution of violations and in the preparation and management of charges of violations of sections 148.01 to 148.105 on behalf of the board are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under sections 148.01 to 148.105.

History: 1987 c 345 s 8

148.104 COOPERATION DURING INVESTIGATIONS.

A doctor of chiropractic who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient health records, as reasonably requested by the board, to assist the board in its investigation.

History: 1987 c 345 s 9

148.105 VIOLATION.

Subdivision 1. Generally. Any person who practices, or attempts to practice, chiropractic or who uses any of the terms or letters "Doctors of Chiropractic," "Chiropractor," "D.C.," or any other title or letters under any circumstances as to lead the public to believe that the person who so uses the terms is engaged in the practice of chiropractic, without having complied with the provisions of sections 148.01 to 148.104, is guilty of a gross misdemeanor; and, upon conviction, fined not less than \$1,000 nor more than \$10,000 or be imprisoned in the county jail for not less than 30 days nor more than six months or punished by both fine and imprisonment, in the discretion of the court. It is the duty of the county attorney of the county in which the person practices to prosecute. Nothing in sections 148.01 to 148.105 shall be considered as interfering with any person:

- (a) licensed by a health related licensing board, as defined in section 214.01, subdivision 2, including licensed psychologists with respect to the use of hypnosis;
- (b) registered by the commissioner of health under section 214.13; or
- (c) engaged in other methods of healing regulated by law in the state of Minnesota; provided that the person confines activities within the scope of the license or other regulation and does not practice or attempt to practice chiropractic.

Subd. 2. Exceptions. The following persons shall not be in violation of subdivision 1:

- (1) a student practicing under the direct supervision of a preceptor while the student is enrolled in and regularly attending a recognized chiropractic college; and
- (2) a student who is in continuing training and performing the duties of an intern or resident or engaged in postgraduate work considered by the board to be the equivalent of an internship or residency in any institution approved for training by the board.

History: 1987 c 345 s 10

148.106 PEER REVIEW OF SERVICES AND FEES.

Subdivision 1. Definitions. As used in this section, the term:

(a) "Accepted standards" for peer review of a licensed chiropractor means those standards of care, skill, and treatment which are recognized by a reasonably prudent similar health care provider as being acceptable under similar conditions and circumstances.

(b) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed, which by virtue of a substantiated and properly

diagnosed condition, appears to be of a type consistent with that diagnosis as reviewed by the peer review committee.

(c) "Unconscionable fees" means charges submitted for services performed that are unnecessary or unreasonable charges in the judgment of the peer review committee. In determining the unconscionability of costs, the committee may consider, among other appropriate factors, charges by health care providers other than chiropractors for the same or similar services.

(d) "Bill for treatment" means all services provided to a consumer, regardless of the monetary consideration paid to the health care provider.

(e) "Patient" means an individual who receives chiropractic treatment from a chiropractor.

(f) "Peer review" means an evaluation, based on accepted standards, by a peer review committee of the appropriateness, quality, utilization, and cost of health care and health services provided to a patient.

(g) "Peer review committee" means a committee of seven individuals, five of whom are chiropractors licensed under this chapter, two of whom are consumers, and none of whom is in a direct business relationship with the provider, insurer, or patient whose case is being reviewed. The committee shall be appointed by the executive director of the board or provided for by a contractual arrangement with the board, and may consist of different individuals for review of different cases.

(h) "Properly utilized services" means appropriate treatment services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports of the provider or any other facts or evidence pertinent to the controversy as reviewed by the peer review committee.

Subd. 2. Purpose. The board shall review directly or by contract information relating to certain chiropractic providers for the purposes identified in section 145.61.

It is the intention of the legislature that the peer review system and activities established under this chapter, including the board and the peer review committee and their officers, members, employees and agents, shall be exempt from challenge under federal or state antitrust laws or other similar laws in regulation of trade or commerce.

Subd. 3. Duties. The peer review committee shall advise the board as to its findings under subdivision 2. The peer review committee may hear, without qualification or threshold, any submission regarding the appropriateness, quality, or utilization of chiropractic services. The board may establish additional criteria for screening requests for peer review. The screening shall occur upon submission by a patient, the patient's representative, insurer, or chiropractor of an inquiry about a bill for treatment rendered to a patient by a health care provider.

Subd. 4. Fees for review. Any third party provider or chiropractor making a peer review request may be charged a fee to assist in defraying the administrative costs of performing the review.

Subd. 5. Conduct of review. Peer review occurs upon submission by a patient, the patient's representative, insurer, or chiropractor, in accordance with the procedures approved by the board, of an inquiry about a bill for treatment rendered to a patient by a chiropractor. The peer review committee shall examine each inquiry submitted to it and shall report its findings to the executive director of the board and furnish copies of the findings to the patient, chiropractor, and third-party payor. The findings of the peer review committee on each inquiry reviewed shall include a determination of whether or not the chiropractor properly utilized services and rendered or ordered appropriate treatment or services and whether or not the cost of the treatment was unconscionable.

Subd. 6. Annual report. An annual summary of the findings of the peer review committee shall be prepared by the committee and submitted to the board. The report may be made available to interested persons upon request and upon payment of necessary administrative costs to defray the expenses of reproduction. No report or summary submitted to the public by the board may disclose the name or identifier of any patient without the patient's consent.

Subd. 7. **Treatment records.** The acceptance of, or the request for, payment for treatment rendered to a patient by a doctor of chiropractic constitutes the consent of the doctor of chiropractic to the submission of all necessary records and other information concerning the treatment to the peer review committee.

Subd. 8. **Rules.** (a) The board may adopt rules it considers necessary and appropriate to implement the peer review system and activities established under this chapter.

(b) The decision by the board to refer the matter to a peer review committee, the establishment by the board of the procedures by which a peer review committee reviews the rendering of health care services, and the proceedings and findings of a peer review committee are not subject to the rulemaking provisions of chapter 14.

Subd. 9. **Application of other law.** (a) The provisions of section 145.62, apply to any person, firm, corporation, or other entity providing information to the board or the peer review committee.

(b) The provisions of section 145.63, apply to an officer, member, employee, or agent of the board and to an officer, member, employee, or agent of an entity with which the board has contracted under this section.

Subd. 10. **Confidentiality of peer review records.** All data and information acquired by the board or the peer review committee, in the exercise of its duties and functions, shall be subject to the same disclosure and confidentiality protections as provided for data and information of other review organizations under section 145.64. This subdivision does not limit or restrict the board or the peer review committee from fully performing their prescribed peer review duties and functions, nor does it apply to disciplinary and enforcement proceedings under sections 14.57 to 14.62, 148.10, 148.105, 214.10, and 214.11. The peer review committee shall file with the board a complaint against a health care provider if it determines that reasonable cause exists to believe the health care provider has violated any portion of this chapter or rules adopted under it, for which a licensed chiropractor may be disciplined. The peer review committee shall transmit all complaint information it possesses to the board. The data, information, and records are classified as private data on individuals for purposes of chapter 13. The patient records obtained by the board pursuant to this section must be used solely for the purposes of the board relating to peer review or the disciplinary process.

History: 1987 c 345 s 11

- 148.11 [Repealed, 1963 c 45 s 12]
- 148.12 [Repealed, 1963 c 45 s 12]
- 148.13 [Repealed, 1963 c 45 s 12]
- 148.14 [Repealed, 1963 c 45 s 12]
- 148.15 [Repealed, 1963 c 45 s 12]
- 148.16 [Repealed, 1963 c 45 s 12]
- 148.17 [Repealed, 1945 c 242 s 14]

REGISTERED NURSES AND LICENSED PRACTICAL NURSES

148.171 DEFINITIONS.

Sections 148.171 to 148.285 shall be referred to as the Minnesota nurse practice act.

As used in sections 148.171 to 148.285:

- (1) "Board" means the Minnesota board of nursing.
- (2) "Registered nurse," abbreviated R.N., means an individual licensed by the board to practice professional nursing.
- (3) The practice of professional nursing means the performance for compensation

or personal profit of the professional interpersonal service of: (a) providing a nursing assessment of the actual or potential health needs of individuals, families, or communities; (b) providing nursing care supportive to or restorative of life by functions such as skilled ministrations of nursing care, supervising and teaching nursing personnel, health teaching and counseling, case finding, and referral to other health resources; and (c) evaluating these actions.

The practice of professional nursing includes both independent nursing functions and delegated medical functions which may be performed in collaboration with other health team members, or may be delegated by the professional nurse to other nursing personnel. Independent nursing function may also be performed autonomously. The practice of professional nursing requires that level of special education, knowledge, and skill ordinarily expected of an individual who has completed an approved professional nursing education program as described in section 148.211, subdivision 1.

(4) "Licensed practical nurse," abbreviated L.P.N., means an individual licensed by the board to practice practical nursing.

(5) The practice of practical nursing means the performance for compensation or personal profit of any of those services in observing and caring for the ill, injured, or infirm, in applying counsel and procedure to safeguard life and health, in administering medication and treatment prescribed by a licensed health professional, which are commonly performed by licensed practical nurses and which require specialized knowledge and skill such as are taught or acquired in an approved school of practical nursing, but which do not require the specialized education, knowledge, and skill of a registered nurse.

(6) "Nurse" means registered nurse and licensed practical nurse unless the context clearly refers to only one category.

(7) "Nursing assistant" means an individual providing nursing or nursing-related services that do not require the specialized knowledge and skill of a nurse, at the direction of a nurse, but does not include a licensed health professional or an individual who volunteers to provide such services without monetary compensation.

(8) "Public health nurse" means a registered nurse who meets the voluntary registration requirements established by the board by rule.

History: 1945 c 242 s 1; 1955 c 34 s 1; 1959 c 140 s 1; 1974 c 554 s 1; 1988 c 440 s 1; 1989 c 194 s 3; 1990 c 483 s 1 .

148.18 [Repealed, 1945 c 242 s 14]

148.181 BOARD OF NURSING MEMBERSHIP, VACANCIES, DISCLOSURE.

Subdivision 1. Membership. The board of nursing shall consist of 11 members appointed by the governor, each of whom shall be a resident of this state. Five members shall be registered nurses, each of whom shall have graduated from an approved school of nursing, shall be licensed as a registered nurse in this state, and shall have had at least five years experience in nursing practice, nursing administration, or nursing education immediately preceding appointment. One of the five shall have had at least two years executive or teaching experience in a professional nursing program approved by the board under section 148.251 during the five years immediately preceding appointment, and one of the five shall have had at least two years executive or teaching experience in a practical nursing program approved by the board under section 148.251 during the five years immediately preceding appointment. Three members shall be licensed practical nurses each of whom shall have graduated from an approved school of nursing, shall be licensed as a licensed practical nurse in this state, and shall have had at least five years experience in nursing practice immediately preceding appointment. The remaining three members shall be public members as defined by section 214.02. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09. The provision of staff, administrative services, and office space; the

review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in sections 148.171 to 148.285 and chapter 214. Each member of the board shall file with the secretary of state the constitutional oath of office before beginning the term of office.

Subd. 2. **Vacancies.** On expiration of the term of a member who is a registered nurse, the governor may appoint a registered nurse from a list of members submitted by professional nursing groups. Likewise on expiration of the term of a member who is a licensed practical nurse, the governor may appoint a licensed practical nurse from a list of members submitted by licensed practical nursing groups. These lists should contain names of persons in number at least twice the number of places to be filled. Vacancies occurring on the board, when the member is a registered nurse or a licensed practical nurse, may be filled for the unexpired terms by appointments to be made by the governor from nominations submitted by nursing groups in the manner aforesaid or from other recommendations. Members shall hold office until a successor is appointed and qualified.

Subd. 3. [Repealed, 1975 c 136 s 77]

Subd. 3. **Disclosure.** All communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction, and all records of any action or proceedings, except a final decision of the board, are private data on individuals as defined in section 13.02, subdivision 12, and any disciplinary hearing shall be closed to the public.

Upon application of a party in a proceeding before the board under section 148.261, the board shall produce and permit the inspection and copying, by or on behalf of the moving party, of any designated documents or papers relevant to the proceedings, in accordance with rule 34 of the Minnesota rules of civil procedure.

History: 1945 c 242 s 2; 1955 c 34 s 2; 1971 c 418 s 1; 1973 c 638 s 14; 1975 c 136 s 10; 1975 c 360 s 1,2; 1976 c 222 s 50; 1976 c 239 s 55; 1981 c 94 s 1; 1986 c 444; 1989 c 194 s 4

148.19 [Repealed, 1945 c 242 s 14]

148.191 OFFICERS; STAFF; POWERS.

Subdivision 1. **Officers; staff.** The board shall elect from its members a president, a vice-president, and a secretary-treasurer who shall each serve for one year or until a successor is elected and qualifies. The board shall appoint and employ an executive director and may employ such persons as may be necessary to carry on its work. A majority of the board, including one officer, shall constitute a quorum at any meeting.

Subd. 2. **Powers.** (a) The board is authorized to adopt and, from time to time, revise rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of sections 148.171 to 148.285. The board shall prescribe by rule curricula and standards for schools and courses preparing persons for licensure under sections 148.171 to 148.285. It shall conduct or provide for surveys of such schools and courses at such times as it may deem necessary. It shall approve such schools and courses as meet the requirements of sections 148.171 to 148.285 and board rules. It shall examine, license, and renew the license of duly qualified applicants. It shall hold examinations at least once in each year at such time and place as it may determine. It shall by rule adopt, evaluate, and periodically revise, as necessary, requirements for licensure and for registration and renewal of registration as defined in section 148.231. It shall cause the prosecution of all persons violating sections 148.171 to 148.285 and have power to incur such necessary expense therefor. It shall register public health nurses who meet educational and other requirements established by the board by rule, including payment of a fee. Prior to the adoption of rules, the board shall use the same procedures used by the department of health to certify public health nurses. It shall have power to issue subpoenas, and to compel the attendance of witnesses and the production of all necessary documents and other evidentiary material. Any board member may administer oaths to witnesses, or take their affirmation. It shall keep a record of all its proceedings.

(b) The board shall have access to hospital, nursing home, and other medical records of a patient cared for by a nurse under review. If the board does not have a written consent from a patient permitting access to the patient's records, the nurse or facility shall delete any data in the record that identifies the patient before providing it to the board. The board shall have access to such other records as reasonably requested by the board to assist the board in its investigation. Nothing herein may be construed to allow access to any records protected by section 145.64. The board shall maintain any records obtained pursuant to this paragraph as investigative data under chapter 13.

Subd. 3. [Repealed, 1989 c 194 s 22]

History: 1945 c 242 s 3; 1955 c 847 s 13; 1975 c 136 s 12; 1975 c 240 s 1; 1975 c 360 s 3; 1976 c 222 s 51; 1983 c 260 s 36; 1986 c 444; 1989 c 194 s 5

148.20 [Repealed, 1945 c 242 s 14]

148.201 [Repealed, 1975 c 136 s 77]

148.21 [Repealed, 1945 c 242 s 14]

148.211 LICENSING.

Subdivision 1. Licensure by examination. An applicant for a license to practice as a registered nurse or licensed practical nurse shall apply to the board for a license by examination on forms prescribed by the board and pay a fee in an amount determined by rule. An applicant applying for reexamination shall pay a fee in an amount determined by rule. In no case shall fees be refunded.

Before being scheduled for examination, the applicant shall provide written evidence verified by oath that the applicant (1) has not engaged in conduct warranting disciplinary action as set forth in section 148.261; (2) meets secondary education requirements as determined by the board and other preliminary qualification requirements the board may prescribe by rule; and (3) either has completed a course of study in a nursing program approved by the board or is enrolled in the final term of study in such program. The nursing program must be approved for the preparation of applicants for the type of license for which the application has been submitted.

The applicant shall be required to pass a written examination in the subjects the board may determine. Each written examination may be supplemented by an oral or practical examination. An applicant failing to pass the examination may apply for reexamination.

Upon submission by the applicant of an affidavit of graduation from an approved nursing program as well as proof that the applicant has passed the examination, paid the required fees, and met all other requirements stated in this subdivision, the board shall issue a license to the applicant. The board may issue a license with conditions and limitations if it considers it necessary to protect the public.

Subd. 2. Licensure by endorsement. The board shall issue a license to practice professional nursing or practical nursing without examination to an applicant who has been duly licensed or registered as a nurse under the laws of another state, territory, or country, if in the opinion of the board the applicant has the qualifications equivalent to the qualifications required in this state as stated in subdivision 1, all other laws not inconsistent with this section, and rules promulgated by the board.

Subd. 3. [Repealed, 1976 c 222 s 209]

Subd. 4. Education waived. A person who has been licensed as a licensed practical nurse in another state, who has passed a licensing examination acceptable to the board, and who has had 24 months of experience as a licensed practical nurse in the five years prior to applying for a license is not required to meet any additional educational requirements.

Subd. 5. Denial of license. Refusal of an applicant to supply information necessary to determine the applicant's qualifications, failure to demonstrate qualifications, or failure to satisfy the requirements for a license contained in this section or rules of the board may result in denial of a license. The burden of proof is upon the applicant to demonstrate the qualifications and satisfaction of the requirements.

History: 1945 c 242 s 5; 1955 c 34 s 4; 1961 c 56 s 1; 1967 c 68 s 1; 1969 c 53 s 1; 1975 c 360 s 4,5; 1976 c 222 s 52,53; 1981 c 94 s 2; 1986 c 444; 1989 c 194 s 6

148.212 TEMPORARY PERMIT.

Upon receipt of the applicable fee and in accordance with rules of the board, the board may issue a nonrenewable temporary permit to practice professional or practical nursing to an applicant for licensure who is not the subject of a pending investigation or disciplinary action, nor disqualified for any other reason, under the following circumstances:

(a) The applicant for licensure under section 148.211, subdivision 1, has graduated from an approved nursing program and has applied to write the first examination for licensure given by the board following graduation. The permit holder must practice professional or practical nursing under the direct supervision of a registered nurse. The permit is valid from the date of graduation until the date the board takes action on the application.

(b) The applicant for licensure under section 148.211, subdivision 2, has graduated from an approved nursing program in another state or territory and has written the first examination for licensure given by that jurisdiction's board following graduation. The examination must be the same examination required under section 148.211. The permit holder must practice professional or practical nursing under the direct supervision of a registered nurse. The permit shall be valid from the date of graduation or completion of the examination, whichever is later, until the date of board action on the application.

(c) The applicant for licensure under section 148.211, subdivision 2, is currently licensed to practice professional or practical nursing in another state, territory, or Canadian province. The permit shall be valid from submission of a proper request until the date of board action on the application.

(d) The applicant for reregistration under section 148.231, subdivision 5, is currently registered in a formal, structured refresher course for nurses that includes clinical practice.

History: 1989 c 194 s 7

148.22 [Repealed, 1945 c 242 s 14]

148.221 [Repealed, 1989 c 194 s 22]

148.23 [Repealed, 1945 c 242 s 14]

148.231 REGISTRATION; FAILURE TO REGISTER; REREGISTRATION; VERIFICATION.

Subdivision 1. **Registration.** Every person licensed to practice professional or practical nursing must maintain with the board a current registration for practice as a registered nurse or licensed practical nurse which must be renewed at regular intervals established by the board by rule. No certificate of registration shall be issued by the board to a nurse until the nurse has submitted satisfactory evidence of compliance with the procedures and minimum requirements established by the board.

The fee for periodic registration for practice as a nurse shall be determined by the board by rule. A penalty fee shall be added for any application received after the required date as specified by the board by rule. Upon receipt of the application and the required fees, the board shall verify the application and the evidence of completion of continuing education requirements in effect, and thereupon issue to the nurse a certificate of registration for the next renewal period.

Subd. 2. [Repealed, 1981 c 94 s 12]

Subd. 3. [Repealed, 1976 c 222 s 209]

Subd. 4. **Failure to register.** Any person licensed under the provisions of sections 148.171 to 148.285 who fails to register within the required period shall not be entitled to practice nursing in this state as a registered nurse or licensed practical nurse.

Subd. 5. **Reregistration.** A person whose registration has lapsed desiring to resume practice shall make application for reregistration, submit satisfactory evidence of com-

pliance with the procedures and requirements established by the board, and pay the registration fee for the current period to the board. Thereupon, the registration certificate shall be issued to the person who shall immediately be placed on the practicing list as a registered nurse or licensed practical nurse.

Subd. 6. Verification. A person licensed under the provisions of sections 148.171 to 148.285 who requests the board to verify a Minnesota license to another state, territory, or country or to an agency, facility, school, or institution shall pay a fee to the board for each verification.

History: 1945 c 242 s 7; 1947 c 286 s 1; 1955 c 34 s 5; 1961 c 8 s,2; 1967 c 68 s 2; 1969 c 53 s 2,3; 1971 c 131 s 1; 1975 c 240 s 2; 1975 c 360 s 6,7; 1976 c 149 s 30; 1981 c 94 s 3-6; 1986 c 444; 1989 c 194 s 8

148.232 REGISTRATION OF PUBLIC HEALTH NURSES.

A public health nurse certified for public health duties by the commissioner of health under section 145A.06, subdivision 3, or previous authority must be deemed to be registered as a public health nurse under the provisions of sections 148.171 to 148.285.

History: 1989 c 194 s 9

148.235 PRESCRIBING DRUGS AND THERAPEUTIC DEVICES.

Subdivision 1. Nurse-midwives. A registered nurse who has graduated from a program of study designed to prepare registered nurses for advanced practice as nurse-midwives and who is certified through the national professional nursing organization for nurse-midwives may prescribe and administer drugs and therapeutic devices within practice as a nurse-midwife.

Subd. 2. Nurse practitioners. (a) **Prescribing authority.** A registered nurse who (1) has graduated from a program of study designed to prepare registered nurses for advanced practice as nurse practitioners, (2) is certified through a national professional nursing organization which certifies nurse practitioners and is included in the list of professional nursing organizations adopted by the board under section 62A.15, subdivision 3a, and (3) has a written agreement with a physician based on standards established by the Minnesota nurses association and the Minnesota medical association that defines the delegated responsibilities related to the prescription of drugs and therapeutic devices, may prescribe and administer drugs and therapeutic devices within the scope of the written agreement and within practice as a nurse practitioner.

(b) **Rules.** By July 1, 1991, the board shall promulgate rules to provide for the following:

(1) a system of identifying nurse practitioners eligible to prescribe drugs and therapeutic devices;

(2) a method of determining which general categories of prescription drugs and therapeutic devices have been delegated to each nurse practitioner;

(3) a system of transmitting to pharmacists information concerning nurse practitioners eligible to prescribe drugs and therapeutic devices and the types of drugs and therapeutic devices they have been delegated the authority to prescribe; and

(4) a fee to the nurse practitioner who seeks prescribing authority in an amount sufficient to cover the board's ongoing costs relating to monitoring and regulating the prescribing authority of nurse practitioners.

(c) **Task force.** For purposes of adopting rules under this paragraph, the board shall establish and appoint an advisory task force composed of the following nine members:

(1) five nurse practitioners;

(2) two pharmacists; and

(3) two physicians.

Members must be appointed from lists of qualified persons nominated by the

appropriate professional associations. The task force shall recommend rules to the board on each of the subjects listed above. No rule relating to the prescribing of drugs and therapeutic devices by nurse practitioners may be proposed by the board unless it was first submitted to the task force for review and comment.

History: 1990 c 483 s 2

148.236 FUNDING FOR NURSING GRANTS.

Subdivision 1. Registered nurse funding. (a) The nursing grant program shall be funded by a \$5.50 fee on each registration renewal of registered nurses as provided under section 148.231, unless the applicant specifically indicates on the renewal form that the applicant does not wish to participate in the funding of this program. The board of nursing shall transfer all money received under this subdivision, less an amount sufficient to pay the costs of administering the program not to exceed 12 percent of the fee collected under this subdivision, to the higher education coordinating board on a quarterly basis. This money is available until expended by the higher education coordinating board. By January 1, 1991, and each subsequent year, the board of nursing shall provide an estimate to the higher education coordinating board of the amount of money that may be available each year based on the number of anticipated registration renewals in that year.

(b) Notwithstanding paragraph (a), up to the first \$11,000 of fees collected under this subdivision may be used to program the board of nursing's computer system for purposes of administering this section.

Subd. 2. Licensed practical nurse funding. (a) The nursing grant program shall be funded by a \$5.50 fee on each registration renewal of licensed practical nurses as provided under section 148.231, unless the applicant specifically indicates on the renewal form that the applicant does not wish to participate in the funding of this program. The board of nursing shall transfer all money received under this subdivision, less an amount sufficient to pay the costs of administering the program not to exceed 12 percent of the fee collected under this subdivision, to the higher education coordinating board on a quarterly basis. This money is available until expended by the higher education coordinating board. By January 1, 1991, and each subsequent year, the board of nursing shall provide an estimate to the higher education coordinating board of the amount of money that may be available each year based on the number of anticipated registration renewals in that year.

(b) Notwithstanding paragraph (a), up to the first \$6,000 of fees collected under this subdivision may be used to program the board of nursing's computer system for purposes of administering this section.

History: 1990 c 568 art 2 s 100

148.24 [Repealed, 1945 c 242 s 14]

148.241 EXPENSES.

Subdivision 1. Appropriation. The expenses of administering sections 148.171 to 148.285 shall be paid from the appropriation made to the Minnesota board of nursing.

Subd. 2. Expenditure. All amounts appropriated to the board shall be held subject to the order of the board to be used only for the purpose of meeting necessary expenses incurred in the performance of the purposes of sections 148.171 to 148.285, and the duties imposed thereby as well as the promotion of nursing education and standards of nursing care in this state.

History: 1945 c 242 s 8; 1955 c 34 s 3; 1973 c 638 s 16; 1976 c 222 s 54; 1989 c 194 s 10

148.25 [Repealed, 1945 c 242 s 14]

148.251 NURSING PROGRAM.

Subdivision 1. **Initial approval.** An institution desiring to conduct a nursing program shall apply to the board and submit evidence that:

(1) It is prepared to provide a program of theory and practice in professional or practical nursing that meets the program approval standards adopted by the board. Instruction and required experience may be obtained in one or more institutions or agencies outside the applying institution as long as the nursing program retains accountability for all clinical and nonclinical teaching.

(2) It is prepared to meet other standards established by law and by the board.

Subd. 2. [Repealed, 1989 c 194 s 22]

Subd. 3. **Continuing approval.** From time to time as deemed necessary by the board, it shall be the duty of the board, through its representatives, to survey all nursing programs in the state. If the results of the survey show that a nursing program meets all board rules, the board shall continue approval of the nursing program.

Subd. 4. **Loss of approval.** If the board determines that an approved nursing program is not maintaining the standards required by the statutes and board rules, notice thereof in writing specifying the defect shall be given to the program. If a program fails to correct these conditions to the satisfaction of the board within a reasonable time, approval of the program shall be revoked and the program shall be removed from the list of approved nursing programs.

Subd. 5. **Reinstatement of approval.** The board shall reinstate approval of a nursing program upon submission of satisfactory evidence that its program of theory and practice meets the standards required by statutes and board rules.

Subd. 6. **Advanced standing.** Associate degree nursing programs approved or seeking to be approved by the board shall provide for advanced standing for licensed practical nurses in recognition of their nursing education and experience.

History: 1945 c 242 s 9; 1961 c 56 s 2; 1975 c 360 s 8; 1981 c 94 s 7; 1989 c 194 s 11

148.26 [Repealed, 1945 c 242 s 14]

148.261 GROUNDS FOR DISCIPLINARY ACTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 2. [Repealed, 1976 c 222 s 209]

Subd. 3. [Repealed, 1989 c 194 s 22]

Subd. 4. **Evidence.** In disciplinary actions alleging a violation of subdivision 1, clause (3) or (4), a copy of the judgment or proceeding under the seal of the clerk of the court or of the administrative agency that entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the violation concerned.

Subd. 5. **Examination; access to medical data.** The board may take the following actions if it has probable cause to believe that grounds for disciplinary action exist under subdivision 1, clause (8) or (9):

(a) It may direct the applicant or nurse to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, when a nurse licensed under sections 148.171 to 148.285 is directed in writing by the board to submit to a mental or physical examination or chemical dependency evaluation, that person is considered to have consented and to have waived all objections to admissibility on the grounds of privilege. Failure of the applicant or nurse to submit to an examination when directed constitutes an admission of the allegations against the applicant or nurse, unless the failure was due to circumstances beyond the person's control, and the board may enter a default and final order without taking testimony or allowing evidence to be presented. A nurse affected under this paragraph shall, at reasonable intervals, be given an opportunity to demonstrate that the competent practice of professional or practical nursing can be resumed with reasonable skill and safety to patients. Neither the record of proceedings nor the orders entered by the board in a proceeding under this paragraph, may be used against a nurse in any other proceeding.

(b) It may, notwithstanding sections 13.42, 144.651, 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a registered nurse, licensed practical nurse, or applicant for a license without that person's consent. The medical data may be requested from a provider, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the department of human services. A provider, insurance company, or government agency shall comply with any written request of the board under this subdivision and is not liable in any action for damages for releasing the data requested by the board if the data are released pursuant to a written request under this subdivision unless the information is false and the provider giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is classified as private data on individuals as defined in section 13.02.

History: 1945 c 242 s 10; 1975 c 360 s 9; 1976 c 222 s 55; 1986 c 444; 1989 c 194 s 12

148.262 FORMS OF DISCIPLINARY ACTION; AUTOMATIC SUSPENSION; TEMPORARY SUSPENSION; REISSUANCE.

Subdivision 1. **Forms of disciplinary action.** When the board finds that grounds for disciplinary action exist under section 148.261, subdivision 1, it may take one or more of the following actions:

- (1) deny the license, registration, or registration renewal;
- (2) revoke the license;
- (3) suspend the license;
- (4) impose limitations on the nurse's practice of professional or practical nursing including, but not limited to, limitation of scope of practice or the requirement of practice under supervision;
- (5) impose conditions on the retention of the license including, but not limited to, the imposition of retraining or rehabilitation requirements or the conditioning of continued practice on demonstration of knowledge or skills by appropriate examination, monitoring, or other review;

(6) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed as to deprive the nurse of any economic advantage gained by reason of the violation charged, to reimburse the board for the cost of counsel, investigation, and proceeding, and to discourage repeated violations;

(7) order the nurse to provide unremunerated service;

(8) censure or reprimand the nurse; or

(9) any other action justified by the facts in the case.

Subd. 2. **Automatic suspension.** Unless the board orders otherwise, a license to practice professional or practical nursing is automatically suspended if:

(1) a guardian of a nurse is appointed by order of a probate court under sections 525.54 to 525.61;

(2) the nurse is committed by order of a probate court under chapter 253B or sections 526.09 to 526.11; or

(3) the nurse is determined to be mentally incompetent, mentally ill, chemically dependent, or a person dangerous to the public by a court of competent jurisdiction within or without this state.

The license remains suspended until the nurse is restored to capacity by a court and, upon petition by the nurse, the suspension is terminated by the board after a hearing or upon agreement between the board and the nurse.

Subd. 3. **Temporary suspension of license.** In addition to any other remedy provided by law, the board may, through its designated board member under section 214.10, subdivision 2, temporarily suspend the license of a nurse without a hearing if the board finds that there is probable cause to believe the nurse has violated a statute or rule the board is empowered to enforce and continued practice by the nurse would create a serious risk of harm to others. The suspension shall take effect upon written notice to the nurse, served by first-class mail, specifying the statute or rule violated. The suspension shall remain in effect until the board issues a temporary stay of suspension or a final order in the matter after a hearing or upon agreement between the board and the nurse. At the time it issues the suspension notice, the board shall schedule a disciplinary hearing to be held under the administrative procedure act. The nurse shall be provided with at least 20 days' notice of any hearing held under this subdivision. The hearing shall be scheduled to begin no later than 30 days after the issuance of the suspension order.

Subd. 4. **Reissuance.** The board may reinstate and reissue a license or registration certificate to practice professional or practical nursing, but as a condition may impose any disciplinary or corrective measure that it might originally have imposed. Any person whose license or registration has been revoked, suspended, or limited may have the license reinstated and a new registration issued when, in the discretion of the board, the action is warranted, provided that the person shall be required by the board to pay the costs of the proceedings resulting in the revocation, suspension, or limitation of the license or registration certificate and reinstatement of the license or registration certificate, and to pay the fee for the current registration period. The cost of proceedings shall include, but not be limited to, the cost paid by the board to the office of administration hearings and the office of the attorney general for legal and investigative services, the costs of a court reporter and witnesses, reproduction of records, board staff time, travel, and expenses, and board members' per diem reimbursements, travel costs, and expenses.

History: 1989 c 194 s 13

148.263 REPORTING OBLIGATIONS.

Subdivision 1. **Permission to report.** A person who has knowledge of any conduct constituting grounds for discipline under sections 148.171 to 148.285 may report the alleged violation to the board.

Subd. 2. **Institutions.** The chief nursing executive or chief administrative officer

of any hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the board any action taken by the institution or organization or any of its administrators or committees to revoke, suspend, limit, or condition a nurse's privilege to practice in the institution, or as part of the organization, any denial of privileges, any dismissal from employment, or any other disciplinary action. The institution or organization shall also report the resignation of any nurse before the conclusion of any disciplinary proceeding, or before commencement of formal charges, but after the nurse had knowledge that formal charges were contemplated or in preparation. The reporting described by this subdivision is required only if the action pertains to grounds for disciplinary action under section 148.261.

Subd. 3. Licensed professionals. A person licensed by a health-related licensing board as defined in section 214.01, subdivision 2, shall report to the board personal knowledge of any conduct the person reasonably believes constitutes grounds for disciplinary action under sections 148.171 to 148.285 by any nurse including conduct indicating that the nurse may be incompetent, may have engaged in unprofessional or unethical conduct, or may be mentally or physically unable to engage safely in the practice of professional or practical nursing.

Subd. 4. Insurers. Four times each year, by the first day of February, May, August, and November, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to registered nurses or licensed practical nurses shall submit to the board a report concerning any nurse against whom a malpractice award has been made or who has been a party to a settlement. The report must contain at least the following information:

- (1) the total number of settlements or awards;
- (2) the date settlement or award was made;
- (3) the allegations contained in the claim or complaint leading to the settlement or award;
- (4) the dollar amount of each malpractice settlement or award and whether that amount was paid as a result of a settlement or of an award; and
- (5) the name and address of the practice of the nurse against whom an award was made or with whom a settlement was made.

An insurer shall also report to the board any information it possesses that tends to substantiate a charge that a nurse may have engaged in conduct violating sections 148.171 to 148.285.

Subd. 5. Courts. The court administrator of district court or another court of competent jurisdiction shall report to the board any judgment or other determination of the court that adjudges or includes a finding that a nurse is mentally ill, mentally incompetent, chemically dependent, a person dangerous to the public, guilty of a felony or gross misdemeanor, guilty of a violation of federal or state narcotics laws or controlled substances act, guilty of operating a motor vehicle while under the influence of alcohol or a controlled substance, or guilty of an abuse or fraud under Medicare or Medicaid, appoints a guardian of the nurse under sections 525.54 to 525.61, or commits a nurse under chapter 253B or section 526.09 to 526.11.

Subd. 6. Deadlines; forms. Reports required by subdivisions 2 to 5 must be submitted no later than 30 days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that the reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting. The board shall review all reports, including those submitted after the deadline.

History: 1989 c 194 s 14

148.264 IMMUNITY.

Subdivision 1. Reporting. Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting in good faith a report to the board under section 148.263 or for otherwise reporting in good faith to

the board violations or alleged violations of sections 148.171 to 148.285. All such reports are investigative data as defined in chapter 13.

Subd. 2. **Investigation.** Members of the board and persons employed by the board or engaged in the investigation of violations and in the preparation and management of charges of violations of sections 148.171 to 148.285 on behalf of the board or persons participating in the investigation or testifying regarding charges of violations are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under sections 148.171 to 148.285.

History: 1989 c 194 s 15

148.265 NURSE COOPERATION.

A nurse who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or other records in the nurse's possession, as reasonably requested by the board, to assist the board in its investigation and to appear at conferences and hearings scheduled by the board. The board shall pay for copies requested. If the board does not have a written consent from a patient permitting access to the patient's records, the nurse shall delete any data in the record that identify the patient before providing it to the board. The board shall maintain any records obtained pursuant to this section as investigative data under chapter 13. The nurse shall not be excused from giving testimony or producing any documents, books, records, or correspondence on the grounds of self-incrimination, but the testimony or evidence may not be used against the nurse in any criminal case.

History: 1989 c 194 s 16

148.266 DISCIPLINARY RECORD ON JUDICIAL REVIEW.

Upon judicial review of any board disciplinary action taken under sections 148.171 to 148.285, the reviewing court shall seal the administrative record, except for the board's final decision, and shall not make the administrative record available to the public.

History: 1989 c 194 s 17

148.27 [Repealed, 1945 c 242 s 14]

148.271 EXEMPTIONS.

The provisions of sections 148.171 to 148.285 shall not prohibit:

- (1) The furnishing of nursing assistance in an emergency.
- (2) The practice of professional or practical nursing by any legally qualified registered or licensed practical nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of official duties.
- (3) The practice of any profession or occupation licensed by the state, other than professional or practical nursing, by any person duly licensed to practice the profession or occupation, or the performance by a person of any acts properly coming within the scope of the profession, occupation, or license.
- (4) The provision of a nursing or nursing-related service by a nursing assistant who has been delegated the specific function and is supervised by a registered nurse or monitored by a licensed practical nurse.
- (5) The care of the sick with or without compensation when done in a nursing home covered by the provisions of section 144A.09, subdivision 1.
- (6) Professional nursing practice by a registered nurse or practical nursing practice by a licensed practical nurse licensed in another state or territory who is in Minnesota

as a student enrolled in a formal, structured course of study, such as a course leading to a higher degree, certification in a nursing specialty, or to enhance skills in a clinical field, while the student is practicing in the course.

(7) Professional or practical nursing practice by a student practicing under the supervision of an instructor while the student is enrolled in a nursing program approved by the board under section 148.251.

History: 1945 c 242 s 11; 1959 c 140 s 2; 1975 c 360 s 10; 1977 c 256 s 1; 1981 c 94 s 8; 1986 c 444; 1989 c 194 s 18

148.272 [Repealed, 1989 c 194 s 22]

148.28 [Repealed, 1945 c 242 s 14]

148.281 VIOLATIONS; PENALTY.

Subdivision 1. **Violations described.** It shall be unlawful for any person, corporation, or association, to:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license or record, or aid or abet therein;

(2) Practice professional or practical nursing or practice as a public health nurse under cover of any diploma, permit, license, registration certificate, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(3) Practice professional or practical nursing unless the person has been issued a temporary permit under the provisions of section 148.212 or is duly licensed and currently registered to do so under the provisions of sections 148.171 to 148.285;

(4) Use any abbreviation or other designation tending to imply licensure as a registered nurse or licensed practical nurse unless duly licensed and currently registered so to practice professional or practical nursing under the provisions of sections 148.171 to 148.285 except as authorized by the board by rule;

(5) Use any abbreviation or other designation tending to imply registration as a public health nurse unless duly registered by the board;

(6) Practice professional or practical nursing in a manner prohibited by the board in any limitation of a license or registration issued under the provisions of sections 148.171 to 148.285;

(7) Practice professional or practical nursing during the time a license or current registration issued under the provisions of sections 148.171 to 148.285 shall be suspended or revoked;

(8) Conduct a nursing program for the education of persons to become registered nurses or licensed practical nurses unless the program has been approved by the board; and

(9) Knowingly employ persons in the practice of professional or practical nursing who have not been issued a current permit, license, or registration certificate to practice as a nurse in this state.

Subd. 1a. [Repealed, 1989 c 194 s 22]

Subd. 2. **Penalty.** Any person, corporation, or association violating any provisions of subdivision 1 shall be guilty of a gross misdemeanor, and shall be punished according to law.

History: 1945 c 242 s 12,13; 1959 c 140 s 4; 1975 c 360 s 11; 1977 c 256 s 2; 1986 c 444; 1989 c 194 s 19

148.282 [Repealed, 1975 c 360 s 25]

148.283 UNAUTHORIZED PRACTICE OF PROFESSIONAL AND PRACTICAL NURSING.

The practice of professional or practical nursing by any person who has not been

licensed to practice professional or practical nursing under the provisions of sections 148.171 to 148.285, or whose license has been suspended or revoked, or whose registration has expired, is hereby declared to be inimical to the public health and welfare and to constitute a public nuisance. Upon complaint being made thereof by the board, or any prosecuting officer, and upon a proper showing of the facts, the district court of the county where such practice occurred may enjoin such acts and practice. Such injunction proceeding shall be in addition to, and not in lieu of, all other penalties and remedies provided by law.

History: 1959 c 140 s 6; 1989 c 194 s 20

148.285 TRANSFER OF ASSETS.

All moneys, property, and property rights belonging to and under the control of the board of examiners, are hereby transferred and appropriated to the control and use of the board hereunder and the purpose provided herein.

History: 1945 c 242 s 14

- 148.286** [Repealed, 1989 c 194 s 22]
- 148.29** [Repealed, 1989 c 194 s 22]
- 148.291** [Repealed, 1989 c 194 s 22]
- 148.292** [Repealed, 1989 c 194 s 22]
- 148.293** [Repealed, 1989 c 194 s 22]
- 148.294** [Repealed, 1989 c 194 s 22]
- 148.295** MS 1953 [Renumbered 120.44]
- 148.295** [Repealed, 1989 c 194 s 22]
- 148.296** [Repealed, 1989 c 194 s 22]
- 148.297** [Repealed, 1989 c 194 s 22]
- 148.298** [Repealed, 1989 c 194 s 22]
- 148.299** [Repealed, 1989 c 194 s 22]

MIDWIVES

148.30 MIDWIFERY.

Within the meaning of sections 148.30 to 148.32, a person who shall publicly profess to be a midwife or who, for a fee, shall attend to women in childbirth, shall be regarded as practicing midwifery. Nothing in sections 148.30 to 148.32 shall apply to gratuitous emergency services or to authorized medical practitioners.

History: (5721) RL s 2301

148.31 LICENSES.

A person desiring to practice midwifery in this state, if not already authorized so to do, shall apply to the state board of medical examiners for a license. This license shall be granted upon the production of a diploma from a school of midwifery recognized by the board or, after examination of the applicant, upon the consent of seven members thereof. Examinations shall be held concurrently with those provided for applicants for physicians' licenses. The fee for a license granted on diploma shall be \$1, and on examination, \$2.

History: (5722) RL s 2302

148.32 LICENSES; DENIAL, REVOCATION, REFUSAL.

All licenses to practice midwifery heretofore or hereafter issued by the board of medical examiners must be renewed and a fee paid for each renewal as set by the board. Licenses may be revoked, suspended, conditioned, limited, qualified or restricted, or renewals refused by the board for unprofessional or dishonorable conduct, or neglect

to make proper returns to agents of a board of health as authorized under section 145A.04 of births, deaths, puerperal fever, and other contagious diseases.

A license to practice midwifery is suspended if (1) a guardian of the person of a licensee is appointed by order of a probate court pursuant to sections 525.54 to 525.61, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a probate court pursuant to 253B or sections 526.09 to 526.11. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

History: (5723) *RL s 2303; 1967 c 118 s 1; 1969 c 927 s 5; 1976 c 222 s 60; 1982 c 581 s 24; 1987 c 309 s 24; 1987 c 384 art 2 s 1*

- 148.33 [Repealed, 1974 c 62 s 4]
- 148.34 [Repealed, 1974 c 62 s 4]
- 148.35 [Repealed, 1974 c 62 s 4]
- 148.36 [Repealed, 1974 c 62 s 4]
- 148.37 [Repealed, 1974 c 62 s 4]
- 148.38 [Repealed, 1967 c 845 s 14]
- 148.39 [Repealed, 1967 c 845 s 14]
- 148.40 [Repealed, 1967 c 845 s 14]
- 148.41 [Repealed, 1974 c 62 s 4]
- 148.42 [Repealed, 1967 c 845 s 14]
- 148.43 [Repealed, 1974 c 62 s 4]
- 148.44 [Repealed, 1967 c 845 s 14]
- 148.45 [Repealed, 1974 c 62 s 4]
- 148.46 [Repealed, 1974 c 62 s 4]
- 148.47 [Repealed, 1974 c 62 s 4; 1974 c 224 s 6]
- 148.48 [Repealed, 1974 c 62 s 4]
- 148.51 [Repealed, 1974 c 62 s 4]
- 148.511 [Repealed, 1974 c 62 s 4]

OPTOMETRISTS

148.52 BOARD OF OPTOMETRY.

The board of optometry shall consist of two public members as defined by section 214.02 and five qualified optometrists appointed by the governor. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09.

The provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in chapter 214 and Laws 1976, chapter 222, sections 2 to 7.

History: (5785) *1915 c 127 s 1; 1925 c 239 s 1; 1929 c 420 s 1; 1973 c 62 s 1; 1973 c 638 s 20; 1975 c 136 s 16; 1976 c 222 s 61; 1976 c 239 s 56*

148.53 POWERS OF BOARD.

The state board of optometry shall have the power to make any rules and to do any and all things not inconsistent with law which it may deem necessary or expedient for the effective enforcement of sections 148.52 to 148.62 or for the full and efficient performance of its duties thereunder.

History: (5786) *1915 c 127 s 2; 1925 c 239 s 2; 1929 c 420 s 2; 1985 c 248 s 70*

148.54 BOARD; SEAL.

The board of optometry shall elect from among its members a president and may adopt a seal.

History: (5787) 1915 c 127 s 3; 1925 c 239 s 3; 1949 c 267 s 1; 1975 c 136 s 17; 1976 c 222 s 62

148.55 [Repealed, 1976 c 222 s 209]**148.56 OPTOMETRISTS.**

Subdivision 1. **Optometry defined.** Any person shall be deemed to be practicing optometry within the meaning of sections 148.52 to 148.62 who shall display a sign, such as an eye, a pair of eyes, a pair of glasses or spectacles, or who shall in any way advertise as an optometrist, or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses or prisms for the aid thereof, or possess testing appliances for the purpose of the measurement of the powers of vision, or diagnose any optical deficiency or deformity, visual or muscular anomaly of the human eye, or prescribe lenses, prisms, or ocular exercises for the correction or the relief of same, or who holds oneself out as being able to do so.

Subd. 2. **Unlawful practices.** It shall be unlawful for any person who is not licensed as an optometrist in this state to fit, sell, or dispose of, or to take, receive, or solicit any order for the fitting, sale, or disposition of, any spectacles, eye glasses, or lenses for the correction of vision in any place within the state other than an established place of business wherein such spectacles, eye glasses, or lenses are commonly sold and dealt in; and it shall be unlawful for any person, not licensed as an optometrist thereunder, to sell or dispose of, at retail, any spectacles, eye glasses, or lenses for the correction of vision in any established place of business or elsewhere in this state except under the supervision, direction, and authority of a duly licensed optometrist holding a certificate under sections 148.52 to 148.62, who shall be in charge of and in personal attendance at the booth, counter, or place where such articles are sold or disposed of.

Subd. 3. **Unregulated sales.** Nothing in sections 148.52 to 148.62 shall be construed to apply to the sale of toy glasses, goggles consisting of plano-white or plano-colored lenses or ordinary colored glasses or to the replacement of duplications of broken lenses, nor to sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor, nor shall it apply to regularly licensed physicians and surgeons. Sections 148.52 to 148.62 also do not apply to the sale of spectacles, used for reading and containing only simple lenses having a plus power of up to and including 3.25, if no attempt is made to test the eyes. The term "simple lenses" does not include bifocals. The seller shall prominently display a sign on the counter or rack or other display device where the spectacles are offered for sale that reads as follows: "If you have experienced a vision loss, the selection of these glasses should not take the place of an eye exam."

Subd. 4. **License required.** It shall be unlawful for any person to engage in the practice of optometry without first procuring and filing for record a certificate of registration as a licensed optometrist pursuant to this section.

History: (5789) 1915 c 127 s 5; 1925 c 239 s 5; 1929 c 420 s 3; 1983 c 301 s 146; 1986 c 444; 1987 c 125 s 1

148.57 LICENSE.

Subdivision 1. **Examination.** A person not authorized to practice optometry in the state and desiring to do so shall apply to the director of the state board of optometry for examination and pay to the board a fee in an amount set by the board. The candidate desiring to apply for examination by the board shall complete a form furnished by the board and shall file the same with the secretary of the board at least two weeks prior to the date of the examination. With the submission of the application form, the candidate shall prove that the candidate (a) is of good moral character, and (b) is a grad-

uate of an optometry school requiring at least two academic years of preprofessional training for admittance to such school and which has been approved by the board, or is currently enrolled in the final year of study at such a school. The examination shall include both a written test and a practical demonstration and shall thoroughly test the fitness of the candidate to practice in this state. In regard to the written examination, the board (a) may prepare, administer, and grade the examination itself or (b) may recognize and approve in whole or in part a similar examination prepared, administered and graded by the national board of examiners in optometry or (c) may administer a recognized and approved examination prepared and graded by or under the direction of the national board of examiners in optometry. The board shall issue a license to each applicant who satisfactorily passes the examination and fulfills the other requirements stated in this section. The applicant shall pay to the board a fee as set by the board upon issuance of the license. In the event the candidate fails to pass a part of the examination, upon the payment of an additional fee as set by the board, the candidate may retake the examination at the time the board next schedules such examinations. The fees mentioned in this section are for the use of the board and in no case shall be refunded.

Subd. 2. Reciprocity. A person who holds a certificate of registration, or license, from another state, and who has practiced not less than three years in that state, may apply for licensure in Minnesota by filling out and swearing to an application for license by reciprocity form furnished by the board and by filing that form with the board secretary along with a fee as set by the board at least two weeks prior to the regular meeting at which the board is considering such applications. The application fee as set by the board shall be for the use of the board and in no case shall be refunded. To verify that the applicant possesses the knowledge and ability essential to the practice of optometry in this state, the board may for good cause request the applicant to perform a practical demonstration to its satisfaction. The applicant may then be issued a license if the requirements for registration or licensure in the other state are deemed by the board to be equivalent to those of sections 148.52 to 148.62; provided, that the other state accords like privileges to holders of certificates from the Minnesota board.

Subd. 3. Revocation, suspension. The board may revoke the license or suspend the right to practice of any person who has been convicted of any violation of sections 148.52 to 148.62 or of any other criminal offense, or who violates any provision of sections 148.571 to 148.574 or who is found by the board to be incompetent or guilty of unprofessional conduct. "Unprofessional conduct" means any conduct of a character likely to deceive or defraud the public, including, among other things, free examination advertising, the loaning of a license by any licensed optometrist to any person; the employment of "cappers" or "steerers" to obtain business; splitting or dividing a fee with any person; the obtaining of any fee or compensation by fraud or misrepresentation; employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by sections 148.52 to 148.62; the advertising by any means of optometric practice or treatment or advice in which untruthful, improbable, misleading, or impossible statements are made. After one year, upon application and proof that the disqualification has ceased, the board may reinstate such person.

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

History: (5790) 1915 c 127 s 6; 1925 c 239 s 6; 1929 c 420 s 4; 1949 c 267 s 3; 1967 c 381 s 2; 1973 c 62 s 2-4; 1976 c 222 s 63; 1978 c 516 s 1; 1982 c 388 s 5; 1985 c 247 s 25; 1986 c 444

148.571 USE OF TOPICAL OCULAR DRUGS.

Subdivision 1. Authority. Subject to the provisions of sections 148.57, subdivision

3, and 148.571 to 148.574, licensed optometrists may 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.

Subd. 2. Drugs specified. For purposes of sections 148.57, subdivision 3, and 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.

History: 1982 c 388 s 1; 1986 c 444

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, 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.

History: 1982 c 388 s 2

148.573 PREREQUISITES TO DRUG USE.

Subdivision 1. Certificate required. A licensed optometrist shall not purchase, possess or administer any topical ocular drugs unless, after August 1, 1982, the optometrist has obtained a certificate from the board of optometry certifying that the optometrist has complied with the following requirements:

(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 Post-secondary 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;

(c) Successful completion, after August 1, 1982, of a course in cardiopulmonary resuscitation offered or approved by the Red Cross, American Heart Association, an accredited hospital, or a comparable organization or institution; and

(d) Establishment, after August 1, 1982, of an emergency plan for the management and referral to appropriate medical services of patients who may experience adverse drug reactions resulting from the application of topical ocular drugs. The plan must be approved by the board of optometry and shall, at least, require the optometrist to:

(1) Refer patients who notify the optometrist of an adverse drug reaction to appropriate medical specialists or facilities;

(2) Routinely advise the patient to immediately contact the optometrist if the patient experiences an adverse reaction;

(3) Place in the patient's permanent record information describing any adverse drug reaction experienced by the patient, and the date and time that any referral was made; and

(4) Include in the plan the names of at least three physicians, physician clinics, or hospitals to whom the optometrist will refer patients who experience an adverse drug reaction. At least one of these physicians shall be skilled in the diagnosis and treatment of diseases of the eye.

Subd. 2. Exception. The course and examination required by clauses (a) and (b) of subdivision 1 shall be completed after August 1, 1982 except that the board of optometry may certify applicants who have graduated from an accredited school of optometry within two years prior to August 1, 1982 if the school's curriculum includes a course and examination meeting the requirements of clauses (a) and (b) of subdivision 1.

Subd. 3. Consultation required. Approvals of the course, examination and emergency plan required by clauses (a), (b) and (d) of subdivision 1 shall be given by the board of optometry only after consultation with the board of medical examiners and board of pharmacy, provided that the recommendations of the board of medical examiners and board of pharmacy are made within 120 days after they are requested by the board of optometry.

History: 1982 c 388 s 3

148.574 PROHIBITIONS RELATING TO LEGEND DRUGS; AUTHORIZING SALES BY PHARMACISTS UNDER CERTAIN CONDITIONS.

An optometrist shall not purchase, possess, administer, prescribe or give any legend drug as defined in section 151.01 to any person except as is expressly authorized by sections 148.571 to 148.573. Nothing in chapter 151 shall prevent a pharmacist from selling topical ocular drugs to an optometrist authorized to use such drugs pursuant to sections 148.571 to 148.573.

History: 1982 c 388 s 4

148.58 [Repealed, 1976 c 222 s 209]

148.59 LICENSE RENEWAL; FEE.

A licensed optometrist shall pay to the state board of optometry a fee as set by the board in order to renew a license as provided by board rule.

History: (5792) 1915 c 127 s 8; 1925 c 239 s 8; 1949 c 267 s 4; 1959 c 378 s 1; 1967 c 381 s 4; 1973 c 62 s 6; 1976 c 222 s 64; 1986 c 444

148.60 EXPENSES.

The expenses of administering sections 148.52 to 148.62 shall be paid from appropriations made to the board of optometry.

History: (5793) 1915 c 127 s 9; 1925 c 239 s 9; 1955 c 847 s 14; 1973 c 638 s 21; 1975 c 136 s 19; 1976 c 222 s 65

148.61 PENALTY.

Subdivision 1. [Repealed, 1945 c 242 s 14]

Subd. 2. [Renumbered 148.511, subd 1]

Subd. 3. [Renumbered 148.101]

Subd. 4. [Renumbered 148.511, subd 2]

Subd. 5. Every person who shall violate any of the provisions of sections 148.52 to 148.62 shall be guilty of a gross misdemeanor.

History: (5794) 1915 c 127 s 10; 1925 c 239 s 10

148.62 APPLICATION.

Sections 148.52 to 148.62 shall not be construed as forbidding any person licensed to practice any profession in this state from engaging in such profession as it may now be defined by law.

History: (5796-1) 1925 c 239 s 13

PHYSICAL THERAPISTS

148.65 DEFINITIONS.

Subdivision 1. **Physical therapy.** As used in sections 148.65 to 148.78 the term "physical therapy" means the evaluation or treatment or both of any person by the employment of physical measures and the use of therapeutic exercises and rehabilitative procedures, with or without assistive devices, for the purpose of preventing, correcting, or alleviating a physical or mental disability. Physical measures shall include but shall not be limited to heat or cold, air, light, water, electricity and sound. Physical therapy includes evaluation other than medical diagnosis, treatment planning, treatment, documentation, performance of appropriate tests and measurement, interpretation of orders or referrals, instruction, consultative services, and supervision of supportive personnel. "Physical therapy" does not include the practice of medicine as defined in section 147.081, or the practice of chiropractic as defined in section 148.01.

Subd. 2. **Physical therapist.** "Physical therapist" means a person who practices physical therapy as defined in sections 148.65 to 148.78.

History: 1951 c 479 s 1; 1980 c 412 s 1; 1985 c 182 s 1; 1987 c 384 art 2 s 1

148.66 STATE BOARD OF MEDICAL EXAMINERS, DUTIES.

The state board of medical examiners, as now or hereafter constituted, hereinafter termed "the board," in the manner hereinafter provided, shall administer the provisions of this law.

History: 1951 c 479 s 2

148.67 PHYSICAL THERAPY COUNCIL.

The board of medical examiners shall appoint a physical therapy council in carrying out the provisions of this law, regarding the qualifications and examination of physical therapists. The council shall consist of seven members, citizens and residents of the state of Minnesota, composed of three physical therapists, two licensed and registered doctors of medicine and surgery, one being a professor or associate or assistant professor from a program in physical therapy approved by the board of medical examiners, one aide or assistant to a physical therapist and one public member. The council shall expire, and the terms, compensation and removal of members shall be as provided in section 15.059.

History: 1951 c 479 s 3; 1975 c 136 s 20; 1976 c 222 s 66; 1976 c 239 s 71; 1980 c 412 s 2

148.68 [Repealed, 1975 c 136 s 77]

148.69 [Repealed, 1975 c 136 s 77]

148.70 APPLICANTS, QUALIFICATIONS.

It shall be the duty of the board of medical examiners with the advice and assistance of the physical therapy council to pass upon the qualifications of applicants for registration, continuing education requirements for reregistration, provide for and con-

duct all examinations following satisfactory completion of all didactic requirements, determine the applicants who successfully pass the examination, and duly register such applicants after the applicant has presented evidence satisfactory to the board that the applicant has completed a program of education or continuing education approved by the board.

History: 1951 c 479 s 6; 1973 c 725 s 17; 1975 c 136 s 21; 1980 c 412 s 3; 1986 c 444; 1988 c 549 s 1

148.705 APPLICATION.

An applicant for registration as a physical therapist shall file a written application on forms provided by the board together with a fee in the amount set by the board, no portion of which shall be returned.

An approved program for physical therapists shall include the following:

(a) A minimum of 60 academic semester credits or its equivalent from an accredited college, including courses in the biological and physical sciences;

(b) An accredited course in physical therapy education which has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures, as determined by the board. In determining whether or not a course in physical therapy is approved, the board may take into consideration the accreditation of such schools by the appropriate council of the American Medical Association, the American Physical Therapy Association, or the Canadian Medical Association.

History: 1980 c 412 s 4

148.706 SUPERVISION OF ASSISTANTS AND AIDES.

Every physical therapist who uses the services of an assistant or aide for the purpose of assisting in the practice of physical therapy is responsible for functions performed by the assistant or aide while engaged in such assistance. The physical therapist shall permit the assistant or aide to perform only those functions which the therapist is authorized by rule to delegate to a physical therapist assistant or assign to a physical therapy aide and shall provide supervision as specified.

History: 1980 c 412 s 11; 1986 c 444

148.71 REGISTRATION.

Subdivision 1. Qualified applicant. The state board of medical examiners shall register as a physical therapist and shall furnish a certificate of registration to each applicant who successfully passes an examination provided for in sections 148.65 to 148.78 for registration as a physical therapist and who is otherwise qualified as required herein.

Subd. 2. Temporary permit. The board may, upon payment of a fee set by the board, issue a temporary permit to practice physical therapy under supervision to a physical therapist who is a graduate of an approved school of physical therapy and qualified for admission to examination for registration as a physical therapist. A temporary permit to practice physical therapy under supervision may be issued only once and cannot be renewed. It expires 90 days after the next examination for registration given by the board or on the date on which the board, after examination of the applicant, grants or denies the applicant a registration to practice, whichever occurs first. A temporary permit expires on the first day the board begins its next examination for registration after the permit is issued if the holder does not submit to examination on that date. The holder of a temporary permit to practice physical therapy under supervision may practice physical therapy as defined in section 148.65 if the entire practice is under the supervision of a person holding a valid registration to practice physical therapy in this state. The supervision shall be direct, immediate, and on premises.

History: 1951 c 479 s 7; 1980 c 412 s 5; 1988 c 557 s 4

148.72 EXAMINATIONS.

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

Subd. 2. Certificate of registration. The board may issue a certificate of registration to a physical therapist without examination to an applicant who presents evidence satisfactory to the board of having passed an examination recognized by the board if the standards of the other state or foreign country are determined by the board to be as high as those of this state. At the time of making an application the applicant shall pay to the board a fee in the amount set by the board, no portion of which shall be returned.

Subd. 3. Examinations. The board shall give an examination to applicants who comply with section 148.70. The examination shall include a written examination which shall test the applicant's knowledge of the basic and clinical sciences as they relate to physical therapy, physical therapy theory and procedures, and such other subjects as the board may deem useful to test the applicant's qualifications to act as a physical therapist.

Subd. 4. Issuance of registration after examination. The board shall issue a certificate of registration to each applicant who passes the examination in accordance with standards established by the board and who is not disqualified to receive registration under the provisions of section 148.75.

History: 1951 c 479 s 8; 1980 c 412 s 6; 1986 c 444

148.73 RENEWALS.

Every registered physical therapist shall, during each January, apply to the board for an extension of registration and pay a fee in the amount set by the board. The extension of registration is contingent upon demonstration that the continuing education requirements set by the board under section 148.70 have been satisfied.

History: 1951 c 479 s 9; 1959 c 282 s 1; 1961 c 323 s 1; 1980 c 412 s 7; 1986 c 444; 1988 c 549 s 2

148.74 RULES.

The board is authorized to adopt rules as may be necessary to carry out the purposes of sections 148.65 to 148.78. The secretary of the board shall keep a record of proceedings under these sections and a register of all persons registered under it. The register shall show the name, address, date and number of registration, and the renewal thereof. Any other interested person in the state may obtain a copy of such list on request to the board upon payment of an amount as may be fixed by the board, which shall not exceed the cost of the list so furnished. The board shall provide blanks, books, certificates, and stationery and assistance as is necessary for the transaction of the business of the board and the physical therapy council hereunder, and all money received by the board under sections 148.65 to 148.78 shall be paid into the state treasury as provided for by law. The board shall set by rule the amounts of the application fee and the annual registration fee. The fees collected by the board must be sufficient to cover the costs of administering sections 148.65 to 148.78.

History: 1951 c 479 s 10; 1977 c 305 s 45; 1980 c 412 s 8; 1985 c 248 s 70; 1988 c 549 s 3

148.75 CERTIFICATES; DENIAL, SUSPENSION, REVOCATION.

The state board of medical examiners may refuse to grant registration to any physical therapist, or may suspend or revoke the registration of any physical therapist for any of the following grounds:

- (a) using drugs or intoxicating liquors to an extent which affects professional competence;
- (b) been convicted of a felony;
- (c) conviction for violating any state or federal narcotic law;
- (d) procuring, aiding or abetting a criminal abortion;
- (e) registration or attempted registration by fraud or deception;
- (f) conduct unbecoming a person registered as a physical therapist or conduct detrimental to the best interests of the public;
- (g) gross negligence in the practice of physical therapy as a physical therapist;
- (h) treating human ailments by physical therapy after an initial 30-day period of patient admittance to treatment has lapsed, except by the order or referral of a person licensed in this state to practice medicine as defined in section 147.10, the practice of chiropractic as defined in section 148.01, the practice of podiatry as defined in section 153.01, or the practice of dentistry as defined in section 150A.05 and whose license is in good standing; or when a previous diagnosis exists indicating an ongoing condition warranting physical therapy treatment, subject to periodic review defined by board of medical examiners rule;
- (i) treating human ailments without referral by physical therapy treatment without first having practiced one year under a physician's orders as verified by the board's records;
- (j) failure to consult with the patient's health care provider who prescribed the physical therapy treatment if the treatment is altered by the physical therapist from the original written order. The provision does not include written orders specifying orders to "evaluate and treat";
- (k) treating human ailments other than by physical therapy unless duly licensed or registered to do so under the laws of this state;
- (l) inappropriate delegation to a physical therapist assistant or inappropriate task assignment to an aide or inadequate supervision of either level of supportive personnel;
- (m) treating human ailments other than by performing physical therapy procedures unless duly licensed or registered to do so under the laws of this state;
- (n) practicing as a physical therapist performing medical diagnosis, the practice of medicine as defined in section 147.081, or the practice of chiropractic as defined in section 148.01;
- (o) failure to comply with a reasonable request to obtain appropriate clearance for mental or physical conditions which would interfere with the ability to practice physical therapy, and which may be potentially harmful to patients;
- (p) dividing fees with, or paying or promising to pay a commission or part of the fee to, any person who contacts the physical therapist for consultation or sends patients to the physical therapist for treatment;
- (q) engaging in an incentive payment arrangement, other than that prohibited by clause (p), that tends to promote physical therapy overutilization, whereby the referring person or person who controls the availability of physical therapy services to a client profits unreasonably as a result of patient treatment;
- (r) practicing physical therapy and failing to refer to a licensed health care professional any patient whose medical condition at the time of evaluation has been determined by the physical therapist to be beyond the scope of practice of a physical therapist; and
- (s) failure to report to the board other registered physical therapists who violate this section.

A certificate of registration to practice as a physical therapist is suspended if (1) a guardian of the person of the physical therapist is appointed by order of a probate court pursuant to sections 525.54 to 525.61, for reasons other than the minority of the physical therapist; or (2) the physical therapist is committed by order of a probate court

pursuant to 253B or sections 526.09 to 526.11. The certificate of registration remains suspended until the physical therapist is restored to capacity by a court and, upon petition by the physical therapist, the suspension is terminated by the board of medical examiners after a hearing.

History: 1951 c 479 s 11; 1967 c 119 s 1; 1969 c 6 s 27; 1969 c 927 s 7; 1974 c 61 s 1; 1974 c 406 s 23; 1980 c 412 s 9; 1982 c 581 s 24; 1985 c 182 s 2; 1986 c 444; 1987 c 384 art. 2 s 1; 1988 c 549 s 4

148.76 PROHIBITED CONDUCT.

Subdivision 1. No person shall

(a) use the title of physical therapist without a certificate of registration as a physical therapist issued pursuant to the provisions of sections 148.65 to 148.78;

(b) in any manner hold out as a physical therapist, or use in connection with the person's name the words or letters Physical Therapist, Physiotherapist, Physical Therapy Technician, Registered Physical Therapist, Licensed Physical Therapist, P.T., P.T.T., R.P.T., L.P.T., or any letters, words, abbreviations or insignia indicating or implying that the person is a physical therapist, without a certificate of registration as a physical therapist issued pursuant to the provisions of sections 148.65 to 148.78. To do so is a gross misdemeanor;

(c) employ fraud or deception in applying for or securing a certificate of registration as a physical therapist.

Nothing contained in sections 148.65 to 148.78 shall prohibit any person licensed or registered in this state under another law from carrying out the therapy or practice for which the person is duly licensed or registered.

Subd. 2. No physical therapist shall:

(a) treat human ailments by physical therapy after an initial 30-day period of patient admittance to treatment has lapsed, except by the order or referral of a person licensed in this state to practice medicine as defined in section 147.10, the practice of chiropractic as defined in section 148.01, the practice of podiatry as defined in section 153.01, or the practice of dentistry as defined in section 150A.05 and whose license is in good standing; or when a previous diagnosis exists indicating an ongoing condition warranting physical therapy treatment, subject to periodic review defined by board of medical examiners rule;

(b) treat human ailments by physical therapy treatment without first having practiced one year under a physician's orders as verified by the board's records;

(c) utilize any chiropractic manipulative technique whose end is the chiropractic adjustment of an abnormal articulation of the body; and

(d) treat human ailments other than by physical therapy unless duly licensed or registered to do so under the laws of this state.

History: 1951 c 479 s 12; 1980 c 412 s 10; 1985 c 182 s 3; 1986 c 444; 1988 c 549 s 5

148.77 VIOLATIONS.

Any person violating the provisions of section 148.76 is guilty of a gross misdemeanor.

History: 1951 c 479 s 13; 1980 c 412 s 12

148.78 PROSECUTION, ALLEGATIONS.

In the prosecution of any person for violation of sections 148.65 to 148.78 as specified in section 148.76, it shall not be necessary to allege or prove want of a valid certificate of registration as a physical therapist, but shall be a matter of defense to be established by the accused.

History: 1951 c 749 s 14; 1980 c 412 s 13

PSYCHOLOGISTS

- 148.79** [Repealed, 1973 c 685 s 14; 1976 c 2 s 67]
148.80 [Repealed, 1973 c 685 s 14]
148.81 [Repealed, 1973 c 685 s 14; 1974 c 406 s 91]
148.82 [Repealed, 1973 c 685 s 14]
148.83 [Repealed, 1973 c 685 s 14]
148.84 [Repealed, 1973 c 685 s 14]
148.85 [Repealed, 1973 c 685 s 14; 1976 c 2 s 67]
148.86 [Repealed, 1973 c 685 s 14]
148.87 [Repealed, 1976 c 2 s 66]

148.88 CITATION.

Sections 148.88 to 148.98 may be cited as the Minnesota licensing law for psychologists.

History: 1973 c 685 s 1; 1Sp1981 c 4 art 1 s 81

148.89 DEFINITIONS.

Subdivision 1. For the purpose of Laws 1973, chapter 685 the term "private practice of psychology" means the application for a fee, monetary or otherwise, to the public of psychological principles in the description, prediction and modification of human behavior and emotional adjustment, including but not restricted to such practices as:

- (1) Psychological assessment, including such functions as intelligence, personality, aptitude, and attitude appraisal;
- (2) Psychological treatment of persons who have adjustment problems;
- (3) Psychological counseling and guidance;
- (4) Conducting behavioral research; and
- (5) Teaching of psychology.

Subd. 2. For the purpose of Laws 1973, chapter 685 the term "collaboration" means consultation between a licensed psychologist and a licensed consultant psychologist on at least an annual basis but shall not necessarily require consultation on each case referred to a licensed psychologist.

History: 1973 c 685 s 2

148.90 BOARD OF PSYCHOLOGY.

Subdivision 1. The board of psychology is hereby created with powers and duties as hereinafter prescribed. The board shall consist of 11 members. In its initial composition, membership shall consist of (1) three psychologists whose qualifications shall be not less than those specified in section 148.91, subdivision 4, (2) two psychologists whose qualifications shall be those specified in section 148.91, subdivision 5, (3) two doctoral level psychologists, not necessarily licensed under Laws 1973, chapter 685, whose specialties broadly represent the fields of interest in psychology, and (4) four public members. After the initial appointments, members specified in clause (1) shall be licensed consulting psychologists and members specified in clause (2) shall be licensed psychologists.

Subd. 2. The members of the board shall:

- (1) Be appointed by the governor;
- (2) Be residents of the state;
- (3) Serve for not more than two consecutive terms;
- (4) Designate the officers of the board, and pursuant to chapter 14, prescribe rules as may be necessary to enable it to carry into effect the provisions of Laws 1973, chapter 685; and
- (5) Administer oaths pertaining to the business of the board.

Public members of the board shall broadly represent the public interest and shall not: (a) be members of health professions licensed by the state of Minnesota; (b) be a spouse, parent, child, or employee of a practicing psychologist or of a health professional licensed by the state of Minnesota; or (c) be persons who are or were before their retirement persons who were engaged on a full or part-time basis in the practice of psychology.

Subd. 3. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09. The provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in chapter 214 and Laws 1976, chapter 222, sections 2 to 7.

Subd. 4. [Repealed, 1975 c 136 s 77]

Subd. 5. [Repealed, 1975 c 136 s 77]

History: 1973 c 685 s 3; 1975 c 136 s 22,23; 1975 c 271 s 6; 1976 c 222 s 67; 1982 c 424 s 130

148.91 REQUIREMENTS OF LICENSES.

Subdivision 1. The board may grant licenses for two levels of psychological practice. The persons so licensed are to be known and are hereafter referred to as (a) licensed consulting psychologist and (b) licensed psychologist, or if both levels are referred to, as licensee.

Subd. 2. Before granting any such license the board shall require every applicant therefor to pass an examination in psychology. This examination shall be given at least once each year, at such time and place and under such supervision as the board prescribes.

Subd. 3. Each applicant shall pay a nonrefundable application fee set by the board. The licenses granted hereunder shall be valid for a period as set by the board. The fee for renewal shall be set by the board.

Subd. 4. To become a licensed consulting psychologist a person must fulfill and comply with the requirements of subdivision 2 and satisfy the board that the person:

- (1) Has attained the age of majority;
- (2) Is of good moral character and is not found to be engaging in unethical practices as defined within the code of ethics adopted pursuant to section 148.98;
- (3) Has received a doctorate degree with a major in psychology, which may include educational and child psychology, from an educational institution meeting standards which may be prescribed by rule of the board; and
- (4) Has had at least two full years or their equivalent of post doctoral employment as a psychologist.

Subd. 5. To become a licensed psychologist, a person must have:

- (1) Received a doctorate or master's degree or has received the equivalent of a master's degree in a doctoral program with a major in psychology, which may include educational and child psychology, from an educational institution meeting the standards which may be prescribed by rule of the board;
- (2) At least two full years of experience or its equivalent of employment as a psychologist after receiving the training upon which application for this license is made;
- (3) Otherwise fulfilled and complied with subdivision 2 and subdivision 4, clauses (1) and (2).

History: 1973 c 685 s 4; 1976 c 222 s 68,69; 1985 c 248 s 70; 1986 c 444

148.92 WAIVERS.

Subdivision 1. For a period of two years from July 1, 1973 the board shall waive the requirements of section 148.91, subdivision 2, and grant the appropriate license to

any person who meets or has met the requirements of section 148.91, subdivisions 3, and 4, or 5, who is qualified by experience to practice at the appropriate level of psychology, and who has engaged in such practice of a nature satisfactory to the board for at least two years or its equivalent, within five years prior to July 1, 1973.

Subd. 2. The board may grant a license without an examination to any person who at the time of application is licensed or certified by a similar board of another state whose standards, in the judgment of the board, are not lower than those required by Laws 1973, chapter 685 at the time the person was licensed or certified in said state; or who is a diplomate of the American Board of Professional Psychology.

Subd. 3. The board may grant a license as a consulting psychologist without an examination to any person residing in the state who has applied for said license on or before a date two years after July 1, 1973 and who fulfills and complies with section 148.91, subdivisions 3, 4, clauses (1) and (2), and 5, clause (1), and who has had at least ten years experience of a type satisfactory to the board.

History: 1973 c 685 s 5; 1986 c 444

148.93 LIMITATION.

A licensed psychologist may engage in private practice only in collaboration with at least one licensed consulting psychologist in the licensed psychologist field of practice. In addition, a licensed psychologist so collaborating may form any other working relationships with psychologists or other professionals insofar as these do not violate other sections of this or other Minnesota Statutes. It shall be unlawful for any licensed psychologist or licensed consulting psychologist to divide fees with, or to pay a commission to, or to pay a referral fee to any other person who calls for consultation or sends clients for psychological services as defined in Laws 1973, chapter 685, provided that payment of a fee for collaborative services performed is not prohibited by this section.

History: 1973 c 685 s 6; 1986 c 444

148.94 [Repealed, 1976 c 222 s 209]

148.95 SUSPENSION AND REVOCATION.

The license of any consulting psychologist or psychologist may be suspended or revoked by the board upon proof of guilt of unprofessional conduct as defined by the rules established by the board or violation of the code of ethics adopted by the board.

For reasons it deems sufficient and upon a vote of six of its members, the board may restore a license which has been revoked, reduce a period of suspension or withdraw a reprimand.

History: 1973 c 685 s 8; 1975 c 136 s 24; 1976 c 222 s 70; 1986 c 444

148.951 EVIDENCE OF PAST SEXUAL CONDUCT.

In a proceeding for the suspension or revocation of a license or other disciplinary action for unethical or unprofessional conduct involving sexual contact with a client or former client, the board or administrative law judge shall not consider evidence of the client's previous sexual conduct nor shall any reference to this conduct be made during the proceedings or in the findings, except by motion of the complainant, unless the evidence would be admissible under the applicable provisions of section 609.347, subdivision 3.

History: 1984 c 556 s 2; 1984 c 640 s 32

148.96 PRESENTATION TO PUBLIC.

No individual shall present or permit presentation of that individual to the public by any title incorporating the word "psychological," "psychologist," or "psychology" other than those so licensed by Laws 1973, chapter 685; except that:

(1) Any psychologically trained individual employed by educational institutions

recognized by a regional accrediting organization, federal, state, county, or local governmental institutions, agencies, research facilities, or agencies providing services on a contracting basis may be represented by the academic or research title designated by that organization;

(2) Any psychologically trained individual from such recognized institutions, as given in clause (1), may offer lecture services and be exempt from the provisions of this section; and

(3) Persons preparing for the profession of psychologist under qualified supervision in recognized training institutions or facilities may be designated by such titles as "psychological intern," "psychological trainee," or others clearly indicating such training status.

History: 1973 c 685 s 9; 1986 c 444

148.97 PENALTIES.

Subdivision 1. Any person who shall engage in the private practice of psychology without having obtained a license under Laws 1973, chapter 685 and any person who shall violate any other provision of Laws 1973, chapter 685 shall be guilty of a misdemeanor.

Subd. 2. [Repealed, 1976 c 222 s 209]

Subd. 3. (1) Nothing in Laws 1973, chapter 685 shall be construed to limit the professional pursuits consistent with their training and code of ethics of professions such as teachers in recognized public and private schools, members of the clergy, physicians, social workers, alcohol or drug counselors, or optometrists or attorneys. However, in such performance any title used must be in accord with section 148.96.

(2) Persons preparing for the profession of psychology may perform as a part of their training any functions specified in section 148.89, but only under qualified supervision.

(3) Use of psychological techniques by business and industrial organizations for their own personnel purposes or by employment agencies or state vocational rehabilitation agencies for the evaluation of their own clients prior to recommendation for employment is also specifically allowed. However, no representative of an industrial or business firm or corporation may sell or offer for sale any psychological services as specified in section 148.89 unless such services are performed or supervised by individuals licensed under Laws 1973, chapter 685.

Subd. 4. Nothing in Laws 1973, chapter 685 is to be construed as restricting a sociologist who holds a doctoral degree in sociology or social psychology awarded by an accredited institution, and who elects to be represented to the public by the title "social psychologist" and who has notified the board of the intention to be represented as such.

Subd. 5. A psychological consultant who is not a resident of the state of Minnesota, but is licensed or certified by a similar board of another state whose standards, in the judgment of the board, are not lower than those required by Laws 1973, chapter 685 at the time of that person's licensure and certification in said state or who meets the requirements of section 148.91, subdivision 4, and resides in a state which does not grant certification or licenses to psychologists may offer professional services in this state for no more than 60 days in any calendar year without holding a license under Laws 1973, chapter 685, provided that such persons shall report to the board the nature and extent of their practice in this state if it exceeds 12 days in any calendar year.

Subd. 6. Nothing in Laws 1973, chapter 685 shall be construed to authorize a person licensed under Laws 1973, chapter 685 to engage in the practice of any other profession regulated under Minnesota law unless the person is duly licensed or registered in that profession.

History: 1973 c 685 s 10; 1976 c 222 s 71; 1986 c 444

CIVIL LIABILITY

148.975 DUTY TO WARN; LIMITATION ON LIABILITY; VIOLENT BEHAVIOR OF PATIENT.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section and section 148.976.

(b) "Other person" means an immediate family member or someone who personally knows the patient and has reason to believe the patient is capable of and will carry out the serious, specific threat of harm to a specific, clearly identified victim.

(c) "Practitioner" means a psychologist, school psychologist, nurse, chemical dependency counselor, or social worker who is licensed by the state or who performs psychotherapy within a program or facility licensed by the state or established pursuant to rules adopted under section 245.69, subdivision 2.

(d) "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(e) "Reasonable efforts" means communicating the serious, specific threat to the potential victim and if unable to make contact with the potential victim, communicating the serious, specific threat to the law enforcement agency closest to the potential victim or the patient.

Subd. 2. **Liability standard.** No monetary liability and no cause of action may arise against a practitioner for failure to predict, warn of, or take reasonable precautions to provide protection from, a patient's violent behavior, unless the patient or other person has communicated to the practitioner a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim.

Subd. 3. **Duty to warn.** The duty to predict, warn of, or take reasonable precautions to provide protection from, violent behavior arises only under the limited circumstances specified in subdivision 2. The duty is discharged by the practitioner if reasonable efforts are made to communicate the threat to the potential victim.

Subd. 4. **Disclosure of confidences.** No monetary liability and no cause of action, or disciplinary action by the state board of psychology or board of nursing may arise against a practitioner for disclosing confidences to third parties in a good-faith effort to discharge a duty arising under this section.

Subd. 5. **Continuity of care.** Nothing in subdivision 3 shall be construed to authorize a practitioner to terminate treatment of a patient as a direct result of a patient's violent behavior or threat of physical violence unless the patient is referred to another practitioner or appropriate health care facility.

Subd. 6. **Exception.** This section does not apply to a threat to commit suicide or other threats by a patient to harm the patient, or to a threat by a patient who is adjudicated mentally ill and dangerous under chapter 253B.

History: 1986 c 380 s 1

148.976 OPTIONAL DISCLOSURE; LIMITATION ON LIABILITY.

Subdivision 1. **Optional disclosure.** Nothing in section 148.975 shall be construed to prohibit a practitioner from disclosing confidences to third parties in a good-faith effort to warn against or take precautions against a patient's violent behavior for which a duty to warn does not arise under section 148.975.

Subd. 2. **Limitation on liability.** No monetary liability and no cause of action, or disciplinary action by the state board of psychology or board of nursing may arise against a practitioner for disclosure of confidences to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure of confidences to third parties in a good-faith effort to warn against or take precautions against a patient's violent behavior for which a duty to warn does not arise under section 148.975.

History: 1986 c 380 s 2

148.98 CODE OF ETHICS.

The board shall adopt a code of ethics to govern appropriate practices or behavior, as referred to in section 148.89. The board shall file such code with the secretary of state at least 30 days prior to the effective date of such code. This code of ethics shall include, but not be limited to, the following principles:

(1) The psychologist recognizes personal boundaries of competence and the limitation of techniques and does not offer services or use techniques that fail to meet professional standards established in particular fields.

(2) The psychologist who engages in practice assists the client in obtaining professional help for all important aspects of the client's problem that fall outside the boundaries of the psychologist's competence.

(3) A psychologist does not claim either directly or by implication professional qualifications that differ from actual qualifications, nor does the psychologist misrepresent affiliation with any institution, organization, or individual, nor lead others to assume the psychologist has false affiliations.

History: 1973 c 685 s 11; 1976 c 222 s 72; 1986 c 444

148.99 Subdivision 1. [Repealed, 1976 c 222 s 209]

Subd. 2. [Expired]