

CHAPTER 148C

ALCOHOL AND DRUG COUNSELORS, LICENSING

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148C.01 DEFINITIONS.

Subdivision 1. **Definitions.** For the purposes of sections 148C.01 to 148C.11 and 595.02, subdivision 1, the following terms have the meanings given them.

Subd. 2. **Alcohol and drug counselor.** "Alcohol and drug counselor" or "counselor" means a person who:

(1) uses, as a representation to the public, any title or description of services incorporating the words "alcohol and drug counselor";

(2) offers to render professional alcohol and drug counseling services relative to the abuse of or the dependency on alcohol or other drugs to the general public or groups, organizations, corporations, institutions, or government agencies for compensation, implying that the person is licensed and trained, experienced or expert in alcohol and drug counseling;

(3) holds a valid license issued under sections 148C.01 to 148C.11 to engage in the practice of alcohol and drug counseling; or

(4) is an applicant for an alcohol and drug counseling license.

Subd. 3. [Repealed by amendment, 1995 c 164 s 3]

Subd. 4. **Dependency.** "Dependency" means a maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

(a) tolerance, as defined by either of the following:

(1) a need for markedly increased amounts of the substance to achieve intoxication or desired effect; or

(2) a markedly diminished effect with continued use of the same amount of the substance;

(b) withdrawal, as manifested by either of the following:

(1) the characteristic withdrawal syndrome for the substance, as referred to in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders; or

(2) the same or closely related substance is taken to relieve or avoid withdrawal symptoms;

(c) the substance is often taken in larger amounts or over a longer period than was intended;

(d) a persistent desire or unsuccessful efforts to cut down or control substance use;

(e) a great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects;

(f) important social, occupational, or recreational activities are given up or reduced because of the substance use; or

(g) substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by the substance.

Subd. 5. **Abuse.** "Abuse" means a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of the following occurring at any time during the same 12-month period:

(1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home;

(2) recurrent substance use in situations in which it is physically hazardous;

(3) recurrent substance-related legal problems; and

(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

For substance use to be considered abuse, the individual must never have met the criteria for dependence in subdivision 4 for the class of substance in question.

Subd. 6. **Commissioner.** "Commissioner" means the commissioner of health, or a designee.

Subd. 7. **Accredited school or educational program.** "Accredited school or educational program" means a school of alcohol and drug counseling, university, college, or other post-secondary education program that offers no less than the required number of education and practicum hours as described in section 148C.04, subdivision 3, and the core functions as defined in subdivision 9, and that, at the time the student completes the program, is accredited by a regional accrediting association whose standards are substantially equivalent to those of the North Central Association of Colleges and Post-Secondary Education Institutions or an accrediting association that evaluates schools of alcohol and drug counseling for inclusion of the education, practicum, and core function standards in this chapter.

Subd. 8. [Repealed, 1995 c 164 s 35]

Subd. 9. **Core functions.** "Core functions" means the following services provided in alcohol and drug dependency treatment:

(1) "Screening" means the process by which a client is determined appropriate and eligible for admission to a particular program.

(2) "Intake" means the administrative and initial assessment procedures for admission to a program.

(3) "Orientation" means describing to the client the general nature and goals of the program; rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program; in a nonresidential program, the hours during which services are available; treatment costs to be borne by the client, if any; and client's rights.

(4) "Assessment" means those procedures by which a counselor identifies and evaluates an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan.

(5) "Treatment planning" means the process by which the counselor and the client identify and rank problems needing resolution; establish agreed upon immediate and long-term goals; and decide on a treatment process and the sources to be utilized.

(6) "Counseling" means the utilization of special skills to assist individuals, families, or groups in achieving objectives through exploration of a problem and its ramifications; examination of attitudes and feelings; consideration of alternative solutions; and decision making.

(7) "Case management" means activities which bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals.

(8) "Crisis intervention" means those services which respond to an alcohol or other drug user's needs during acute emotional or physical distress.

(9) "Client education" means the provision of information to clients who are receiving or seeking counseling concerning alcohol and other drug abuse and the available services and resources.

(10) "Referral" means identifying the needs of the client which cannot be met by the counselor or agency and assisting the client to utilize the support systems and available community resources.

(11) "Reports and recordkeeping" means charting the results of the assessment and treatment plan, writing reports, progress notes, discharge summaries, and other client-related data.

(12) "Consultation with other professionals regarding client treatment and services" means communicating with other professionals in regard to client treatment and services to assure comprehensive, quality care for the client.

Subd. 10. Practice of alcohol and drug counseling. "Practice of alcohol and drug counseling" means the observation, description, evaluation, interpretation, and modification of human behavior as it relates to the harmful or pathological use or abuse of alcohol or other drugs by the application of the core functions. The practice of alcohol and drug counseling includes, but is not limited to, the following activities, regardless of whether the counselor receives compensation for the activities:

- (1) assisting clients who use alcohol or drugs, evaluating that use, and recognizing dependency if it exists;
- (2) assisting clients with alcohol or other drug problems to gain insight and motivation aimed at resolving those problems;
- (3) providing experienced professional guidance, assistance, and support for the client's efforts to develop and maintain a responsible functional lifestyle;
- (4) recognizing problems outside the scope of the counselor's training, skill, or competence and referring the client to other appropriate professional services;
- (5) assessing the level of alcohol or other drug use involvement;
- (6) individual planning to prevent a return to harmful alcohol or chemical use;
- (7) alcohol and other drug abuse education for clients;
- (8) consultation with other professionals; and
- (9) providing the above services, as needed, to family members or others who are directly affected by someone using alcohol or other drugs.

Subd. 11. Sexual contact. "Sexual contact" means contact as defined in section 148A.01 with a client or former client, or engaging in contact that may reasonably be interpreted by a client as sexual, or engaging in any verbal behavior that is seductive or sexually demeaning to the client, or engaging in sexual exploitation of a client or former client.

Subd. 12. Supervised alcohol and drug counseling experience. Except during the transition period, "supervised alcohol and drug counseling experience" means practical experience gained by a student, volunteer, or intern, and supervised by a person licensed under this chapter; either before, during, or after the student completes a program from an accredited school or education program of alcohol and drug counseling.

Subd. 13. Alcohol and drug counseling practicum. "Alcohol and drug counseling practicum" means formal experience gained by a student and supervised by a person licensed under this chapter, in an accredited school or program of alcohol and drug counseling as part of the education requirements of this chapter.

Subd. 14. Applicant. "Applicant" means a person seeking a license under this chapter.

Subd. 15. Client. "Client" means an individual who is the recipient of any of the alcohol and drug counseling services described in this section.

Subd. 16. Compensation. "Compensation" means a fee, salary, reward, payment, or the expectation of payment from a client or a client's agent, insurer, employer, or other representative for providing alcohol and drug counseling services. Compensation does not include bartering for services.

History: 1995 c 164 s 3

148C.015 SCOPE; DEFINITIONS.

Before engaging in the practice of alcohol and drug counseling as defined in section 148C.01, all persons, except as provided in section 148C.11, regardless of their titles, must obtain a license as provided in this chapter.

History: 1995 c 164 s 4

148C.02 ALCOHOL AND DRUG COUNSELORS LICENSING ADVISORY COUNCIL.

Subdivision 1. Membership. The alcohol and drug counselors licensing advisory council consists of 13 members. The commissioner shall appoint:

(1) except for those members initially appointed, seven members who must be licensed alcohol and drug dependency counselors;

(2) three members who must be public members as defined by section 214.02;

(3) one member who must be a director or coordinator of an accredited alcohol and drug dependency training program; and

(4) one member who must be a former consumer of alcohol and drug dependency counseling service and who must have received the service more than three years before the person's appointment.

The American Indian advisory committee to the department of human services chemical dependency office shall appoint the remaining member.

Subd. 2. Duties. (a) The advisory council shall:

(1) provide advice and recommendations to the commissioner on the development of rules for the licensure of alcohol and drug counselors;

(2) provide advice and recommendations to the commissioner on the development of standards and procedures for the competency testing, licensing, and review of alcohol and drug counselors' professional conduct;

(3) provide advice and recommendations to the commissioner in disciplinary cases in the areas of counselor competency issues, counselor practice issues, and counselor impairment issues.

(b) The advisory council shall form an education committee, including a chair, and shall advise the commissioner on the administration of education requirements in section 148C.05, subdivision 2.

Subd. 3. Terms. The terms, compensation, and removal of members shall be as provided in section 15.059, except that notwithstanding any contrary law, the advisory council shall not expire.

History: 1995 c 164 s 5

148C.03 DUTIES OF THE COMMISSIONER.

Subdivision 1. General. The commissioner shall, after consultation with the advisory council or a subcommittee or the special licensing criteria committee established under section 148C.11, subdivision 3, paragraph (b):

(a) adopt and enforce rules for licensure of alcohol and drug counselors, including establishing standards and methods of determining whether applicants and licensees are qualified under section 148C.04. The rules must provide for examinations and establish standards for the regulation of professional conduct. The rules must be designed to protect the public;

(b) hold or contract for the administration of examinations at least twice a year to assess applicants' knowledge and skills. The examinations must be written and oral and may be administered by the commissioner or by a private organization under contract with the commissioner to administer the licensing examinations. Examinations must minimize cultural bias and must be balanced in various theories relative to practice of alcohol and drug counseling;

(c) issue licenses to individuals qualified under sections 148C.01 to 148C.11;

(d) issue copies of the rules for licensure to all applicants;

(e) adopt rules to establish and implement procedures, including a standard disciplinary process and rules of professional conduct;

(f) carry out disciplinary actions against licensees;

(g) establish, with the advice and recommendations of the advisory council, written internal operating procedures for receiving and investigating complaints and for taking disciplinary actions as appropriate. Establishment of the operating procedures are not subject to rulemaking procedures under chapter 14;

(h) educate the public about the existence and content of the rules for chemical dependency counselor licensing to enable consumers to file complaints against licensees who may have violated the rules;

(i) evaluate the rules in order to refine and improve the methods used to enforce the commissioner's standards;

(j) set, collect, and adjust license fees for alcohol and drug counselors so that the total fees collected will as closely as possible equal anticipated expenditures during the biennium, as provided in section 16A.1285; fees for initial and renewal application and examinations; late fees for counselors who submit license renewal applications after the renewal deadline; and a surcharge fee. The surcharge fee must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for the adoption of the rules providing for the licensure of alcohol and drug counselors. All fees received shall be deposited in the state treasury and credited to the special revenue fund; and

(k) prepare reports on activities related to the licensure of alcohol and drug counselors according to this subdivision by October 1 of each even-numbered year. Copies of the reports shall be delivered to the legislature in accordance with section 3.195 and to the governor. The reports shall contain the following information on the commissioner's activities relating to the licensure of chemical dependency counselors, for the two-year period ending the previous June 30:

- (1) a general statement of the activities;
- (2) the number of staff hours spent on the activities;
- (3) the receipts and disbursements of funds;
- (4) the names of advisory council members and their addresses, occupations, and dates of appointment and reappointment;
- (5) the names and job classifications of employees;
- (6) a brief summary of rules proposed or adopted during the reporting period with appropriate citations to the State Register and published rules;
- (7) the number of persons having each type of license issued by the commissioner as of June 30 in the year of the report;
- (8) the locations and dates of the administration of examinations by the commissioner;
- (9) the number of persons examined by the commissioner with the persons subdivided into groups showing age categories, sex, and states of residency;
- (10) the number of persons licensed by the commissioner after taking the examinations referred to in clause (8) with the persons subdivided by age categories, sex, and states of residency;
- (11) the number of persons not licensed by the commissioner after taking the examinations referred to in clause (8) with the persons subdivided by age categories, sex, and states of residency;
- (12) the number of persons not taking the examinations referred to in clause (8) who were licensed by the commissioner or who were denied licensing, the reasons for the licensing or denial, and the persons subdivided by age categories, sex, and states of residency;
- (13) the number of persons previously licensed by the commissioner whose licenses were revoked, suspended, or otherwise altered in status with brief statements of the reasons for the revocation, suspension, or alteration;
- (14) the number of written and oral complaints and other communications received by the commissioner which allege or imply a violation of a statute or rule which the commissioner is empowered to enforce;
- (15) a summary, by specific category, of the substance of the complaints and communications referred to in clause (14) and, for each specific category, the responses or dispositions; and
- (16) any other objective information which the commissioner believes will be useful in reviewing the commissioner's activities.

Subd. 2. [Repealed, 1995 c 164 s 35]

Subd. 3. [Repealed, 1995 c 164 s 35]

Subd. 4. **Professional accountability.** The commissioner shall maintain and keep current a file containing the reports and complaints filed against alcohol and drug counselors within the commissioner's jurisdiction.

History: 1995 c 164 s 6,7

148C.035 [Repealed, 1995 c 164 s 35]

148C.0351 PROCEDURES FOR ADMISSION TO LICENSURE.

Subdivision 1. **Application forms.** Unless exempted under section 148C.11, a person who practices alcohol and drug counseling in Minnesota must:

(1) apply to the commissioner for a license to practice alcohol and drug counseling on forms provided by the commissioner;

(2) include with the application a statement that the statements in the application are true and correct to the best of the applicant's knowledge and belief;

(3) include with the application a nonrefundable application fee specified by the commissioner;

(4) include with the application information describing the applicant's experience, including the number of years and months the applicant has practiced alcohol and drug counseling as defined in section 148C.01;

(5) include with the application the applicant's business address and telephone number, or home address and telephone number if the applicant conducts business out of the home, and if applicable, the name of the applicant's supervisor, manager, and employer;

(6) include with the application a written and signed authorization for the commissioner to make inquiries to appropriate state regulatory agencies and private credentialing organizations in this or any other state where the applicant has practiced alcohol and drug counseling; and

(7) complete the application in sufficient detail for the commissioner to determine whether the applicant meets the requirements for filing. The commissioner may ask the applicant to provide additional information necessary to clarify incomplete or ambiguous information submitted in the application.

Subd. 2. **Fee for late renewal.** A licensee must pay a late fee and the renewal fee set by rule.

Subd. 3. **Requirement to maintain current information.** An alcohol and drug counselor must notify the commissioner within 30 days of the occurrence of any of the following:

(1) a change of name, address, place of employment, and home or business telephone number; and

(2) a settlement or award based on negligent or intentional acts committed in providing alcohol and drug counseling services.

History: 1995 c 164 s 8

148C.04 REQUIREMENTS FOR LICENSURE.

Subdivision 1. **General requirements.** The commissioner shall issue licenses to the individuals qualified under sections 148C.01 to 148C.11 to practice alcohol and drug counseling.

Subd. 2. **Fee.** Each applicant shall pay a nonrefundable fee set by the commissioner pursuant to section 148C.03. Fees paid to the commissioner shall be deposited in the special revenue fund.

Subd. 3. **Licensing requirements for alcohol and drug counselors; evidence.** (a) For five years after the effective date of the rules authorized in section 148C.03, the applicant, unless qualified for initial licensure under this subdivision, must furnish evidence satisfactory to the commissioner that the applicant has met all the requirements in clauses (1) to (3).

(1) Except as provided in subdivision 4, the applicant must have received an associate degree including 270 clock hours of alcohol and drug counseling education from an accredited school or educational program and 880 clock hours of chemical dependency practicum;

(2) The applicant must have completed a written case presentation and satisfactorily passed an oral examination that demonstrates competence in the core functions; and

(3) The applicant must have satisfactorily passed a written examination as established by the commissioner.

(b) Unless the applicant qualifies for licensure under this subdivision, an applicant must furnish evidence satisfactory to the commissioner that the applicant has met the requirements of paragraph (a), clauses (1) to (3).

Beginning two years after the effective date of the rules authorized in section 148C.03, subdivision 1, no person may be licensed without meeting the requirements in section 148C.04, subdivision 4, paragraph (a), clauses (2) and (3), or the special licensing criteria established pursuant to section 148C.11, subdivision 4.

Subd. 4. Additional licensing requirements. Beginning five years after the effective date of the rules authorized in section 148C.03, subdivision 1, an applicant for licensure must have received a bachelor's degree from an accredited school or educational program, and must have completed 480 clock hours of alcohol and drug counseling education from an accredited school or educational program and 880 clock hours of alcohol and drug counseling practicum.

History: 1995 c 164 s 9-12

148C.05 LICENSE RENEWAL REQUIREMENTS; LAPSE.

Subdivision 1. Renewal requirements. To renew a license, an applicant must:

(1) annually complete a renewal application on a form provided by the commissioner and submit the annual renewal fee by the deadline; and

(2) submit additional information if requested by the commissioner to clarify information presented in the renewal application. This information must be submitted within 30 days of the commissioner's request.

Subd. 2. Continuing education. At the time of renewal, if required, each licensee shall furnish evidence satisfactory to the commissioner that the licensee has completed at least the equivalent of 40 clock hours of continuing professional postdegree education during the past two years, in programs approved by the commissioner, after consultation with the education committee, and that the licensee continues to be qualified to practice under sections 148C.01 to 148C.11.

Subd. 3. Late renewals. The deadline to renew licensure is the date set by the commissioner. An application submitted after that date but before the renewal deadline shall be a late renewal and must be accompanied by a late fee as required in section 148C.0351, subdivision 2.

Subd. 4. Lapse in licensure. An applicant's license shall lapse if the renewal application is not received by the date set by the commissioner. An applicant whose license has lapsed less than two years must meet all the requirements of this chapter except the examination requirements of section 148C.04. An applicant whose license has lapsed for two years or more must meet all the requirements of this chapter except the continuing education requirement of subdivision 2. License renewal fees of applicants whose license has lapsed shall not be prorated over the time remaining in the annual licensure period.

History: 1995 c 164 s 13

148C.06 TRANSITION PERIOD.

For two years from the effective date of the rules authorized in section 148C.03, subdivision 1, the commissioner shall issue a license to an applicant if the applicant meets one of the following qualifications:

(a) is credentialed as a certified chemical dependency counselor (CCDC) or certified chemical dependency counselor reciprocal (CCDCR) by the Institute for Chemical Dependency Professionals of Minnesota, Inc.;

(b) has 6,000 hours of supervised alcohol and drug counselor experience as defined by the core functions, 270 clock hours of alcohol and drug training with a minimum of 60 hours of this training occurring within the past five years, 300 hours of alcohol and drug practicum, and has successfully completed the requirements in section 148C.04, subdivision 3, paragraph (a), clauses (2) and (3);

(c) has 10,000 hours of supervised alcohol and drug counselor experience as defined by the core functions, 270 clock hours of alcohol and drug training with a minimum of 60 hours of this training occurring within the past five years, and has successfully completed the requirements in section 148C.04, subdivision 3, paragraph (a), clause (2) or (3), or is credentialed as a certified chemical dependency practitioner (CCDP) by the Institute for Chemical Dependency Professionals of Minnesota, Inc.;

(d) has 14,000 hours of supervised alcohol and drug counselor experience as defined by the core functions and 270 clock hours of alcohol and drug training with a minimum of 60 hours of this training occurring within the past five years; or

(e) has met the special licensing criteria established pursuant to section 148C.11.

History: 1995 c 164 s 14

148C.07 RECIPROCITY.

The commissioner shall issue an appropriate license to an individual who holds a current license or other credential to engage in alcohol and drug counseling from another jurisdiction if the commissioner finds that the requirements for that credential are substantially similar to the requirements in sections 148C.01 to 148C.11.

History: 1995 c 164 s 15

148C.08 NONTRANSFERABILITY OF LICENSES.

An alcohol and drug counselor license is not transferable.

History: 1995 c 164 s 16

148C.09 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

Subdivision 1. **Grounds.** The commissioner may refuse to grant a license to, or may suspend, revoke, or restrict the license of an individual if the commissioner determines that a licensee or applicant:

(1) is incompetent to engage in alcohol and drug counseling practice or is found to be engaged in alcohol and drug counseling practice in a manner harmful or dangerous to a client or the public;

(2) has violated the rules of the commissioner or the statutes the commissioner is empowered to enforce; or any law, rule order, stipulation and consent order, agreement, or settlement;

(3) has obtained or attempted to obtain a license or license renewal by bribery or fraudulent misrepresentation;

(4) has knowingly made a false statement on the form required to be submitted to the commissioner for licensing or license renewal;

(5) has failed to obtain continuing education credits required by the commissioner;

(6) has failed to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the commissioner. The burden of proof shall be upon the applicant to demonstrate qualifications or satisfaction of requirements;

(7) has been convicted of a crime, including a finding or verdict of guilt, an admission of guilt, or a no contest plea, in any court in Minnesota or any other jurisdiction in the United States, reasonably related to the provision of alcohol and drug counseling services. Conviction, as used in this subdivision, includes conviction of an offense which, if committed in this state, would be deemed a felony or gross misdemeanor without regard to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilty is made or returned but the adjudication of guilt is either withheld or not entered;

(8) has been convicted of a crime against another person. For purposes of this chapter, a crime against another person means an offense listed in section 148B.68, subdivision 1, paragraph (b);

(9) has failed to comply with the self-reporting requirements of section 148C.095, subdivision 7;

(10) has engaged in sexual contact with a client, or a former client, as defined in section 148A.01, or has engaged in conduct that may be reasonably interpreted by a client as sexual, or has engaged in any verbal behavior that is seductive or sexually demeaning to the client, or has engaged in sexual exploitation of a client or former client;

(11) has engaged in false, fraudulent, deceptive, or misleading advertising;

(12) has engaged in conduct likely to deceive, defraud, or harm the public; or has demonstrated a willful or careless disregard for the health, welfare, or safety of a client; or any

other practice that may create unnecessary danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established;

(13) has been adjudicated as mentally incompetent, or as a person who has a psychopathic personality, or who is dangerous to self, or has been adjudicated as chemically dependent, mentally ill, mentally retarded, or mentally ill and dangerous to the public pursuant to chapter 253B;

(14) is unable to provide alcohol and drug counseling services with reasonable safety to clients;

(15) is habitually overindulgent in the use of or the dependence on alcohol;

(16) has engaged in the improper or unauthorized personal or other use of any legend drugs as defined in section 151.01, any chemicals as defined in section 151.01, or any controlled substance as defined in section 152.01;

(17) reveals a communication from, or relating to, a client except when required or permitted by law;

(18) fails to comply with a client's request for health records made under section 144.335, or to furnish a client record or report required by law;

(19) has engaged in fee splitting or promises to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client;

(20) has engaged in abusive or fraudulent billing practices, including violations of the federal Medicare and Medicaid laws or state medical assistance laws;

(21) fails to make reports as required by section 148C.095, or cooperate with an investigation of the commissioner;

(22) obtains money, property, or services from a client, other than reasonable fees for services provided to the client, through the use of undue influence, harassment, duress, deception, or fraud;

(23) undertakes or continues a professional relationship with a client in which the objectivity of the alcohol and drug counselor may be impaired;

(24) engages in conduct that constitutes grounds for discipline as established by the commissioner in rule; or

(25) engages in bartering for services with a client.

Subd. 2. Appeal; restoring a license. If a license is denied, suspended, restricted, or revoked, an applicant or licensee may request a hearing under the contested case provisions of chapter 14. The commissioner may, for good cause demonstrated by the applicant or counselor, grant a license previously refused, restore a license that has been revoked, or reduce a period of suspension or restriction of a license. The commissioner may impose any conditions or limitations as the commissioner deems reasonable.

Subd. 3. [Repealed, 1995 c 164 s 35]

Subd. 4. Evidence. In disciplinary actions alleging violations of subdivision 1, paragraph (7), (8), (13), or (14), a copy of the judgment or proceedings under the seal of the court administrator or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

History: 1995 c 164 s 17

148C.091 DISCIPLINARY ACTIONS.

Subdivision 1. Forms of disciplinary action. When the commissioner finds that an applicant or a licensed alcohol and drug counselor has violated a provision or provisions of sections 148C.01 to 148C.11, or rules promulgated under this chapter, the commissioner may take one or more of the following actions:

(1) refuse to grant a license;

(2) revoke the license;

(3) suspend the license;

(4) impose limitations or conditions;

(5) 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 counselor of any economic advantage

gained by reason of the violation charged or to reimburse the commissioner for all costs of the investigation and proceeding; including, but not limited to, the amount paid by the commissioner for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, advisory council members' per diem compensation, staff time, and expense incurred by advisory council members and staff of the department;

(6) order the counselor to provide uncompensated professional service under supervision at a designated public hospital, clinic, or other health care institution;

(7) censure or reprimand the counselor; or

(8) any other action justified by the case.

Subd. 2. Discovery; subpoenas. In all matters relating to the commissioner's investigation and enforcement activities related to alcohol and drug counselors, the commissioner of health may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary materials. Any person failing or refusing to appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the commissioner or by a subpoena of the commissioner to do so may, upon application by the commissioner to the district court in any district, be ordered to comply with the order or subpoena. The commissioner may administer oaths to witnesses or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 3. Temporary suspension. In addition to any other remedy provided by law, the commissioner may, without a hearing, temporarily suspend the right of an alcohol and drug counselor to practice if the commissioner finds that the counselor has violated a statute or rule that the commissioner has authority to enforce and that continued practice by the practitioner would create a serious risk of harm to others. The suspension takes effect upon service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the commissioner issues a final order in the matter after a hearing or upon agreement between the commissioner and the counselor. Service of the order is effective if the order is served on the counselor or the counselor's attorney either personally or by first class mail. Within ten days of service of the order, the commissioner shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the commissioner or counselor must be by affidavit only. The counselor or the counselor's attorney of record may appear for oral argument. Within five working days after the hearing, the commissioner shall issue an order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The commissioner shall issue a final order within 30 days after receipt of that report, the hearing record, and any exceptions to the report filed by the parties.

Subd. 4. Automatic suspension. The right to practice is automatically suspended if (1) a guardian of an alcohol and drug counselor is appointed by order of a probate court under sections 525.54 to 525.61, or (2) the counselor is committed by order of a probate court under chapter 253B. The right to practice remains suspended until the counselor is restored to capacity by a court and, upon petition by the counselor, the suspension is terminated by the commissioner after a hearing or upon agreement between the commissioner and the counselor.

History: 1995 c 164 s 18

148C.093 ADDITIONAL REMEDIES.

Subdivision 1. Cease and desist. The commissioner may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the commissioner has issued or has authority to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections

14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the commissioner and is not reviewable by a court or agency.

A hearing must be initiated by the commissioner not later than 30 days from the date of the commissioner's receipt of a written hearing request. Within 30 days of receipt of the administrative law judge's report, and any written agreement or exceptions filed by the parties, the commissioner shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the commissioner.

When a request for a stay accompanies a timely hearing request, the commissioner may, in the commissioner's discretion, grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the office of administrative hearings within three working days of receipt of the request. Within ten days after receiving the request from the commissioner, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner shall grant or deny the stay within five working days of receiving the administrative law judge's recommendation.

In the event of noncompliance with a cease and desist order, the commissioner may institute a proceeding in district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the commissioner not exceeding \$10,000 for each separate violation.

Subd. 2. Injunctive relief. In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the commissioner may in the commissioner's own name bring an action in district court for injunctive relief to restrain an alcohol and drug counselor from a violation or threatened violation of any statute, rule, or order which the commissioner has authority to administer, enforce, or issue.

Subd. 3. Additional powers. The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a counselor from criminal prosecution by a competent authority or from disciplinary action by the commissioner.

History: 1995 c 164 s 19

148C.095 REPORTING OBLIGATIONS.

Subdivision 1. Permission to report. A person who has knowledge of any conduct constituting grounds for disciplinary action relating to the practice of alcohol and drug counseling under this chapter may report the violation to the commissioner.

Subd. 2. Institutions. A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the commissioner any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an alcohol and drug counselor's privilege to practice or treat patients or clients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the commissioner under this chapter. The institution, organization, or governmental entity shall also report the resignation of any alcohol and drug counselors before the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter, or before the commencement of formal charges but after the practitioner had knowledge that formal charges were contemplated or were being prepared.

Subd. 3. Professional societies. A state or local professional society for alcohol and drug counselors shall report to the commissioner any termination, revocation, or suspension of membership or any other disciplinary action taken against an alcohol and drug counselor. If the society has received a complaint that might be grounds for discipline under this chapter against a member on which it has not taken any disciplinary action, the society shall report the complaint and the reason why it has not taken action on it or shall direct the complainant to the commissioner.

Subd. 4. Licensed professionals. A licensed health professional shall report to the commissioner personal knowledge of any conduct that the licensed health professional rea-

sonably believes constitutes grounds for disciplinary action under this chapter by an alcohol and drug counselor, including conduct indicating that the individual may be medically incompetent, or may be medically or physically unable to engage safely in the provision of services. If the information was obtained in the course of a client relationship, the client is an alcohol and drug counselor, and the treating individual successfully counsels the alcohol and drug counselor to limit or withdraw from practice to the extent required by the impairment, the commissioner may deem this limitation of or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. Insurers. Each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to alcohol and drug counselors or the medical joint underwriting association under chapter 62F, shall submit to the commissioner quarterly reports concerning the alcohol and drug counselors against whom malpractice settlements and awards have been made. The report must contain at least the following information:

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

The insurance company shall, in addition to the above information, submit to the commissioner any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that a licensed alcohol and drug counselor may have engaged in conduct violating this chapter.

Subd. 6. Self-reporting. An alcohol and drug counselor shall report to the commissioner any personal action that would require that a report be filed with the commissioner by any person, health care facility, business, or organization under subdivisions 2 to 5. The alcohol and drug counselor shall also report the revocation, suspension, restriction, limitation, or other disciplinary action in this state and report the filing of charges regarding the practitioner's license or right of practice in another state or jurisdiction.

Subd. 7. Deadlines; forms. Reports required by subdivisions 2 to 6 must be submitted no later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The commissioner may provide forms for the submission of the 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.

History: 1995 c 164 s 20

148C.099 PROFESSIONAL COOPERATION.

An alcohol and drug counselor who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the commissioner, shall cooperate fully with the investigation. Cooperation includes responding fully to any question raised by or on behalf of the commissioner relating to the subject of the investigation whether tape recorded or not. Challenges to requests of the commissioner may be brought before the appropriate agency or court.

History: 1995 c 164 s 21

148C.10 PROHIBITION AGAINST UNLICENSED PRACTICE OR USE OF TITLES; PENALTY.

Subdivision 1. Practice. After the commissioner adopts rules, no individual shall engage in alcohol and drug counseling practice unless that individual holds a valid license as an alcohol and drug counselor.

Subd. 2. Use of titles. After the commissioner adopts rules, no individual shall present themselves or any other individual to the public by any title incorporating the words "li-

censed alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed or otherwise qualified to practice alcohol and drug counseling unless that individual holds a valid license. City, county, and state agency alcohol and drug counselors who are not licensed under sections 148C.01 to 148C.11 may use the title "city agency alcohol and drug counselor," "county agency alcohol and drug counselor," or "state agency alcohol and drug counselor." Hospital alcohol and drug counselors who are not licensed under sections 148C.01 to 148C.11 may use the title "hospital alcohol and drug counselor" while acting within the scope of their employment.

Subd. 3. Penalty. A person who violates sections 148C.01 to 148C.11 is guilty of a misdemeanor.

History: 1995 c 164 s 22

148C.11 EXCEPTIONS TO LICENSE REQUIREMENT.

Subdivision 1. Other professionals. Nothing in sections 148C.01 to 148C.10 shall prevent members of other professions or occupations from performing functions for which they are qualified or licensed. This exception includes, but is not limited to, licensed physicians, registered nurses, licensed practical nurses, psychological practitioners, members of the clergy, attorneys, probation officers, marriage and family therapists, social workers, professional counselors, school counselors, and registered occupational therapists or certified occupational therapist assistants. These persons must not, however, use a title incorporating the words "alcohol and drug counselor" or "licensed alcohol and drug counselor" or otherwise hold themselves out to the public by any title or description stating or implying that they are licensed to engage in the practice of alcohol and drug counseling.

Subd. 2. Students. Nothing in sections 148C.01 to 148C.10 shall prevent students enrolled in an accredited school of alcohol and drug counseling from engaging in the practice of alcohol and drug counseling under qualified supervision in an accredited school of alcohol and drug counseling.

Subd. 3. Federally recognized tribes. Alcohol and drug counselors licensed to practice alcohol and drug counseling according to standards established by federally recognized tribes, while practicing under tribal jurisdiction, are exempt from the requirements of this chapter. In practicing alcohol and drug counseling under tribal jurisdiction, individuals licensed under that authority shall be afforded the same rights, responsibilities, and recognition as persons licensed pursuant to this chapter.

The commissioner shall develop special licensing criteria for issuance of a license to alcohol and drug counselors who: (1) are members of ethnic minority groups; or (2) are employed by private, nonprofit agencies, including agencies operated by private, nonprofit hospitals, whose primary agency service focus addresses ethnic minority populations. These licensing criteria may differ from the licensing criteria specified in section 148C.04. To develop these criteria, the commissioner shall establish a committee comprised of but not limited to representatives from the council on hearing impaired, the council on affairs of Spanish-speaking people, the council on Asian-Pacific Minnesotans, the council on Black Minnesotans, and the Indian affairs council.

Subd. 4. Hospital alcohol and drug counselors. The licensing of hospital alcohol and drug counselors shall be voluntary, while the counselor is employed by the hospital. Hospitals employing alcohol and drug counselors shall not be required to employ licensed alcohol and drug counselors, nor shall they require their alcohol and drug counselors to be licensed, however, nothing in this chapter will prohibit hospitals from requiring their counselors to be eligible for licensure.

Subd. 5. City, county, and state agency alcohol and drug counselors. The licensing of city, county, and state agency alcohol and drug counselors shall be voluntary, while the counselor is employed by the city, county, or state agency. City, county, and state agencies employing alcohol and drug counselors shall not be required to employ licensed alcohol and drug counselors, nor shall they require their drug and alcohol counselors to be licensed.

History: 1995 c 164 s 23