

CHAPTER 152

PROHIBITED DRUGS

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152.021 CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. Penalty. (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 30 years or to payment of a fine of not more than \$1,000,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than four years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$1,000,000.

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

History: 1995 c 244 s 1

152.022 CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. Penalty. (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$500,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than three years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$500,000.

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

History: 1995 c 244 s 2

152.023 CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. Penalty. (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$250,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections for not less than two years nor more than 30 years and, in addition, may be sentenced to payment of a fine of not more than \$250,000.

History: 1995 c 244 s 3

152.024 CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. Penalty. (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$100,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections or to a local correctional authority for not less than one year nor more than 30 years and, in addition, may be sentenced to payment of a fine of not more than \$100,000.

History: 1995 c 244 s 4

152.025 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE.

[For text of subs 1 and 2, see M.S.1994]

Subd. 3. Penalty. (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months nor more than ten years and, in addition, may be sentenced to payment of a fine of not more than \$20,000.

History: 1995 c 244 s 5

152.11 WRITTEN OR ORAL PRESCRIPTIONS, REQUISITES.

Subdivision 1. No person may dispense a controlled substance included in Schedule II of section 152.02 without a prescription written by a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully licensed to prescribe in this state, or a state bordering Minnesota, and having a current federal drug enforcement administration registration number. Provided that in emergency situations, as authorized by federal law, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist. Such prescriptions shall be retained in conformity with section 152.101. No prescription for a Schedule II substance may be refilled.

For the purposes of this chapter, a written prescription or oral prescription, which shall be reduced to writing, for a controlled substance in schedule II, III, IV or V is void unless (1) it is written in ink and contains the name and address of the person for whose use it is intended; (2) it states the amount of the controlled substance to be compounded or dispensed, with directions for its use; (3) if a written prescription, it contains the signature, address and federal registry number of the prescriber and a designation of the branch of the healing art pursued by the prescriber; and if an oral prescription, the name and address of the prescriber and a designation of the prescriber's branch of the healing art; and (4) it shows the date when signed by the prescriber, or the date of acceptance in the pharmacy if an oral prescription. Every licensed pharmacist who compounds any such prescription shall retain such prescription in a file for a period of not less than two years, open to inspection by any officer of the state, county, or municipal government, whose duty it is to aid and assist with the enforcement of this chapter. Every such pharmacist shall distinctly label the container with the directions contained in the prescription for the use thereof.

Subd. 2. No person may dispense a controlled substance included in schedule III or IV of section 152.02 without a written or oral prescription from a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully licensed to prescribe in this state or a state bordering Minnesota, and having a current federal drug enforcement administration registration number. Such prescription may not be dispensed or refilled except with the written or verbal consent of the prescriber, and in no event more than six months after the date on which such prescription was issued and no such prescription may be refilled more than five times.

[For text of subd 3, see M.S.1994]

History: 1995 c 66 s 1,2

152.18 DISCHARGE AND DISMISSAL.

Subdivision 1. If any person who has not previously participated in or completed a diversion program authorized under section 401.065 or who has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section is found guilty of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, or 4, for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision 16a, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the department of public safety for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the department shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the department of public safety who shall make and maintain the not public record of it as provided under this subdivision. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.

[For text of subs 2 and 3, see M.S.1994]

History: 1995 c 226 art 2 s 2

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

Subd. 2f. Late renewals. The deadline for application to renew certification is October 1 of each year. An application submitted after October 1 and before November 1 shall be a late renewal and must be accompanied by a late fee as required in section 153A.17.

Subd. 2g. Lapse in certification. Certification shall lapse if not renewed before November 1 of each year. An applicant whose certification has lapsed less than two years must meet all the requirements of this chapter except the certification by examination requirements of subdivision 2h. The application fees to renew certification following a lapse of less than two years must include the late fee. An applicant whose certification has lapsed for two years or more must meet all the requirements of this chapter except the continuing education requirement of subdivision 2i. Certification application fees of applicants whose certification has lapsed for any amount of time shall not be prorated over the time remaining in the annual certification period.

Subd. 2h. Certification by examination. An applicant must achieve a passing score, as determined by the commissioner, on an examination according to paragraphs (a) and (b).

(a) The examination must include, but is not limited to:

(1) A written examination approved by the commissioner covering the following areas as they pertain to hearing instrument selling:

- (i) basic physics of sound;
- (ii) the anatomy and physiology of the ear;
- (iii) the function of hearing instruments;
- (iv) the principles of hearing instrument selection; and
- (v) state and federal laws, rules, and regulations.

(2) Practical tests of proficiency in the following techniques as they pertain to hearing instrument selling:

- (i) pure tone audiometry, including air conduction testing and bone conduction testing;
- (ii) live voice or recorded voice speech audiometry including speech recognition (discrimination) testing, most comfortable loudness level, and uncomfortable loudness measurements of tolerance thresholds;
- (iii) masking when indicated;
- (iv) recording and evaluation of audiograms and speech audiometry to determine proper selection and fitting of a hearing instrument;
- (v) taking ear mold impressions; and
- (vi) using an otoscope for the visual observation of the entire ear canal.

(b) The examination shall be administered by the commissioner at least twice a year.

Subd. 2i. Continuing education requirement. On forms provided by the commissioner, each certified dispenser must submit with the application for renewal of certification evidence of completion of ten course hours of continuing education earned within the 12-month period of July 1 to June 30 immediately preceding renewal. Continuing education courses must be directly related to hearing instrument dispensing and approved by the International Hearing Society or qualify for continuing education approved for Minnesota registered audiologists. Evidence of completion of the ten course hours of continuing education must be submitted with renewal applications by October 1 of each year. This requirement does not apply to dispensers certified for less than one year. The first report of evidence of completion of the continuing education credits shall be due October 1, 1997.

Subd. 2j. Required use of certification number. The certification holder must use the certification number on all contracts, bills of sale, and receipts used in the sale of hearing instruments.

Subd. 3. Nontransferability of certificate. A certificate may not be transferred.

Subd. 4. Dispensing of hearing instruments without certificate. Except as provided in subdivision 4a, it is unlawful for any person not holding a valid certificate to dispense a hearing instrument as defined in section 153A.13, subdivision 3. A person who dispenses a

hearing instrument without the certificate required by this section is guilty of a gross misdemeanor.

Subd. 4a. Trainees. (a) A person who is not certified under this section may dispense hearing instruments as a trainee for a period not to exceed 12 months if the person:

(1) submits an application on forms provided by the commissioner;

(2) is under the supervision of a certified dispenser meeting the requirements of this subdivision; and

(3) meets all requirements for certification except passage of the examination required by this section.

(b) A certified hearing instrument dispenser may not supervise more than two trainees at the same time. The certified dispenser is responsible for all actions or omissions of a trainee in connection with the dispensing of hearing instruments. A certified dispenser may not supervise a trainee if there are any commissioner, court, or other orders, currently in effect or issued within the last five years, that were issued with respect to an action or omission of a certified dispenser or a trainee under the certified dispenser's supervision.

Trainees must be supervised in all areas described in subdivision 4b, and the activities tested by the examination. Two hundred hours of on-site observations must be completed within the trainee period with a minimum of 100 hours involving the supervisor, trainee, and a consumer. In addition, the trainee must complete two monitored activities a week. Monitored activities may be executed by correspondence, telephone, or other telephonic devices, and include, but are not limited to, evaluation of audiograms, written reports, and contracts. The time spent in supervision must be recorded and the record retained by the supervisor.

Subd. 4b. Hearing testing protocol. (a) A dispenser when conducting a hearing test for the purpose of hearing instrument dispensing must:

(1) comply with the United States Food and Drug Administration warning regarding potential medical conditions required by Code of Federal Regulations, title 21, section 801.420;

(2) complete a case history of the client's hearing;

(3) inspect the client's ears with an otoscope; and

(4) conduct the following tests on both ears of the client and document the results, and if for any reason one of the following tests cannot be performed pursuant to the United States Food and Drug Administration guidelines, an audiologist shall evaluate the hearing and the need for a hearing instrument:

(i) air conduction at 250, 500, 1,000, 2,000, 4,000, and 8,000 Hertz. When a difference of 20 dB or more occurs between adjacent octave frequencies the interoctave frequency must be tested;

(ii) bone conduction at 500, 1,000, 2,000, and 4,000 Hertz for any frequency where the air conduction threshold is greater than 15 dB HL;

(iii) monaural word recognition (discrimination), with a minimum of 25 words presented for each ear; and

(iv) loudness discomfort level, monaural, for setting a hearing instrument's maximum power output; and

(5) include masking in all tests whenever necessary to ensure accurate results.

Subd. 5. Rulemaking authority. The commissioner shall adopt rules under chapter 14 to implement this chapter. The rules may include procedures and standards relating to the certification requirement, the scope of authorized practice, fees, supervision required, continuing education, career progression, disciplinary matters, and examination procedures.

Subd. 6. Hearing instruments to comply with federal and state requirements. The commissioner shall ensure that hearing instruments are dispensed in compliance with state requirements and the requirements of the United States Food and Drug Administration. Failure to comply with state or federal regulations may be grounds for enforcement actions under section 153A.15, subdivision 2.

Subd. 7. Contested cases. The commissioner shall comply with the contested case procedures in chapter 14 when suspending, revoking, or refusing to issue a certificate under this section.