

## CHAPTER 147

## BOARD OF MEDICAL PRACTICE

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**147.001 PURPOSE.**

The primary responsibility and obligation of the board of medical practice is to protect the public.

In the interest of public health, safety, and welfare, and to protect the public from the unprofessional, improper, incompetent, and unlawful practice of medicine, it is necessary to provide laws and regulations to govern the granting and subsequent use of the license to practice medicine.

**History:** 1996 c 334 s 2

**147.01 BOARD OF MEDICAL PRACTICE.**

Subdivision 1. **Creation; terms.** The board of medical practice consists of 16 residents of the state of Minnesota appointed by the governor. Ten board members must hold a degree of doctor of medicine and be licensed to practice medicine under this chapter. One board member must hold a degree of doctor of osteopathy and either be licensed to practice osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16; prior to May 1, 1963, or be licensed to practice medicine under this chapter. Five board members must be public members as defined by section 214.02. The governor shall make appointments to the board which reflect the geography of the state. In making these appointments, the governor shall ensure that no more than one public member resides in each United States congressional district, and that at least one member who is not a public member resides in each United States congressional district. The board members holding the degree of doctor of medicine must, as a whole, reflect the broad mix of expertise of physicians practicing in Minnesota. A member may be reappointed but shall not serve more than eight years consecutively. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements are 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 are as provided in chapter 214.

Subd. 2. **Recommendations for appointment.** Prior to the end of the term of a doctor of medicine or public member on the board, or within 60 days after a doctor of medicine or public member position on the board becomes vacant, the state medical association, the mental health association of Minnesota, and other interested persons and organizations may recommend to the governor doctors of medicine and public members qualified to serve on the board. Prior to the end of the term of a doctor of osteopathy, or within 60 days after a doctor of osteopathy membership becomes vacant, the Minnesota osteopathic medical society may recommend to the governor three doctors of osteopathy qualified to serve on the board. The governor may appoint

members to the board from the list of persons recommended or from among other qualified candidates.

Subd. 3. **Board administration.** The board shall elect from among its number 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 have authority to adopt rules as may be found necessary to carry out the purposes of this chapter. The members of the board shall have authority to administer oaths and the board, in session, to take testimony as to matters pertaining to the duties of the board. Nine members of the board shall constitute a quorum for the transaction of business. The board shall have a common seal, which shall be kept by the executive director, whose duty it shall be to keep a record of all proceedings of the board, including a register of all applicants for license under this chapter, giving their names, addresses, ages, educational qualifications, and the result of their examination. These books and registers shall be prima facie evidence of all the matters therein recorded.

Subd. 4. **Disclosure.** Subject to the exceptions listed in this subdivision, all communications or information received by or disclosed to the board relating to any person or matter subject to its regulatory jurisdiction are confidential and privileged and any disciplinary hearing shall be closed to the public.

(a) Upon application of a party in a proceeding before the board under section 147.091, 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 the provisions of rule 34, Minnesota rules of civil procedure.

(b) If the board imposes disciplinary measures of any kind, whether by contested case or by settlement agreement, the name and business address of the licensee, the nature of the misconduct, and the action taken by the board are public data. If disciplinary action is taken by settlement agreement, the entire agreement is public data. The board shall decide disciplinary matters, whether by settlement or by contested case, by roll call vote. The votes are public data.

(c) The board shall exchange information with other licensing boards, agencies, or departments within the state, as required under section 214.10, subdivision 8, paragraph (c), and may release information in the reports required under section 147.02, subdivision 6.

(d) The board shall upon request furnish to a person who made a complaint, or the alleged victim of a violation of section 147.091, subdivision 1, paragraph (t), or both, a description of the activities and actions of the board relating to that complaint, a summary of the results of an investigation of that complaint, and the reasons for actions taken by the board.

(e) A probable cause hearing held pursuant to section 147.092 shall be closed to the public, except for the notices of hearing made public by operation of section 147.092.

(f) Findings of fact, conclusions, and recommendations issued by the administrative law judge, and transcripts of oral arguments before the board pursuant to a contested case proceeding in which an administrative law judge found a violation of section 147.091, subdivision 1, paragraph (t), are public data.

Subd. 5. **Expenses; staff.** The board of medical practice shall provide blanks, books, certificates, and such stationery and assistance as is necessary for the transaction of the business pertaining to the duties of such board. The expenses of administering this chapter shall be paid from the appropriations made to the board of medical practice. The board shall employ an executive director.

Subd. 6. [Repealed, 1997 c 225 art 2 s 63]

**History:** (5706) *RL s 2295; 1921 c 68 s 1; 1927 c 188 s 1; 1963 c 45 s 1; 1967 c 416 s 1; 1969 c 927 s 1; 1973 c 638 s 6; 1975 c 136 s 5; 1976 c 2 s 65; 1976 c 222 s 32; 1976 c 239 s 53; 1984 c 588 s 1; 1985 c 247 s 1-3,25; 1986 c 444; 1Sp1986 c 3 art 1 s 22; 1987 c 86 s 1; 1990 c 576 s 1-3; 1991 c 105 s 1; 1991 c 106 s 6; 1991 c 199 art 1 s 40; 1992 c 513 art 7 s 9; 1Sp1993 c 1 art 5 s 6; 1995 c 186 s 44; 1995 c 207 art 9 s 38; 1996 c 334 s 3; 2000 c 284 s 2*

**147.011 DEFINITION.**

For the purpose of this chapter, "regulated person" or "person regulated by the board" means a person licensed, registered, or regulated in any other manner by the board of medical practice.

**History:** 1995 c 18, s 1

**147.02 EXAMINATION; LICENSING.**

Subdivision 1. **United States or Canadian medical school graduates.** The board shall issue a license to practice medicine to a person who meets the requirements in paragraphs (a) to (h).

(a) An applicant for a license shall file a written application on forms provided by the board, showing to the board's satisfaction that the applicant is of good moral character and satisfies the requirements of this section.

(b) The applicant shall present evidence satisfactory to the board of being a graduate of a medical or osteopathic school located in the United States, its territories or Canada, and approved by the board based upon its faculty, curriculum, facilities, accreditation by a recognized national accrediting organization approved by the board, and other relevant data, or is currently enrolled in the final year of study at the school.

(c) The applicant must have passed an examination as described in clause (1) or (2).

(1) The applicant must have passed a comprehensive examination for initial licensure prepared and graded by the National Board of Medical Examiners or the Federation of State Medical Boards. The board shall by rule determine what constitutes a passing score in the examination.

(2) The applicant taking the United States Medical Licensing Examination (USMLE) must have passed steps one, two, and three within a seven-year period. This seven-year period begins when the applicant first passes either step one or two, as applicable. Applicants actively enrolled in or graduated from accredited MD/PhD, MD/JD, MD/MBA, or MD/MPH dual degree programs or osteopathic equivalents must have passed each of steps one, two, and three within three attempts in seven years plus the time taken to obtain the non-MD degree or ten years, whichever occurs first. The applicant must pass each of steps one, two, and three with passing scores as recommended by the USMLE program within three attempts. The applicant taking combinations of Federation of State Medical Boards, National Board of Medical Examiners, and USMLE may be accepted only if the combination is approved by the board as comparable to existing comparable examination sequences and all examinations are completed prior to the year 2000.

(d) The applicant shall present evidence satisfactory to the board of the completion of one year of graduate, clinical medical training in a program accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization.

(e) The applicant shall make arrangements with the executive director to appear in person before the board or its designated representative to show that the applicant satisfies the requirements of this section. The board may establish as internal operating procedures the procedures or requirements for the applicant's personal presentation.

(f) The applicant shall pay a fee established by the board by rule. The fee may not be refunded. Upon application or notice of license renewal, the board must provide notice to the applicant and to the person whose license is scheduled to be issued or renewed of any additional fees, surcharges, or other costs which the person is obligated to pay as a condition of licensure. The notice must:

- (1) state the dollar amount of the additional costs; and
- (2) clearly identify to the applicant the payment schedule of additional costs.

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(g) The applicant must not be under license suspension or revocation by the licensing board of the state or jurisdiction in which the conduct that caused the suspension or revocation occurred.

(h) The applicant must not have engaged in conduct warranting disciplinary action against a licensee, or have been subject to disciplinary action other than as specified in paragraph (g). If the applicant does not satisfy the requirements stated in this paragraph, the board may issue a license only on the applicant's showing that the public will be protected through issuance of a license with conditions and limitations the board considers appropriate.

Subd. 2. [Repealed, 1985 c 247 s 26]

Subd. 2a. **Temporary permit.** The board may issue a temporary permit to practice medicine to a physician eligible for licensure under this section only if the application for licensure is complete, all requirements in subdivision 1 have been met, and a nonrefundable fee set by the board has been paid. The permit remains valid only until the meeting of the board at which a decision is made on the physician's application or licensure.

Subd. 3. [Repealed, 1971 c 485 s 6]

Subd. 4. [Repealed, 1984 c 432 art 2 s 55]

Subd. 5. **Procedures.** The board shall adopt a written statement of internal operating procedures describing procedures for receiving and investigating complaints, reviewing misconduct cases, and imposing disciplinary actions.

Subd. 6. **Disciplinary actions must be published.** At least annually, the board shall publish and release to the public a description of all disciplinary measures taken by the board. The publication must include, for each disciplinary measure taken, the name and business address of the licensee, the nature of the misconduct, and the disciplinary measure taken by the board.

Subd. 6a. **Exception to publication requirement.** The publication requirement does not apply to disciplinary measures by the board which are based exclusively upon grounds listed in section 147.091, subdivision 1, clause (l) or (r).

**History:** (5707) *RL s 2296; 1909 c 474 s 1; 1927 c 188 s 2; 1937 c 203 s 1; 1953 c 290 s 1; 1959 c 346 s 1; 1963 c 45 s 2; 1967 c 416 s 2; 1969 c 6 s 25; 1969 c 927 s 2; 1971 c 485 s 2; 1973 c 638 s 7; 1974 c 42 s 1; 1975 c 93 s 1,2; 1976 c 222 s 33; 1983 c 290 s 17; 1985 c 247 s 4-6; 1986 c 444; 1988 c 557 s 1,6; 1989 c 282 art 2 s 39; 1990 c 576 s 6; 1993 c 21 s 2,3; 1Sp1993 c 1 art 5 s 7; 1998 c 254 art 1 s 37; 1999 c 33 s 1*

**147.021** [Renumbered 147.091]

## **147.025 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 patient or former patient, the board or administrative law judge shall not consider evidence of the patient'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 1; 1984 c 640 s 32*

## **147.03 LICENSURE BY ENDORSEMENT; RECIPROCITY; TEMPORARY PERMIT.**

Subdivision 1. **Endorsement; reciprocity.** (a) The board may issue a license to practice medicine to any person who satisfies the requirements in paragraphs (b) to (f).

(b) The applicant shall satisfy all the requirements established in section 147.02, subdivision 1, paragraphs (a), (b), (d), (e), and (f).

(c) The applicant shall:

(1) have passed an examination prepared and graded by the Federation of State Medical Boards, the National Board of Medical Examiners, or the United States

Medical Licensing Examination program in accordance with section 147.02, subdivision 1, paragraph (c), clause (2); the National Board of Osteopathic Examiners; or the Medical Council of Canada; and

(2) have a current license from the equivalent licensing agency in another state or Canada and, if the examination in clause (1) was passed more than ten years ago, either:

(i) pass the Special Purpose Examination of the Federation of State Medical Boards with a score of 75 or better within three attempts; or

(ii) have a current certification by a specialty board of the American Board of Medical Specialties, of the American Osteopathic Association Bureau of Professional Education, or of the Royal College of Physicians and Surgeons of Canada.

(d) The applicant shall pay a fee established by the board by rule. The fee may not be refunded.

(e) The applicant must not be under license suspension or revocation by the licensing board of the state or jurisdiction in which the conduct that caused the suspension or revocation occurred.

(f) The applicant must not have engaged in conduct warranting disciplinary action against a licensee, or have been subject to disciplinary action other than as specified in paragraph (e). If an applicant does not satisfy the requirements stated in this paragraph, the board may issue a license only on the applicant's showing that the public will be protected through issuance of a license with conditions or limitations the board considers appropriate.

Subd. 2. **Temporary permit.** The board may issue a temporary permit to practice medicine to a physician eligible for licensure under this section only if the application for licensure is complete, all requirements in subdivision 1 have been met, and a nonrefundable fee set by the board has been paid. The permit remains valid only until the meeting of the board at which a decision is made on the physician's application for licensure.

Subd. 3. **Exception.** Notwithstanding subdivision 2, the board may issue a temporary permit to practice medicine to an applicant who has not satisfied the requirements of subdivision 1, paragraph (c), clause 2, item (i) or (ii), but has satisfied all other requirements for licensure under this section, and has paid a nonrefundable fee set by the board. The permit remains valid for six months.

**History:** (5709) 1905 c 236 s 1; 1913 c 139 s 1; 1919 c 251 s 1; 1927 c 188 s 3; 1953 c 290 s 2; 1963 c 45 s 3; 1975 c 92 s 1; 1977 c 7 s 1; 1985 c 247 s 8; 1986 c 444; 1991 c 106 s 1; 1992 c 513 art 6 s 28; 1993 c 19 s 1; 1993 c 21 s 4; 1999 c 33 s 2

### 147.031 EXAMINATIONS AND LICENSES OF OSTEOPATHS.

Subdivision 1. Any doctor of osteopathy licensed by the state board of osteopathy under Minnesota Statutes 1961, Sections 148.11 to 148.16, desiring to obtain a license to practice medicine shall apply to the secretary of the board and pay a fee of \$50 for the use of the board, which in no case shall be refunded. The applicant shall be examined in the subjects that the board then examines applicants under section 147.02 in which the applicant was not examined by the state board of osteopathy prior to the issuance of a license under Minnesota Statutes 1961, sections 148.11 to 148.16, prior to May 1, 1963. All applicants shall be known to the board members or examiners only by number, without names, or other methods of identification on examination papers by which board members or examiners may be able to identify such applicants, until the final grades of all the examination papers have been determined, and the licenses granted or refused. After such examination, the board, if eight members thereof consent, shall grant such doctor of osteopathy a license to practice medicine. The board may refuse to grant such a license to any person guilty of immoral, dishonorable, or unprofessional conduct, as defined in Minnesota Statutes 1961, chapter 147, but subject to the right of the applicant to appeal to the district court in the county in which the principal office of the board is located on the questions of law and fact.

Subd. 2. Any such doctor of osteopathy may, until so granted a license to practice medicine, continue to practice osteopathy as taught in reputable colleges of osteopathy, including the use and administration, in connection with the practice of obstetrics, minor surgery, and toxicology only, of anesthetics, narcotics, antidotes, and antiseptics subject to the same state and federal restrictions and limitations as are by law applicable to physicians licensed to practice medicine and shall have the same rights and powers and be subject to the same duties as physicians licensed to practice medicine with reference to matters pertaining to the public health, including the reporting of births and deaths. The board shall by rule determine what constitutes minor surgery, anesthetics, narcotics, antidotes, and antiseptics.

Subd. 3. No person who is not on May 1, 1963, licensed by the state board of osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16, shall engage in the practice of osteopathy or by use of titles or initials indicating degrees, or in any other way, hold out as being so engaged.

Subd. 4. Every person who shall violate any provisions of this section shall be guilty of a gross misdemeanor.

Subd. 5. The board shall investigate suspected violations of this section and institute proceedings thereunder.

**History:** 1963 c 45 s 4; 1973 c 638 s 8; 1985 c 248 s 70; 1986 c 444

#### 147.032 INTERSTATE PRACTICE OF TELEMEDICINE.

Subdivision 1. **Requirements; registration.** (a) A physician not licensed to practice medicine in this state may provide medical services to a patient located in this state through interstate telemedicine if the following conditions are met:

(1) the physician is licensed without restriction to practice medicine in the state from which the physician provides telemedicine services;

(2) the physician has not had a license to practice medicine revoked or restricted in any state or jurisdiction;

(3) the physician does not open an office in this state, does not meet with patients in this state, and does not receive calls in this state from patients; and

(4) the physician annually registers with the board, on a form provided by the board.

(b) To register with the board, a physician must:

(1) state the physician's intention to provide interstate telemedicine services in this state;

(2) provide complete information on:

(i) all states and jurisdictions in which the physician is currently licensed;

(ii) any states or jurisdictions in which the physician was previously licensed;

(iii) any negative licensing actions taken previously against the physician in any state or jurisdiction; and

(iv) other information requested by the board; and

(3) pay a registration fee of \$75 annually and an initial application fee of \$100.

(c) A physician registered to provide interstate telemedicine services under this section must immediately notify the board of restrictions placed on the physician's license to practice in any state or jurisdiction.

(d) In registering to provide interstate telemedicine services to state residents under this section, a physician agrees to be subject to state laws, the state judicial system, and the board with respect to providing medical services to state residents.

(e) For the purposes of this section, telemedicine means the practice of medicine as defined in section 147.081, subdivision 3, when the physician is not in the physical presence of the patient.

Subd. 2. **Exemptions from registration.** A physician who is not licensed to practice medicine in this state, but who holds a valid license to practice medicine in another state or jurisdiction, and who provides interstate telemedicine services to a patient

located in this state is not subject to the registration requirement of subdivision 1, paragraph (a), clause (4), if:

(1) the services are provided in response to an emergency medical condition. For the purposes of this section, an emergency medical condition means a condition, including emergency labor and delivery, that manifests itself by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any body organ or part;

(2) the services are provided on an irregular or infrequent basis. For the purposes of this section, a person provides services on an irregular or infrequent basis if the person provides the services less than once a month or provides the services to fewer than ten patients annually; or

(3) the physician provides interstate telemedicine services in this state in consultation with a physician licensed in this state and the Minnesota physician retains ultimate authority over the diagnosis and care of the patient.

**Subd. 3. Notification to other states.** The board shall obtain confirmation of licensure from all states and jurisdictions in which a physician registered under subdivision 1 has ever been licensed to verify statements made by the physician and to be notified if any future adverse action is taken against the physician's license in another state or jurisdiction. This requirement does not replace the reporting obligation under section 147.111.

**Subd. 4. Health records.** A physician who provides interstate telemedicine services to a patient located in this state must comply with section 144.335 with respect to the provision of those services.

**History:** 2002 c 361 s 1.

#### 147.035 MALPRACTICE HISTORY.

**Subdivision 1. Submission.** A person desiring to practice medicine in this state who has previously practiced in another state shall submit the following additional information with the license application for the five-year period of active practice preceding the date of filing such application:

(a) The name and address of the person's professional liability insurer in the other state.

(b) The number, date, and disposition of any medical malpractice settlement or award made to the plaintiff relating to the quality of medical treatment.

**Subd. 2. Board action.** The board shall give due consideration to the information submitted pursuant to section 147.03 and this section. An applicant who willfully submits incorrect information shall be subject to disciplinary action pursuant to section 147.091.

**History:** 1976 c 222 s 35; 1985 c 247 s 25; 1986 c 444

#### 147.037 LICENSING OF FOREIGN MEDICAL SCHOOL GRADUATES; TEMPORARY PERMIT.

**Subdivision 1. Requirements.** The board shall issue a license to practice medicine to any person who satisfies the requirements in paragraphs (a) to (g).

(a) The applicant shall satisfy all the requirements established in section 147.02, subdivision 1, paragraphs (a), (e), (f), (g), and (h).

(b) The applicant shall present evidence satisfactory to the board that the applicant is a graduate of a medical or osteopathic school approved by the board as equivalent to accredited United States or Canadian schools based upon its faculty, curriculum, facilities, accreditation, or other relevant data.

(c) The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical gradu-

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ates, and the applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.

(d) The applicant shall present evidence satisfactory to the board of the completion of two years of graduate, clinical medical training in a program located in the United States, its territories, or Canada and accredited by a national accrediting organization approved by the board. This requirement does not apply:

(1) to an applicant who is admitted as a permanent immigrant to the United States on or before October 1, 1991, as a person of exceptional ability in the sciences according to Code of Federal Regulations, title 20, section 656.22(d);

(2) to an applicant holding a valid license to practice medicine in another country and issued a permanent immigrant visa after October 1, 1991, as a person of extraordinary ability in the field of science or as an outstanding professor or researcher according to Code of Federal Regulations, title 8, section 204.5(h) and (i), or a temporary nonimmigrant visa as a person of extraordinary ability in the field of science according to Code of Federal Regulations, title 8, section 214.2(o),

provided that a person under clause (1) or (2) is admitted pursuant to rules of the United States Department of Labor; or

(3) to an applicant who is licensed in another state, has practiced five years without disciplinary action in the United States, its territories, or Canada, has completed one year of the graduate, clinical medical training required by this paragraph, and has passed the Special Purpose Examination of the Federation of State Medical Boards within three attempts in the 24 months before licensing.

(e) The applicant must:

(1) have passed an examination prepared and graded by the Federation of State Medical Boards, the United States Medical Licensing Examination program in accordance with section 147.02, subdivision 1, paragraph (c), clause (2), or the Medical Council of Canada; and

(2) have a current license from the equivalent licensing agency in another state or country and, if the examination in clause (1) was passed more than ten years ago, either:

(i) pass the Special Purpose Examination of the Federation of State Medical Boards with a score of 75 or better within three attempts; or

(ii) have a current certification by a specialty board of the American Board of Medical Specialties, of the American Osteopathic Association Bureau of Professional Education, of the Royal College of Physicians and Surgeons of Canada, or of the College of Family Physicians of Canada.

(f) The applicant must not be under license suspension or revocation by the licensing board of the state or jurisdiction in which the conduct that caused the suspension or revocation occurred.

(g) The applicant must not have engaged in conduct warranting disciplinary action against a licensee, or have been subject to disciplinary action other than as specified in paragraph (f). If an applicant does not satisfy the requirements stated in this paragraph, the board may issue a license only on the applicant's showing that the public will be protected through issuance of a license with conditions or limitations the board considers appropriate.

**Subd. 1a. Temporary permit.** The board may issue a temporary permit to practice medicine to a physician eligible for licensure under this section only if the application for licensure is complete, all requirements in subdivision 1 have been met, and a nonrefundable fee set by the board has been paid. The permit remains valid only until the meeting of the board at which a decision is made on the physician's application for licensure.

**Subd. 2. Medical school review.** The board may contract with any qualified person or organization for the performance of a review or investigation, including site visits if necessary, of any medical or osteopathic school prior to approving the school under



section 147.02, subdivision 1, paragraph (b), or subdivision 1, paragraph (b), of this section. To the extent possible, the board shall require the school being reviewed to pay the costs of the review or investigation.

**History:** 1985 c 247 s 9; 1986 c 444; 1991 c 106 s 2; 1993 c 21 s 5,6,13; 1994 c 433 s 1; 1995 c 18 s 2; 1999 c 33 s 3

#### 147.038 CANCELLATION OF LICENSE IN GOOD STANDING.

Subdivision 1. **Board approval; reporting.** A person holding an active license to practice medicine in the state may, upon approval of the board, be granted license cancellation if the board is not investigating the person as a result of a complaint or information received or if the board has not begun disciplinary proceedings against the person. Such action by the board shall be reported as a cancellation of a license in good standing.

Subd. 2. **Fees nonrefundable.** A person who receives board approval for license cancellation is not entitled to a refund of any license fees paid for the licensure year in which cancellation of the license occurred.

Subd. 3. **New license after cancellation.** If a person who has been granted board approval for license cancellation desires to resume the practice of medicine in Minnesota, that person must obtain a new license by applying for licensure and fulfilling the requirements then in existence for obtaining an initial license to practice medicine in Minnesota.

**History:** 1991 c 106 s 3

#### 147.0381 CANCELLATION OF CREDENTIALS UNDER DISCIPLINARY ORDER.

Subdivision 1. **Board approval; reporting.** A person regulated by the board, whose right to practice is under suspension, condition, limitation, qualification, or restriction by the board may be granted cancellation of credentials by approval of the board. Such action by the board shall be reported as cancellation while under discipline.

Credentials, for purposes of this section, means board authorized documentation of the privilege to practice a board-regulated profession.

Subd. 2. **Fees nonrefundable.** A person regulated by the board who receives board approval for credential cancellation is not entitled to a refund of any fees paid for the credentialing year in which cancellation of the credential occurred.

Subd. 3. **New credential after cancellation.** If a person regulated by the board, who has been granted board approval for credential cancellation, desires to resume the practice of the regulated profession in Minnesota, that person must obtain a new credential by applying to the board and fulfilling the requirements then in existence for obtaining an initial credential to practice the regulated profession in Minnesota.

**History:** 1995 c 18 s 3

#### 147.039 CANCELLATION OF LICENSE FOR NONRENEWAL.

The board of medical practice shall not renew, reissue, reinstate, or restore a license that has lapsed on or after January 1, 1989, and has not been renewed within two annual license renewal cycles starting July 1, 1991. A licensee whose license is canceled for nonrenewal must obtain a new license by applying for licensure and fulfilling all requirements then in existence for an initial license to practice medicine in Minnesota.

**History:** 1991 c 106 s 4

#### 147.0391 RESIDENCY PERMIT.

Subdivision 1. **Permit required.** A person must have a residency permit to participate in a residency program unless licensed by the board. Upon issuance of a license by the board, the board will terminate a residency permit. A person must have a license to practice medicine to practice outside of a residency program, except as set forth in section 147.09. An applicant for a residency permit must pay a \$20 nonrefunda-

ble fee upon initial application and upon a change in residency program a lesser nonrefundable fee set by the board in such amount that is necessary to cover administrative costs incurred by the board. The applicant must also have been accepted into either:

(1) a graduate medical education program accredited by a national accrediting organization approved by the board; or

(2) other nonaccredited graduate training approved by the board as meeting standards comparable to those of a national accrediting organization.

The approvals required by clauses (1) and (2) must have been granted by the board before the applicant enrolls in the training.

**Subd. 2. Terminating participation in residency program.** Upon a change in residency programs, a person holding a residency permit must notify the board in writing no later than 30 days after termination of participation in the residency program being terminated. A separate residency permit is required for each residency program until licensure is obtained.

**Subd. 3. Reporting obligation.** A person holding a residency permit and faculty of residency programs are subject to the reporting obligations of section 147.111. The intent of this subdivision is not to replace routine academic corrective action undertaken by a residency training program.

**History:** 1993 c 21 s 7

#### 147.04 RETALIATORY PROVISIONS.

If by the laws of any state or the rulings or decisions of the appropriate officers or boards thereof, any burden, obligation, requirement, disqualification, or disability is put upon physicians registered in this state or holding diplomas from medical colleges in this state which are in good standing therein, affecting the right of these physicians to be registered or admitted to practice in that state, then the same or like burdens, obligations, requirements, disqualification, or disability may be put upon the registration in this state of physicians registered in that state or holding diplomas from medical colleges situated therein.

**History:** (5710) 1905 c 236; 1913 c 139 s 2; 1959 c 346 s 2

147.05 [Renumbered 147.01, subd 5]

147.06 [Repealed, 1985 c 247 s 26]

147.07 [Repealed, 1985 c 247 s 26]

147.072 [Repealed, 1985 c 247 s 26]

147.073 [Renumbered 147.161]

147.074 [Renumbered 147.162]

147.075 [Repealed, 1981 c 323 s 4; 1983 c 312 art 1 s 27]

147.08 [Repealed, 1974 c 61 s 2]

#### 147.081 PRACTICING WITHOUT LICENSE; PENALTY.

Subdivision 1. **Unlawful practice of medicine.** It is unlawful for any person to practice medicine as defined in subdivision 3 in this state unless:

(1) the person holds a valid license issued according to this chapter; or

(2) the person is registered to provide interstate telemedicine services according to section 147.032.

**Subd. 2. Penalty.** Any person violating the provisions of subdivision 1 is guilty of a gross misdemeanor.

Subd. 3. **Practice of medicine defined.** For purposes of this chapter, a person not exempted under section 147.09 is "practicing medicine" or engaged in the "practice of medicine" if the person does any of the following:

(1) advertises, holds out to the public, or represents in any manner that the person is authorized to practice medicine in this state;

(2) offers or undertakes to prescribe, give, or administer any drug or medicine for the use of another;

(3) offers or undertakes to prevent or to diagnose, correct, or treat in any manner or by any means, methods, devices, or instrumentalities, any disease, illness, pain, wound, fracture, infirmity, deformity or defect of any person;

(4) offers or undertakes to perform any surgical operation including any invasive or noninvasive procedures involving the use of a laser or laser assisted device, upon any person;

(5) offers to undertake to use hypnosis for the treatment or relief of any wound, fracture, or bodily injury, infirmity, or disease; or

(6) uses in the conduct of any occupation or profession pertaining to the diagnosis of human disease or conditions, the designation "doctor of medicine," "medical doctor," "doctor of osteopathy," "osteopath," "osteopathic physician," "physician," "surgeon," "M.D.," "D.O.," or any combination of these designations.

**History:** (5717) *RL s 2300; 1927 c 188 s 4; 1963 c 45 s 6; 1971 c 485 s 5; 1974 c 43 s 1; 1985 c 247 s 13,25; 1986 c 444; 1993 c 121 s 1; 2002 c 361 s 2*

#### 147.09 EXEMPTIONS.

Section 147.081 does not apply to, control, prevent or restrict the practice, service, or activities of:

(1) A person who is a commissioned medical officer of, a member of, or employed by, the armed forces of the United States, the United States Public Health Service, the Veterans Administration, any federal institution or any federal agency while engaged in the performance of official duties within this state, if the person is licensed elsewhere.

(2) A licensed physician from a state or country who is in actual consultation here.

(3) A licensed or registered physician who treats the physician's home state patients or other participating patients while the physicians and those patients are participating together in outdoor recreation in this state as defined by section 86A.03, subdivision 3. A physician shall first register with the board on a form developed by the board for that purpose. The board shall not be required to promulgate the contents of that form by rule. No fee shall be charged for this registration.

(4) A student practicing under the direct supervision of a preceptor while the student is enrolled in and regularly attending a recognized medical school.

(5) 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 hospital or institution approved for training by the board, provided the student has a residency permit issued by the board under section 147.0391.

(6) A person employed in a scientific, sanitary, or teaching capacity by the state university, the department of children, families, and learning, a public or private school, college, or other bona fide educational institution, a nonprofit organization, which has tax-exempt status in accordance with the Internal Revenue Code, section 501(c)(3), and is organized and operated primarily for the purpose of conducting scientific research directed towards discovering the causes of and cures for human diseases, or the state department of health, whose duties are entirely of a research, public health, or educational character, while engaged in such duties; provided that if the research includes the study of humans, such research shall be conducted under the supervision of one or more physicians licensed under this chapter.

(7) Physician's assistants registered in this state.

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(8) A doctor of osteopathy duly licensed by the state board of osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16, prior to May 1, 1963, who has not been granted a license to practice medicine in accordance with this chapter provided that the doctor confines activities within the scope of the license.

(9) Any person licensed by a health related licensing board, as defined in section 214.01, subdivision 2, or registered by the commissioner of health pursuant to section 214.13, including psychological practitioners with respect to the use of hypnosis; provided that the person confines activities within the scope of the license.

(10) A person who practices ritual circumcision pursuant to the requirements or tenets of any established religion.

(11) A Christian Scientist or other person who endeavors to prevent or cure disease or suffering exclusively by mental or spiritual means or by prayer.

(12) A physician licensed to practice medicine in another state who is in this state for the sole purpose of providing medical services at a competitive athletic event. The physician may practice medicine only on participants in the athletic event. A physician shall first register with the board on a form developed by the board for that purpose. The board shall not be required to adopt the contents of the form by rule. The physician shall provide evidence satisfactory to the board of a current unrestricted license in another state. The board shall charge a fee of \$50 for the registration.

(13) A psychologist licensed under section 148.907 or a social worker licensed under section 148B.21 who uses or supervises the use of a penile or vaginal plethysmograph in assessing and treating individuals suspected of engaging in aberrant sexual behavior and sex offenders.

(14) Any person issued a training course certificate or credentialed by the emergency medical services regulatory board established in chapter 144E, provided the person confines activities within the scope of training at the certified or credentialed level.

(15) An unlicensed complementary and alternative health care practitioner practicing according to chapter 146A.

**History:** (5716) *RL s 2299; 1971 c 485 s 4; 1980 c 567 s 1; 1981 c 23 s 4; 1985 c 247 s 12; 1986 c 444; 1987 c 384 art 1 s 17; 1990 c 542 s 5; 1990 c 576 s 4; 1991 c 255 s 19; 1993 c 21 s 8; 1993 c 326 art 8 s 2; 1Sp1995 c 3 art 16 s 13; 1996 c 324 s 3; 1996 c 424 s 1; 1999 c 54 s 1; 2000 c 260 s 24; 2000 c 460 s 21*

## 147.091 GROUNDS FOR DISCIPLINARY ACTION.

Subdivision 1. **Grounds listed.** The board may refuse to grant a license, may refuse to grant registration to perform interstate telemedicine services, or may impose disciplinary action as described in section 147.141 against any physician. The following conduct is prohibited and is grounds for disciplinary action:

(a) Failure to demonstrate the qualifications or satisfy the requirements for a license contained in this chapter or rules of the board. The burden of proof shall be upon the applicant to demonstrate such qualifications or satisfaction of such requirements.

(b) Obtaining a license by fraud or cheating, or attempting to subvert the licensing examination process. Conduct which subverts or attempts to subvert the licensing examination process includes, but is not limited to: (1) conduct which 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; (2) conduct which 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 (3) impersonating an examinee or permitting an impersonator to take the examination on one's own behalf.

(c) Conviction, during the previous five years, of a felony reasonably related to the practice of medicine or osteopathy. Conviction as used in this subdivision shall include a conviction of an offense which 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 thereon.

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

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

(f) Violating a rule promulgated by the board or an order of the board, a state, or federal law which relates to the practice of medicine, or in part regulates the practice of medicine including without limitation sections 148A.02, 609.344, and 609.345, or a state or federal narcotics or controlled substance law.

(g) Engaging in any unethical conduct; 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; or medical practice which is professionally incompetent, in that it may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.

(h) Failure to supervise a physician's assistant or failure to supervise a physician under any agreement with the board.

(i) Aiding or abetting an unlicensed person in the practice of medicine, except that it is not a violation of this paragraph for a physician 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 that person's license or registration or delegated authority.

(j) Adjudication as mentally incompetent, mentally ill or mentally retarded, or as a chemically dependent person, a person dangerous to the public, a sexually dangerous person, or a person who has a sexual psychopathic personality by a court of competent jurisdiction, within or without this state. Such adjudication shall automatically suspend a license for the duration thereof unless the board orders otherwise.

(k) Engaging in unprofessional conduct. Unprofessional conduct shall include any departure from or the failure to conform to the minimal standards of acceptable and prevailing medical practice in which proceeding actual injury to a patient need not be established.

(l) Inability to practice medicine with reasonable skill and safety to patients by reason of illness, 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.

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

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

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

(p) Fee splitting, including without limitation:

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

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

(3) referring a patient to any health care provider as defined in section 144.335 in which the referring physician has a significant financial interest unless the physician has disclosed the physician's own financial interest; and

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

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

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

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

(s) Prescribing a drug or device for other than medically accepted therapeutic or experimental or investigative purposes authorized by a state or federal agency or referring a patient to any health care provider as defined in section 144.335 for services or tests not medically indicated at the time of referral.

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

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

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

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

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

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

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

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

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

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

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

Subd. 1a. **Conviction of a felony-level criminal sexual conduct offense.** (a) The board may not grant a license to practice medicine to any person who has been convicted of a felony-level criminal sexual conduct offense.

(b) A license to practice medicine is automatically revoked if the licensee is convicted of a felony-level criminal sexual conduct offense.

(c) A license that has been denied or revoked pursuant to this subdivision is not subject to chapter 364.

(d) For purposes of this subdivision, "conviction" means a plea of guilty, a verdict of guilty by a jury, or a finding of guilty by the court, and "criminal sexual conduct offense" means a violation of sections 609.342 to 609.345 or a similar statute in another jurisdiction.

**Subd. 1b. Utilization review.** The board may investigate allegations and impose disciplinary action as described in section 147.141 against a physician performing utilization review for a pattern of failure to exercise that degree of care that a physician reviewer of ordinary prudence making utilization review determinations for a utilization review organization would use under the same or similar circumstances. As part of its investigative process, the board shall receive consultation or recommendation from physicians who are currently engaged in utilization review activities. The internal and external review processes under sections 62M.06 and 62Q.73 must be exhausted prior to an allegation being brought under this subdivision. Nothing in this subdivision creates, modifies, or changes existing law related to tort liability for medical negligence. Nothing in this subdivision preempts state peer review law protection in accordance with sections 145.61 to 145.67, federal peer review law, or current law pertaining to complaints or appeals.

**Subd. 2. Automatic suspension.** (a) A license to practice medicine is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a 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 court pursuant to chapter 253B. 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.

(b) Upon notice to the board of a judgment of, or a plea of guilty to, a felony reasonably related to the practice of patient care, the credentials of the regulated person shall be automatically suspended by the board. The credentials shall remain suspended until, upon petition by the regulated person and after a hearing, the suspension is terminated by the board. The board shall indefinitely suspend or revoke the credentials of the regulated person if, after a hearing, the board finds that the felonious conduct would cause a serious risk of harm to the public.

(c) For credentials that have been suspended or revoked pursuant to paragraphs (a) and (b), the regulated person may be reinstated to practice, either with or without restrictions, by demonstrating clear and convincing evidence of rehabilitation, as provided in section 364.03. If the regulated person's conviction is subsequently overturned by court decision, the board shall conduct a hearing to review the suspension within 30 days after receipt of the court decision. The regulated person is not required to prove rehabilitation if the subsequent court decision overturns previous court findings of public risk.

(d) The board may, upon majority vote of a quorum of its members, suspend the credentials of a regulated person without a hearing if the regulated person fails to maintain a current name and address with the board, as described in paragraph (e), while the regulated person is: (1) under board investigation, and a notice of conference has been issued by the board; (2) party to a contested case with the board; (3) party to an agreement for corrective action with the board; or (4) under a board order for disciplinary action. The suspension shall remain in effect until lifted by the board pursuant to the board's receipt of a petition from the regulated person, along with the regulated person's current name and address.

(e) A person regulated by the board shall maintain a current name and address with the board and shall notify the board in writing within 30 days of any change in name or address. If a name change only is requested, the regulated person must request revised credentials and return the current credentials to the board. The board may require the regulated person to substantiate the name change by submitting

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official documentation from a court of law or agency authorized under law to receive and officially record a name change. If an address change only is requested, no request for revised credentials is required. If the regulated person's current credentials have been lost, stolen, or destroyed, the person shall provide a written explanation to the board.

Subd. 2a. **Effective dates.** A suspension, revocation, condition, limitation, qualification, or restriction of a license or registration shall be in effect pending determination of an appeal unless the court, upon petition and for good cause shown, shall otherwise order. A revocation of a license pursuant to subdivision 1a is not appealable and shall remain in effect indefinitely.

Subd. 3. **Conditions on reissued license.** In its discretion, the board may restore and reissue a license to practice medicine, but as a condition thereof may impose any disciplinary or corrective measure which it might originally have imposed.

Subd. 4. **Temporary suspension of license.** In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend the license of a physician if the board finds that the physician has violated a statute or rule which the board is empowered to enforce and continued practice by the physician would create a serious risk of harm to the public. The suspension shall take effect upon written notice to the physician, specifying the statute or rule violated. The suspension shall remain in effect until the board issues a final order in the matter after a hearing. 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 physician shall be provided with at least 20 days' notice of any hearing held pursuant to this subdivision. The hearing shall be scheduled to begin no later than 30 days after the issuance of the suspension order.

Subd. 5. **Evidence.** In disciplinary actions alleging a violation of subdivision 1, paragraph (c) or (d), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency which entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the contents thereof.

Subd. 6. **Mental examination; access to medical data.** (a) If the board has probable cause to believe that a regulated person comes under subdivision 1, paragraph (1), it may direct the person to submit to a mental or physical examination. For the purpose of this subdivision every regulated person is deemed to have consented 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 regulated person to submit to an examination when directed constitutes an admission of the allegations against the person, unless the failure was due to circumstance 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 regulated person affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the person can resume the competent practice of the regulated profession with reasonable skill and safety to the public.

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

(b) In addition to ordering a physical or mental examination, the board may, notwithstanding section 13.384, 144.651, or any other law limiting access to medical or other health data, obtain medical data and health records relating to a regulated person or applicant without the person's or applicant's consent if the board has probable cause to believe that a regulated person comes under subdivision 1, paragraph (1). 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 under sections 13.01 to 13.87.

**Subd. 7. Tax clearance certificate.** (a) In addition to the provisions of subdivision 1, the board may not issue or renew a license 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 subdivision 1, 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 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, 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. 8. Limitation.** No board proceeding against a regulated person shall be instituted unless commenced within seven years from the date of the commission of some portion of the offense or misconduct complained of except for alleged violations of subdivision 1, paragraph (t).

**History:** 1971 c 485 s 3; 1974 c 31 s 1; 1975 c 213 s 1; 1976 c 222 s 34; 1981 c 83 s 1; 1982 c 581 s 24; 1985 c 21 s 1; 1985 c 247 s 7,25; 1986 c 444; 1Sp1986 c 1 art 7 s 7; 1Sp1986 c 3 art 1 s 82; 1987 c 384 art 2 s 1; 1988 c 557 s 2; 1989 c 184 art 2 s 3; 1992 c 559 art 1 s 3; 1992 c 577 s 1; 1Sp1994 c 1 art 2 s 3,4; 1995 c 18 s 4-8; 1996 c 334 s 4; 1997 c 103 s 1; 1999 c 227 s 22; 2001 c 137 s 7; 2002 c 361 s 3

#### **147.092 PROBABLE CAUSE HEARING; SEXUAL MISCONDUCT.**

(a) In any contested case in which a violation of section 147.091, subdivision 1, paragraph (t), is charged all parties shall be afforded an opportunity for a probable cause hearing before an administrative law judge. The motion for a hearing must be made to the office of administrative hearings within 20 days of the filing date of the contested case and served upon the board upon filing. Any hearing shall be held within 30 days of the motion. The administrative law judge shall issue a decision within 20 days of completion of the probable cause hearing. If there is no request for a hearing,

the portion of the notice of and order for hearing relating to allegations of sexual misconduct automatically becomes public.

(b) The scope of the probable cause hearing is confined to a review of the facts upon which the complaint review committee of the board based its determination that there was a reasonable belief that section 147.091, subdivision 1, paragraph (t), was violated. The administrative law judge shall determine whether there is a sufficient showing of probable cause to believe the licensee committed the violations listed in the notice of and order for hearing, and shall receive evidence offered in support or opposition. Each party may cross-examine any witnesses produced by the other. A finding of probable cause shall be based upon the entire record including reliable hearsay in whole or in part and requires only a preponderance of the evidence. The burden of proof rests with the board.

(c) Upon a showing of probable cause, that portion of the notice of and order for hearing filed by the board that pertains to the allegations of sexual misconduct, including the factual allegations that support the charge, become public data. In addition, the notice of and order for hearing may be amended. A finding of no probable cause by the administrative law judge is grounds for dismissal without prejudice. Nothing in this section shall prevent the board from reopening the investigation or filing charges based on the same subject matter at a later date.

**History:** 1996 c 334 s 5

**147.10** [Renumbered 147.081]

**147.101** [Repealed, 1985 c 247 s 26]

**147.11** [Repealed, 1985 c 247 s 26]

**147.111 REPORTING OBLIGATIONS.**

Subdivision 1. **Permission to report.** A person who has knowledge of any conduct constituting grounds for discipline under sections 147.01 to 147.22 may report the violation to the board.

Subd. 2. **Institutions.** 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 medical or other committees to revoke, suspend, restrict, or condition a physician's privilege to practice or treat patients in the institution, or as part of the organization, any denial of privileges, or any other disciplinary action. The institution or organization shall also report the resignation of any physicians prior to the conclusion of any disciplinary proceeding, or prior to the commencement of formal charges but after the physician had knowledge that formal charges were contemplated or in preparation. Each report made under this subdivision must state the nature of the action taken, state in detail the reasons for the action, and identify the specific patient medical records upon which the action was based. No report shall be required of a physician voluntarily limiting the practice of the physician at a hospital provided that the physician notifies all hospitals at which the physician has privileges of the voluntary limitation and the reasons for it.

Subd. 3. **Medical societies.** A state or local medical society shall report to the board any termination, revocation, or suspension of membership or any other disciplinary action taken against a physician. If the society has received a complaint which might be grounds for discipline under sections 147.01 to 147.22 against a member physician 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 board of medical practice. This subdivision does not apply to a medical society when it performs peer review functions as an agent of an outside entity, organization, or system.

Subd. 4. **Licensed professionals.** A licensed health professional and persons holding a residency permit under section 147.0391, shall report to the board personal knowledge of any conduct which the person reasonably believes constitutes grounds for

disciplinary action under sections 147.01 to 147.22 by any physician or person holding a residency permit under section 147.0391, including any conduct indicating that the person may be medically incompetent, or may have engaged in unprofessional conduct or may be medically or physically unable to engage safely in the practice of medicine. A licensed physician or other health professional licensed under this chapter shall also report to the board any occurrence of any adverse reaction resulting from an optometrist's prescription, use, or administration of any topical legend drug. Any reports received by the board must be reported to the board of optometry. No report shall be required if the information was obtained in the course of a physician-patient relationship if the patient is a physician or person holding a residency permit under section 147.0391, and the treating physician successfully counsels the person to limit or withdraw from practice to the extent required by the impairment.

**Subd. 5. Insurers and other entities.** (a) Four times each year as prescribed by the board, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to persons regulated by the board, shall submit to the board a report concerning the regulated persons against whom professional malpractice settlements or awards have been made to the plaintiff.

(b) A medical clinic, hospital, political subdivision, or other entity which provides professional liability coverage on behalf of persons regulated by the board shall submit to the board a report concerning malpractice settlements or awards paid on behalf of regulated persons, and any settlements or awards paid by a clinic, hospital, political subdivision, or other entity on its own behalf because of care rendered by regulated persons. This requirement excludes forgiveness of bills. The report shall be made to the board within 30 days of payment of all or part of any settlement or award.

(c) The reports in paragraphs (a) and (b) must contain at least the following information:

- (1) the total number of settlements or awards made to the plaintiff;
- (2) the date the 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 settlement or award;
- (5) the regular address of the practice or business of the regulated person or entity against whom an award was made or with whom a settlement was made; and
- (6) the name of the regulated person or entity against whom an award was made or with whom a settlement was made.

The reporting entity shall, in addition to the above information, report to the board any information it possesses which tends to substantiate a charge that a regulated person may have engaged in conduct violating a statute or rule of the board.

**Subd. 6. Courts.** The court administrator 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 physician is mentally ill, mentally incompetent, guilty of a felony, or guilty of a violation of federal or state narcotics laws or controlled substances act, guilty of an abuse or fraud under Medicare or Medicaid, appoints a guardian of the physician pursuant to sections 525.54 to 525.61 or commits a physician pursuant to chapter 253B.

**Subd. 7. Self-reporting.** A physician shall report to the board any personal action which would require that a report be filed with the board by any person, health care facility, business, or organization pursuant to subdivisions 2 to 6.

**Subd. 8. Deadlines; forms.** Reports required by subdivisions 2 to 7 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. 9. **Subpoenas.** The board may issue subpoenas for the production of any reports required by subdivisions 2 to 7 or any related documents.

**History:** 1985 c 247 s 14; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 557 s 3; 1990 c 576 s 5; 1991 c 106 s 6; 1991 c 199 art 2 s 1; 1993 c 21 s 9; 1993 c 121 s 2; 1994 c 497 s 4; 1Sp1994 c 1 art 2 s 5; 1995 c 44 s 1

147.12 [Repealed, 1985 c 247 s 26]

#### 147.121 IMMUNITY.

Subdivision 1. **Reporting.** Any person, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report to the board pursuant to section 147.111 or for otherwise reporting to the board violations or alleged violations of section 147.091. All such reports are confidential and absolutely privileged communications.

Subd. 2. **Investigation; indemnification.** (a) Members of the board, persons employed by the board, consultants retained by the board for the purpose of investigation of violations, the preparation of charges and management of board orders 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 147.01 to 147.22.

(b) For purposes of this section, a member of the board or a consultant described in paragraph (a) is considered a state employee under section 3.736, subdivision 9.

**History:** 1985 c 247 s 15,25; 1991 c 199 art 2 s 1; 1993 c 21 s 10; 1995 c 18 s 9

147.13 [Repealed, 1985 c 247 s 26]

#### 147.131 PHYSICIAN COOPERATION.

A physician 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 medical records, as reasonably requested by the board, to assist the board in its investigation. 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 physician shall delete any data in the record which identifies the patient before providing it to the board. The board shall maintain any records obtained pursuant to this section as investigative data pursuant to chapter 13.

**History:** 1985 c 247 s 16; 1986 c 444

#### 147.141 FORMS OF DISCIPLINARY ACTION.

When the board finds that a licensed physician or a physician registered under section 147.032 has violated a provision or provisions of sections 147.01 to 147.22, it may do one or more of the following:

- (1) revoke the license;
- (2) suspend the license;
- (3) revoke or suspend registration to perform interstate telemedicine;
- (4) impose limitations or conditions on the physician's practice of medicine, including the limitation of scope of practice to designated field specialties; the imposition of retraining or rehabilitation requirements; the requirement of practice under supervision; or the conditioning of continued practice on demonstration of knowledge or skills by appropriate examination or other review of skill and competence;
- (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 physician of any economic

advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding;

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

(7) censure or reprimand the licensed physician.

**History:** 1985 c 247 s 17; 1991 c 199 art 2 s 1; 2002 c 361 s 4

#### 147.151 DISCIPLINARY RECORD ON JUDICIAL REVIEW.

Upon judicial review of any board disciplinary action taken under sections 147.01 to 147.22, 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:** 1985 c 247 s 18; 1991 c 199 art 2 s 1

#### 147.16 [Repealed, 1985 c 247 s 26]

#### 147.161 PHYSICIAN ACCOUNTABILITY.

Subdivision 1. **Investigation.** The board shall maintain and keep current a file containing the reports and complaints filed against persons regulated by the board in the state. Each complaint filed with the board pursuant to section 214.10, subdivision 1, shall be investigated according to section 214.10, subdivision 2.

Whenever the files maintained by the board show that a professional malpractice settlement or award to the plaintiff has been made against a person regulated by the board as reported by insurers pursuant to section 147.111, the executive director of the board shall notify the board and the board may authorize a review of the regulated person's practice.

Subd. 2. **Attorney general investigates.** When the board initiates a review of a physician's practice it shall notify the attorney general who shall investigate the matter in the same manner as provided in section 214.10. If an investigation is to be made, the attorney general shall notify the physician, and, if the incident being investigated occurred there, the administrator and chief of staff at the medical care facilities in which the physician serves.

Subd. 3. **Access to hospital records.** The board shall have access to hospital and medical records of a patient treated by the physician under review if the patient signs a written consent permitting such access. If no consent form has been signed, the hospital or physician shall first delete data in the record which identifies the patient before providing it to the board.

**History:** 1976 c 222 s 39; 1980 c 509 s 47; 1981 c 311 s 39; 1982 c 545 s 24; 1985 c 247 s 10,25; 1Sp1986 c 3 art 1 s 23; 1995 c 44 s 2

#### 147.162 MEDICAL CARE FACILITIES; EXCLUSION.

Each physician shall file with the board a list of the inpatient and outpatient medical care facilities at which the physician has medical privileges. The list shall be updated when the physician applies for license renewal. Nothing in this chapter grants to any person the right to be admitted to the medical staff of a health care facility.

**History:** 1976 c 222 s 40; 1985 c 247 s 11,25; 1986 c 444

#### 147.17 [Repealed, 1985 c 247 s 26]

#### 147.171 [Repealed, 1990 c 576 s 6]

#### 147.18 [Repealed, 1985 c 247 s 26]

#### 147.19 [Repealed, 1985 c 247 s 26]

#### 147.20 [Repealed, 1985 c 247 s 26]

## 147.21 REGISTRATION FEES FOR OSTEOPATHS.

Every doctor of osteopathy licensed by the state board of osteopathy under Minnesota Statutes 1961, sections 148.11 to 148.16, prior to May 1, 1963, and not licensed to practice medicine under this chapter shall annually register with the board in the manner prescribed in section 146.13.

**History:** 1963 c 45 s 9

## 147.22 TRANSFER RECORDS, ASSETS, AND POWERS.

The records, assets, and powers of the state board of osteopathy are transferred to the state board of medical practice.

**History:** 1963 c 45 s 10; 1976 c 2 s 63; 1991 c 106 s 6

147.23 [Repealed, 1985 c 247 s 26]

147.24 [Repealed, 1990 c 576 s 6]

147.25 [Repealed, 1990 c 576 s 6]

147.26 [Repealed, 1990 c 576 s 6]

147.27 [Repealed, 1990 c 576 s 6]

147.28 [Repealed, 1990 c 576 s 6]

147.29 [Repealed, 1990 c 576 s 6]

147.30 [Repealed, 1990 c 576 s 6]

147.31 [Repealed, 1990 c 576 s 6]

147.32 [Repealed, 1990 c 576 s 6]

147.33 [Repealed, 1990 c 576 s 6]

147.34 [Repealed, 1995 c 205 art 1 s 25]

147.35 [Repealed, 1995 c 205 art 1 s 25]

147.36 [Repealed, 1995 c 205 art 1 s 25]