

## CHAPTER 148B

SOCIAL WORK, MARRIAGE AND FAMILY  
THERAPY, MENTAL HEALTH

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- Subd. 5. [Repealed, 2005 c 147 art 1 s 71]

**148B.20** Subdivision 1. [Repealed, 2005 c 147 art 1 s 71]

- Subd. 3. [Repealed, 2005 c 147 art 1 s 71]

**148B.21** [Repealed, 2005 c 147 art 1 s 71]**148B.215** [Repealed, 2005 c 147 art 1 s 71]**148B.22** [Repealed, 2005 c 147 art 1 s 71]**148B.224** [Repealed, 2005 c 147 art 1 s 71]**148B.225** [Repealed, 2005 c 147 art 1 s 71]**148B.226** [Repealed, 2005 c 147 art 1 s 71]**148B.24** [Repealed, 2005 c 147 art 1 s 71]**148B.25** [Repealed, 2005 c 147 art 1 s 71]

148B.26 [Repealed, 2005 c 147 art 1 s 71]

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148B.28 Subdivision 1. [Repealed, 2005 c 147 art 1 s 71]

Subd. 2. [Repealed, 2005 c 147 art 1 s 71]

Subd. 3. [Repealed, 2005 c 147 art 1 s 71]

Subd. 4. [Repealed, 2005 c 147 art 1 s 71]

Subd. 5. [Repealed, 2005 c 147 art 1 s 71]

148B.281 [Repealed, 2005 c 147 art 1 s 71]

148B.282 [Repealed, 2005 c 147 art 1 s 71]

148B.283 [Repealed, 2005 c 147 art 1 s 71]

148B.284 [Repealed, 2005 c 147 art 1 s 71]

148B.285 [Repealed, 2005 c 147 art 1 s 71]

148B.286 [Repealed, 2005 c 147 art 1 s 71]

148B.287 [Repealed, 2005 c 147 art 1 s 71]

148B.288 [Repealed, 2005 c 147 art 1 s 71]

148B.289 [Repealed, 2005 c 147 art 1 s 71]

#### 148B.53 REQUIREMENTS FOR LICENSURE.

Subdivision 1. **General requirements.** (a) To be licensed as a licensed professional counselor (LPC), an applicant must provide evidence satisfactory to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed a master's or doctoral degree program in counseling or a related field, as determined by the board based on the criteria in paragraph (b), that includes a minimum of 48 semester hours or 72 quarter hours and a supervised field experience of not fewer than 700 hours that is counseling in nature;

(4) has submitted to the board a plan for supervision during the first 2,000 hours of professional practice or has submitted proof of supervised professional practice that is acceptable to the board; and

(5) has demonstrated competence in professional counseling by passing the National Counseling Exam (NCE) administered by the National Board for Certified Counselors, Inc. (NBCC) or an equivalent national examination as determined by the board; and ethical, oral, and situational examinations if prescribed by the board.

(b) The degree described in paragraph (a), clause (3), must be from a counseling program recognized by the Council for Accreditation of Counseling and Related Education Programs (CACREP) or from an institution of higher education that is accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA). Except as provided in paragraph (e), specific academic course content and training must include course work in each of the following subject areas:

(1) the helping relationship, including counseling theory and practice;

(2) human growth and development;

(3) lifestyle and career development;

(4) group dynamics, processes, counseling, and consulting;

(5) assessment and appraisal;

(6) social and cultural foundations, including multicultural issues;  
 (7) principles of etiology, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;

(8) family counseling and therapy;

(9) research and evaluation; and

(10) professional counseling orientation and ethics.

(c) To be licensed as a professional counselor, a psychological practitioner licensed under section 148.908 need only show evidence of licensure under that section and is not required to comply with paragraph (a), clauses (1) to (3) and (5), or paragraph (b).

(d) To be licensed as a professional counselor, a Minnesota licensed psychologist need only show evidence of licensure from the Minnesota Board of Psychology and is not required to comply with paragraph (a) or (b).

(e) If the degree described in paragraph (a), clause (3), is from a counseling program recognized by the Council for Accreditation of Counseling and Related Education Programs (CACREP), the applicant is deemed to have met the specific course work requirements of paragraph (b).

Subd. 2. MS 2004 [Expired, 2003 c 118 s 7]

Subd. 3. **Fee.** Nonrefundable fees are as follows:

(1) initial license application fee for licensed professional counseling (LPC) - \$250;

(2) annual active license renewal fee for LPC - \$200 or equivalent;

(3) annual inactive license renewal fee for LPC - \$100;

(4) license renewal late fee - \$100 per month or portion thereof;

(5) copy of board order or stipulation - \$10;

(6) certificate of good standing or license verification - \$10;

(7) duplicate certificate fee - \$10;

(8) professional firm renewal fee - \$25;

(9) initial registration fee - \$50; and

(10) annual registration renewal fee - \$25.

**History:** 2005 c 147 art 5 s 1,2

#### **148B.531 POSTDEGREE COMPLETION OF DEGREE REQUIREMENTS FOR LICENSURE.**

An individual whose degree upon which licensure is to be based included less than 48 semester hours or 72 quarter hours, who did not complete 700 hours of supervised professional practice as part of the degree program, or who did not complete course work in all of the content areas required by section 148B.53, subdivision 1, paragraph (b), may complete these requirements postdegree in order to obtain licensure, if:

(1) all course work and field experiences are completed through an institution of higher education that is accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA) or through a counseling program recognized by the Council for Accreditation of Counseling and Related Education Programs (CACREP);

(2) all course work and field experiences are taken and passed for credit; and

(3) no more than 20 semester credits or 30 quarter credits are completed postdegree for purposes of licensure unless the credits are earned as part of an organized sequence of study.

**History:** 2005 c 147 art 5 s 3

#### **148B.54 LICENSE RENEWAL REQUIREMENTS.**

*[For text of subd 1, see M.S.2004]*

Subd. 2. **Continuing education.** At the completion of the first four years of licensure, a licensee must provide evidence satisfactory to the board of completion of

12 additional postgraduate semester credit hours or its equivalent in counseling as determined by the board, except that no licensee shall be required to show evidence of greater than 60 semester hours or its equivalent. Thereafter, at the time of renewal, each licensee shall provide evidence satisfactory to the board that the licensee has completed during each two-year period at least the equivalent of 40 clock hours of professional postdegree continuing education in programs approved by the board and continues to be qualified to practice under sections 148B.50 to 148B.593.

**History:** 2005 c 147 art 5 s 4

#### **148B.555 EXPERIENCED COUNSELOR TRANSITION.**

(a) An applicant for licensure who, prior to December 31, 2003, completed a master's or doctoral degree program in counseling or a related field, as determined by the board, and whose degree was from a counseling program recognized by the Council for Accreditation of Counseling and Related Education Programs (CACREP) or from an institution of higher education that is accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation (CHEA), need not comply with the requirements of section 148B.53, subdivision 1, paragraph (a), clause (3), or (b), so long as the applicant can document five years of full-time postdegree work experience within the practice of professional counseling as defined under section 148B.50, subdivisions 4 and 5.

(b) This section expires July 1, 2007.

**History:** 2005 c 147 art 5 s 5

#### **148B.561 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 licensed professional counselors licensed and in good standing in this state, affecting the right of these licensed professional counselors to be registered or licensed in that state, then the same or like burden, obligation, requirement, disqualification, or disability may be put upon the licensure in this state of licensed professional counselors registered in that state.

**History:** 2005 c 147 art 5 s 6

#### **148B.59 GROUNDS FOR DISCIPLINARY ACTION; FORMS OF DISCIPLINARY ACTION; RESTORATION OF LICENSE.**

(a) The board may impose disciplinary action as described in paragraph (b) against an applicant or licensee whom the board, by a preponderance of the evidence, determines:

(1) has violated a statute, rule, or order that the board issued or is empowered to enforce;

(2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of licensed professional counseling, that adversely affects the person's ability or fitness to practice professional counseling;

(3) has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established;

(4) has been convicted of or has pled guilty or nolo contendere to a felony or other crime, an element of which is dishonesty or fraud, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the applicant's or licensee's ability or fitness to engage in the practice of professional counseling;

(5) has employed fraud or deception in obtaining or renewing a license, or in passing an examination;

(6) has had any counseling license, certificate, registration, privilege to take an examination, or other similar authority denied, revoked, suspended, canceled, limited, or not renewed for cause in any jurisdiction or has surrendered or voluntarily terminated a license or certificate during a board investigation of a complaint, as part of a disciplinary order, or while under a disciplinary order;

(7) has failed to meet any requirement for the issuance or renewal of the person's license. The burden of proof is on the applicant or licensee to demonstrate the qualifications or satisfy the requirements for a license under the Licensed Professional Counseling Act;

(8) has failed to cooperate with an investigation of the board;

(9) has demonstrated an inability to practice professional counseling with reasonable skill and safety to clients due to any mental or physical illness or condition;

(10) has engaged in fee splitting. 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 licensee or under a licensee's administrative authority. Fee splitting includes, but is not limited to:

(i) dividing fees with another person or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional;

(ii) referring a client to any health care provider as defined in section 144.335 in which the referring licensee has a significant financial interest, unless the licensee has disclosed in advance to the client the licensee's own financial interest; and

(iii) paying, offering to pay, receiving, or agreeing to receive a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of clients;

(11) has engaged in conduct with a client that is sexual or may reasonably be interpreted by the client as sexual, or in any verbal behavior that is seductive or sexually demeaning to a client;

(12) has been subject to a corrective action or similar action in another jurisdiction or by another regulatory authority; or

(13) has been adjudicated 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 this state or an equivalent adjudication from another state. Adjudication automatically suspends a license for the duration thereof unless the board orders otherwise.

(b) If grounds for disciplinary action exist under paragraph (a), the board may take one or more of the following actions:

(1) refuse to grant or renew a license;

(2) revoke a license;

(3) suspend a license;

(4) impose limitations or conditions on a licensee's practice of professional counseling, including, but not limited to, limiting the scope of practice to designated competencies, imposing retraining or rehabilitation requirements, requiring the licensee to practice under supervision, or conditioning continued practice on the demonstration of knowledge or skill by appropriate examination or other review of skill and competence;

(5) censure or reprimand the licensee;

(6) refuse to permit an applicant to take the licensure examination or refuse to release an applicant's examination grade if the board finds that it is in the public interest; or

(7) 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 applicant or licensee of any economic advantage gained by reason of the violation charged, to discourage similar

violations or to reimburse the board for the cost of the investigation and proceeding, including, but not limited to, fees paid for services provided by the Office of Administrative Hearings, legal and investigative services provided by the Office of the Attorney General, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and travel costs and expenses incurred by board staff and board members.

(c) In lieu of or in addition to paragraph (b), the board may require, as a condition of continued licensure, termination of suspension, reinstatement of license, examination, or release of examination grades, that the applicant or licensee:

(1) submit to a quality review, as specified by the board, of the applicant's or licensee's ability, skills, or quality of work; and

(2) complete to the satisfaction of the board educational courses specified by the board.

The board may also refer a licensee, if appropriate, to the health professionals services program described in sections 214.31 to 214.37.

(d) Service of the order is effective if the order is served on the applicant, licensee, or counsel of record personally or by mail to the most recent address provided to the board for the licensee, applicant, or counsel of record. The order shall state the reasons for the entry of the order.

**History:** 2005 c 147 art 5 s 7

#### **148B.5901 TEMPORARY SUSPENSION OF LICENSE.**

(a) In addition to any other remedy provided by law, the board may issue an order to temporarily suspend the credentials of a licensee after conducting a preliminary inquiry to determine if the board reasonably believes that the licensee has violated a statute or rule that the board is empowered to enforce and whether continued practice by the licensee would create an imminent risk of harm to others.

(b) The order may prohibit the licensee from engaging in the practice of licensed professional counseling in whole or in part and may condition the end of a suspension on the licensee's compliance with a statute, rule, or order that the board has issued or is empowered to enforce.

(c) The order shall give notice of the right to a hearing according to this subdivision and shall state the reasons for the entry of the order.

(d) Service of the order is effective when the order is served on the licensee personally or by certified mail, which is complete upon receipt, refusal, or return for nondelivery to the most recent address provided to the board for the licensee.

(e) At the time the board issues a temporary suspension order, the board shall schedule a hearing to be held before its own members. The hearing shall begin no later than 60 days after issuance of the temporary suspension order or within 15 working days of the date of the board's receipt of a request for hearing by a licensee, on the sole issue of whether there is a reasonable basis to continue, modify, or lift the temporary suspension. The hearing is not subject to chapter 14. Evidence presented by the board or the licensee shall be in affidavit form only. The licensee or counsel of record may appear for oral argument.

(f) Within five working days of the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 30 days of the issuance of the order. Notwithstanding chapter 14, the administrative law judge shall issue a report within 30 days after closing the contested case hearing record. The board shall issue a final order within 30 days of receipt of the administrative law judge's report.

**History:** 2005 c 147 art 5 s 8

**148B.5905 MENTAL, PHYSICAL, OR CHEMICAL DEPENDENCY EXAMINATION OR EVALUATION; ACCESS TO MEDICAL DATA.**

(a) If the board has probable cause to believe section 148B.59, paragraph (a), clause (9), applies to a licensee or applicant, the board may direct the person to submit to a mental, physical, or chemical dependency examination or evaluation. For the purpose of this section, every licensee and applicant is deemed to have consented to submit to a mental, physical, or chemical dependency examination or evaluation when directed in writing by the board and to have waived all objections to the admissibility of the examining professionals' testimony or examination reports on the grounds that the testimony or examination reports constitute a privileged communication. Failure of a licensee or applicant to submit to an examination when directed by the board constitutes an admission of the allegations against the person, unless the failure was due to circumstances beyond the person's control, in which case a default and final order may be entered without the taking of testimony or presentation of evidence. A licensee or applicant affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the person can resume the competent practice of licensed professional counseling 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 licensee or applicant 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 licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that section 148B.59, paragraph (a), clause (9), applies to the licensee or applicant. 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.

**History:** 2005 c 147 art 5 s 9

**148B.5925 ASSESSMENT TOOL SECURITY.**

Notwithstanding section 144.335, subdivision 2, paragraphs (a) and (b), a provider shall not be required to provide copies of assessment tools, assessment tool materials, or scoring keys to any individual who has completed an assessment tool or to an individual not qualified to administer, score, and interpret the assessment tool, if the provider reasonably determines that access would compromise the objectivity, fairness, or integrity of the testing process for the individual or others. If the provider makes this determination, the provider shall, at the discretion of the individual who has completed the assessment tool, release the information either to another provider who is qualified to administer, score, and interpret the assessment tool or furnish a summary of the assessment tool results to the individual or to a third party designated by the individual.

**History:** 2005 c 147 art 5 s 10

**148B.60 DEFINITIONS.**

Subdivision 1. **Terms.** As used in sections 148B.60 to 148B.71, the following terms have the meanings given them in this section.

Subd. 2. **Office of Mental Health Practice or office.** "Office of Mental Health Practice" or "office" means the Office of Mental Health Practice authorized in section 148B.61.

Subd. 3. **Unlicensed mental health practitioner or practitioner.** “Unlicensed mental health practitioner” or “practitioner” means a person who provides or purports to provide, for remuneration, mental health services as defined in subdivision 4. It does not include persons licensed by the Board of Medical Practice under chapter 147 or registered by the Board of Medical Practice under chapter 147A; the Board of Nursing under sections 148.171 to 148.285; the Board of Psychology under sections 148.88 to 148.98; the Board of Social Work under sections 148B.18 to 148B.289; the Board of Marriage and Family Therapy under sections 148B.29 to 148B.39; the Board of Behavioral Health and Therapy under sections 148B.50 to 148B.593 and chapter 148C; or another licensing board if the person is practicing within the scope of the license; members of the clergy who are providing pastoral services in the context of performing and fulfilling the salaried duties and obligations required of a member of the clergy by a religious congregation; American Indian medicine men and women; licensed attorneys; probation officers; school counselors employed by a school district while acting within the scope of employment as school counselors; licensed occupational therapists; or licensed occupational therapy assistants. For the purposes of complaint investigation or disciplinary action relating to an individual practitioner, the term includes:

(1) persons employed by a program licensed by the commissioner of human services who are acting as mental health practitioners within the scope of their employment;

(2) persons employed by a program licensed by the commissioner of human services who are providing chemical dependency counseling services; persons who are providing chemical dependency counseling services in private practice; and

(3) clergy who are providing mental health services that are equivalent to those defined in subdivision 4.

Subd. 4. **Mental health services.** “Mental health services” means psychotherapy, behavioral health care, spiritual counseling, hypnosis when not for entertainment, and the professional assessment, treatment, or counseling of another person for a cognitive, behavioral, emotional, social, or mental condition, symptom, or dysfunction, including intrapersonal or interpersonal dysfunctions. The term does not include pastoral services provided by members of the clergy to members of a religious congregation in the context of performing and fulfilling the salaried duties and obligations required of a member of the clergy by that religious congregation or services provided by Christian Scientist practitioners.

Subd. 5. **Mental health client or client.** “Mental health client” or “client” means a person who receives or pays for the services of a mental health practitioner.

Subd. 5a. **Mental-health-related licensing boards.** “Mental-health-related licensing boards” means the Boards of Medical Practice, Nursing, Psychology, Social Work, Marriage and Family Therapy, and Behavioral Health and Therapy.

Subd. 7. [Repealed by amendment, 2005 c 147 art 8 s 1]

Subd. 7a. **Committee.** “Committee” means the Office of Mental Health Practices Committee, consisting of one person appointed by each of the following licensing boards: the Board of Medical Practice; the Board of Nursing; the Board of Psychology; the Board of Social Work; the Board of Marriage and Family Therapy; and the Board of Behavioral Health and Therapy.

Subd. 8. **Disciplinary action.** “Disciplinary action” means an adverse action taken by the commissioner against an unlicensed mental health practitioner relating to the person’s right to provide mental health services.

**History:** 2005 c 147 art 8 s 1

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.



**148B.61 OFFICE OF MENTAL HEALTH PRACTICE.**

Subdivision 1. **Authority.** (a) The Office of Mental Health Practice is transferred to the mental-health-related licensing boards. The mental-health-related licensing boards shall convene an Office of Mental Health Practices Committee to investigate complaints and take and enforce disciplinary actions against all unlicensed mental health practitioners for violations of prohibited conduct, as defined in section 148B.68.

(b) The committee shall publish a complaint telephone number, provide an informational Web site, and also serve as a referral point and clearinghouse on complaints against mental health practitioners. The committee shall disseminate objective information to consumers through the development and performance of public education activities, including outreach, regarding the provision of mental health services and both licensed and unlicensed mental health professionals who provide these services.

Subd. 2. [Repealed by amendment, 2005 c 147 art 8 s 2]

Subd. 4. **Management, report, and sunset of the office.** (a) The committee shall:

- (1) designate one board to provide administrative management of the committee;
- (2) set the program budget; and
- (3) ensure that the committee's direction is in accord with its authority.

(b) If the participating boards change which board is designated to provide administrative management of the committee, any appropriation remaining for the committee shall transfer to the newly designated board on the effective date of the change. The participating boards must inform the appropriate legislative committees and the commissioner of finance of any change in the designated board and the amount of any appropriation transferred under this provision.

(c) The designated board shall hire the office employees and pay expenses of the committee from funds appropriated for that purpose.

(d) After July 1, 2008, the committee shall prepare and submit a report to the legislature by January 15, 2009, evaluating the activity of the office and making recommendations concerning the regulation of unlicensed mental health practitioners. In the absence of legislative action to continue the committee, the committee expires on June 30, 2009.

**History:** 2005 c 147 art 8 s 2

NOTE: This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

**148B.63 REPORTING OBLIGATIONS.**

*[For text of subs 1 to 4, see M.S.2004]*

Subd. 5. **Insurers.** Four times each year as prescribed by the committee, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to unlicensed mental health practitioners or the Medical Joint Underwriting Association under chapter 62F, shall submit to the Office of Mental Health Practice a report concerning the unlicensed mental health practitioners against whom malpractice settlements or awards have been made. The response must contain at least the following information:

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

(6) the name of the unlicensed practitioner against whom an award was made or with whom a settlement was made.

The insurance company shall, in addition to the above information, submit to the Office of Mental Health Practice any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that an unlicensed mental health practitioner may have engaged in conduct violating this chapter.

*[For text of subs 6 to 8, see M.S.2004]*

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

#### **148B.64 IMMUNITY.**

*[For text of subd 1, see M.S.2004]*

**Subd. 2. Investigation.** The committee and employees of the Department of Health and other persons engaged in the investigation of violations and in the preparation, presentation, and management of and testimony pertaining to charges of violations of this chapter are absolutely immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

#### **148B.65 DISCIPLINARY RECORD ON JUDICIAL REVIEW.**

Upon judicial review of any disciplinary action taken by the committee under this chapter, the reviewing court shall seal the administrative record, except for the committee's final decision, and shall not make the administrative record available to the public.

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

#### **148B.66 PROFESSIONAL COOPERATION; UNLICENSED PRACTITIONER.**

**Subdivision 1. Cooperation.** An unlicensed mental health practitioner who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the Office of Mental Health Practice shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the office relating to the subject of the investigation, whether tape recorded or not, and providing copies of client records, as reasonably requested by the office, to assist the office in its investigation, and appearing at conferences or hearings scheduled by the committee. If the office does not have a written consent from a client permitting access to the client's records, the unlicensed mental health practitioner shall delete any data in the record that identifies the client before providing it to the office. The office shall maintain any records obtained pursuant to this section as investigative data pursuant to section 13.41. If an unlicensed mental health practitioner refuses to give testimony or produce any documents, books, records, or correspondence on the basis of the fifth amendment to the Constitution of the United States, the committee may compel the unlicensed mental health practitioner to provide the testimony or information; however, the testimony or evidence may not be

used against the practitioner in any criminal proceeding. Challenges to requests of the office may be brought before the appropriate agency or court.

**Subd. 2. Classification of data.** The committee shall maintain any records, other than client records, obtained as part of an investigation, as investigative data under section 13.41. Client records are classified as private under chapter 13 and must be protected as such in the records of the office and in any administrative or judicial proceeding unless the client authorizes the office in writing to make public the identity of the client or a portion or all of the client's records.

*[For text of subd 3, see M.S.2004]*

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

### 148B.67 PROFESSIONAL ACCOUNTABILITY.

The Office of Mental Health Practice shall maintain and keep current a file containing the reports and complaints filed against unlicensed mental health practitioners within the committee's jurisdiction. Each complaint filed with the office must be investigated. If the files maintained by the office show that a malpractice settlement or award has been made against an unlicensed mental health practitioner, as reported by insurers under section 148B.63, subdivision 5, the committee may authorize a review of the practitioner's practice by the staff of the Office of Mental Health Practice.

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

### 148B.68 PROHIBITED CONDUCT.

**Subdivision 1. Prohibited conduct.** The committee may impose disciplinary action as described in section 148B.69 against any unlicensed mental health practitioner. The following conduct is prohibited and is grounds for disciplinary action:

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

(b) Conviction of crimes against persons. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.2242; 609.23; 609.231; 609.2325; 609.233; 609.2335; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; 609.595; and 609.72, subdivision 3.

(c) Failure to comply with the self-reporting requirements of section 148B.63, subdivision 7.

(d) Engaging in sexual contact with a client or former client as defined in section 148A.01, or engaging in contact that may be reasonably interpreted by a client as sexual, or engaging in any verbal behavior that is seductive or sexually demeaning to the patient, or engaging in sexual exploitation of a client or former client.

(e) Advertising that is false, fraudulent, deceptive, or misleading.

(f) Conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other

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

(g) Adjudication as mentally incompetent, or as a person who is dangerous to self, or adjudication pursuant to chapter 253B, as chemically dependent, mentally ill, mentally retarded, mentally ill and dangerous to the public, or as a sexual psychopathic personality or sexually dangerous person.

(h) Inability to provide mental health services with reasonable safety to clients.

(i) The habitual overindulgence in the use of or the dependence on intoxicating liquors.

(j) Improper or unauthorized personal or other use of any legend drugs as defined in chapter 151, any chemicals as defined in chapter 151, or any controlled substance as defined in chapter 152.

(k) Revealing a communication from, or relating to, a client except when otherwise required or permitted by law.

(l) Failure to comply with a client's request made under section 144.335; or to furnish a client record or report required by law.

(m) Splitting fees or promising to pay a portion of a fee to any other professional other than for services rendered by the other professional to the client.

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

(o) Failure to make reports as required by section 148B.63, or cooperate with an investigation of the office.

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

(q) Undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.

(r) Failure to provide the client with a copy of the client bill of rights or violation of any provision of the client bill of rights.

(s) Violating any order issued by the committee.

(t) Failure to comply with sections 148B.60 to 148B.71, and the rules adopted under those sections.

(u) Failure to comply with any additional disciplinary grounds established by the commissioner by rule.

(v) Revocation, suspension, restriction, limitation, or other disciplinary action against the mental health practitioner's license, certificate, registration, or right of practice in this or another state or jurisdiction, for offenses that would be subject to disciplinary action in this state, or failure to report to the Office of Mental Health Practice that charges regarding the practitioner's license, certificate, registration, or right of practice have been brought in this or another state or jurisdiction.

(w) Bartering for services with a client.

*[For text of subd 2, see M.S.2004]*

**Subd. 3. Examination; access to medical data.** (a) If the committee has probable cause to believe that an unlicensed mental health practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j), the committee may issue an order directing the practitioner to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, every unlicensed mental health practitioner is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the committee and further to have waived all objections to the admissibility of the testimony or examination reports of the health care provider performing the examination or evaluation on the grounds that the same constitute a privileged communication. Failure of an unlicensed mental health practitioner to submit to an

examination or evaluation when ordered, unless the failure was due to circumstances beyond the practitioner's control, constitutes an admission that the unlicensed mental health practitioner violated subdivision 1, paragraph (g), (h), (i), or (j), based on the factual specifications in the examination or evaluation order and may result in a default and final disciplinary order being entered after a contested case hearing. An unlicensed mental health practitioner affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the practitioner can resume the provision of mental health services with reasonable safety to clients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the committee shall be used against a mental health practitioner in any other proceeding.

(b) In addition to ordering a physical or mental examination or chemical dependency evaluation, the committee may, notwithstanding section 13.384, 144.651, 595.02, or any other law limiting access to medical or other health data, obtain medical data and health records relating to an unlicensed mental health practitioner without the practitioner's consent if the committee has probable cause to believe that a practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j). The medical data may be requested from a health care professional, as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the Department of Human Services. A health care professional, insurance company, or government agency shall comply with any written request of the committee under this subdivision and is not liable in any action for damages for releasing the data requested by the committee if the data are released pursuant to a written request under this subdivision, unless the information is false and the person or organization giving the information knew, or had reason to believe, the information was false. Information obtained under this subdivision is private data under section 13.41.

**History:** 2005 c 147 art 8 s 4

NOTE: This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

#### 148B.69 DISCIPLINARY ACTIONS.

Subdivision 1. **Forms of disciplinary action.** When the committee finds that an unlicensed mental health practitioner has violated a provision or provisions of this chapter, the committee may take one or more of the following actions, only against the individual practitioner:

- (1) revoke the right to practice;
- (2) suspend the right to practice;
- (3) impose limitations or conditions on the practitioner's provision of mental health services, the imposition of rehabilitation requirements, or the requirement of practice under supervision;
- (4) 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 practitioner of any economic advantage gained by reason of the violation charged or to reimburse the Office of Mental Health Practice for all costs of the investigation and proceeding;
- (5) order the practitioner to provide unremunerated professional service under supervision at a designated public hospital, clinic, or other health care institution;
- (6) censure or reprimand the practitioner;
- (7) impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the Office of Administrative Hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the staff of the Office of Mental Health Practice; or
- (8) any other action justified by the case.

Subd. 2. **Discovery; subpoenas.** In all matters relating to the lawful activities of the Office of Mental Health Practice, the committee may issue subpoenas and compel the

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

**Subd. 2a. Hearings.** If the committee proposes to take action against the practitioner as described in subdivision 1, the committee must first notify the person against whom the action is proposed to be taken and provide the person with an opportunity to request a hearing under the contested case provisions of chapter 14. If the person does not request a hearing by notifying the committee within 30 days after service of the notice of the proposed action, the committee may proceed with the action without a hearing.

**Subd. 3. Reinstatement.** The committee may at the committee's discretion reinstate the right to practice and may impose any disciplinary measure listed under subdivision 1.

**Subd. 4. Temporary suspension.** In addition to any other remedy provided by law, the committee may, acting through a person to whom the committee has delegated this authority and without a hearing, temporarily suspend the right of an unlicensed mental health practitioner to practice if the committee's delegate finds that the practitioner has violated a statute or rule that the committee is empowered to enforce and continued practice by the practitioner would create a serious risk of harm to others. The suspension is in effect upon service of a written order on the practitioner specifying the statute or rule violated. The order remains in effect until the committee issues a final order in the matter after a hearing or upon agreement between the committee and the practitioner. Service of the order is effective if the order is served on the practitioner or counsel of record personally or by first class mail. Within ten days of service of the order, the committee shall hold a hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the suspension. Evidence presented by the office or practitioner shall be in affidavit form only. The practitioner or the counsel of record may appear for oral argument. Within five working days after the hearing, the committee shall issue the committee's order and, if the suspension is continued, schedule a contested case hearing within 45 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record. The committee shall issue a final order within 30 days after receipt of that report.

**Subd. 5. Automatic suspension.** The right to practice is automatically suspended if (1) a guardian of an unlicensed mental health practitioner is appointed by order of a court under sections 524.5-101 to 524.5-502, or (2) the practitioner is committed by order of a court pursuant to chapter 253B. The right to practice remains suspended until the practitioner is restored to capacity by a court and, upon petition by the practitioner, the suspension is terminated by the committee after a hearing or upon agreement between the committee and the practitioner.

**Subd. 6. Public employees.** Notwithstanding subdivision 1, the committee must not take disciplinary action against an employee of the state or a political subdivision of the state. If, after an investigation conducted in compliance with and with the authority granted under sections 148B.60 to 148B.71, the committee determines that the employee violated a provision or provisions of this chapter, the committee shall report to the employee's employer the committee's findings and the actions the committee recom-

mends that the employer take. The committee's recommendations are not binding on the employer.

**Subd. 7. Release to obtain nonpublic data.** An unlicensed mental health practitioner who is the subject of an investigation must sign a release authorizing the committee to obtain criminal conviction data, reports about abuse or neglect of clients, and other information pertaining to investigations of violations of statutes or rules from the Bureau of Criminal Apprehension, the Federal Bureau of Investigation, the Department of Human Services, the Office of Health Facilities Complaints, private certification organizations, county social service agencies, the Division of Driver and Vehicle Services in the Department of Public Safety, adult protection services, child protection services, and other agencies that regulate provision of health care services. After the committee gives written notice to an individual who is the subject of an investigation, the agencies shall assist the committee with the investigation by giving the committee the requested data.

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

#### 148B.70 ADDITIONAL REMEDIES.

**Subdivision 1. Cease and desist.** The committee may issue a cease and desist order to stop a person from violating or threatening to violate a statute, rule, or order which the Office of Mental Health Practice has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days of service of the order, the subject of the order fails to request a hearing in writing, the order is the final order of the committee and is not reviewable by a court or agency.

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

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

In the event of noncompliance with a cease and desist order, the committee may institute a proceeding in Hennepin County District Court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the Office of Mental Health Practice not exceeding \$10,000 for each separate violation.

**Subd. 2. Injunctive relief.** In addition to any other remedy provided by law, including the issuance of a cease and desist order under subdivision 1, the committee may in the committee's own name bring an action in Hennepin County District Court for injunctive relief to restrain an unlicensed mental health practitioner from a violation or threatened violation of any statute, rule, or order which the committee is empowered to regulate, enforce, or issue. A temporary restraining order must be granted in the proceeding if continued activity by a practitioner would create a serious risk of harm to others. The committee need not show irreparable harm.

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

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.

### **148B.71 MENTAL HEALTH CLIENT BILL OF RIGHTS.**

Subdivision 1. **Scope.** All unlicensed mental health practitioners, other than those providing services in a facility or program licensed by the committee or the commissioner of human services, shall provide to each client prior to providing treatment a written copy of the mental health client bill of rights. A copy must also be posted in a prominent location in the office of the mental health practitioner. Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak English. The mental health client bill of rights shall include the following:

(a) the name, title, business address, and telephone number of the practitioner;

(b) the degrees, training, experience, or other qualifications of the practitioner, followed by the following statement in bold print:

**“THE STATE OF MINNESOTA HAS NOT ADOPTED UNIFORM EDUCATIONAL AND TRAINING STANDARDS FOR ALL MENTAL HEALTH PRACTITIONERS. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATION PURPOSES ONLY.”**

(c) the name, business address, and telephone number of the practitioner’s supervisor, if any;

(d) notice that a client has the right to file a complaint with the practitioner’s supervisor, if any, and the procedure for filing complaints;

(e) the name, address, and telephone number of the Office of Mental Health Practice and notice that a client may file complaints with the office;

(f) the practitioner’s fees per unit of service, the practitioner’s method of billing for such fees, the names of any insurance companies that have agreed to reimburse the practitioner, or health maintenance organizations with whom the practitioner contracts to provide service, whether the practitioner accepts Medicare, medical assistance, or general assistance medical care, and whether the practitioner is willing to accept partial payment, or to waive payment, and in what circumstances;

(g) a statement that the client has a right to reasonable notice of changes in services or charges;

(h) a brief summary, in plain language, of the theoretical approach used by the practitioner in treating patients;

(i) notice that the client has a right to complete and current information concerning the practitioner’s assessment and recommended course of treatment, including the expected duration of treatment;

(j) a statement that clients may expect courteous treatment and to be free from verbal, physical, or sexual abuse by the practitioner;

(k) a statement that client records and transactions with the practitioner are confidential, unless release of these records is authorized in writing by the client, or otherwise provided by law;

(l) a statement of the client’s right to be allowed access to records and written information from records in accordance with section 144.335;

(m) a statement that other services may be available in the community, including where information concerning services is available;

(n) a statement that the client has the right to choose freely among available practitioners, and to change practitioners after services have begun, within the limits of health insurance, medical assistance, or other health programs;

(o) a statement that the client has a right to coordinated transfer when there will be a change in the provider of services;



(p) a statement that the client may refuse services or treatment, unless otherwise provided by law; and

(q) a statement that the client may assert the client's rights without retaliation.

*[For text of subd 2, see M.S.2004]*

**History:** 2005 c 147 art 8 s 4

**NOTE:** This section is repealed by Laws 2003, chapter 118, section 29, paragraph (a), as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3, effective July 1, 2009. Laws 2003, chapter 118, section 29, paragraph (a), the effective date, as amended by Laws 2004, chapter 279, article 5, section 10, and Laws 2005, chapter 147, article 8, section 3.