

MINNESOTA BOARD OF PSYCHOLOGY

PSYCHOLOGY PRACTICE ACT

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Table of Contents

MINNESOTA STATUTES – Chapter 148 4

 148.88 CITATION..... 4

 148.881 DECLARATION OF POLICY..... 4

 148.89 DEFINITIONS..... 4

 148.90 BOARD OF PSYCHOLOGY..... 6

 148.905 DUTIES OF THE BOARD. 7

 148.906 LEVELS OF PRACTICE. 8

 148.907 LICENSED PSYCHOLOGIST. 8

 148.908 LICENSED PSYCHOLOGICAL PRACTITIONER. 9

 148.909 LICENSURE FOR VOLUNTEER PRACTICE..... 10

 148.9105 EMERITUS REGISTRATION..... 11

 148.911 CONTINUING EDUCATION. 12

 148.915 RECIPROCITY. 12

 148.916 GUEST LICENSURE..... 13

 148.925 SUPERVISION..... 14

 148.941 DISCIPLINARY ACTION; INVESTIGATION; PENALTY FOR VIOLATION. 17

 148.952 IMMUNITY..... 21

 148.96 PRESENTATION TO PUBLIC..... 22

 148.965 TEST SECURITY. 23

 148.975 DUTY TO WARN; LIMITATION ON LIABILITY; VIOLENT BEHAVIOR OF PATIENT. 23

 148.98 RULES OF CONDUCT..... 24

MINNESOTA ADMINISTRATIVE RULES – Chapter 7200 26

 7200.0110 DEFINITIONS..... 26

 7200.0200 LICENSURE PROCESS..... 30

 7200.0550 EXAMINATION REQUIREMENTS FOR LICENSURE. 30

 7200.0600 REQUIREMENTS FOR LICENSURE..... 32

 7200.0800 SUPERVISED EMPLOYMENT FOR LICENSED PSYCHOLOGISTS. 32

 7200.0900 REQUIREMENTS FOR ENDORSEMENT. 32

7200.1300 EDUCATIONAL REQUIREMENTS FOR LICENSURE..... 33

7200.1455 INCOMPLETE EDUCATIONAL REQUIREMENTS..... 36

7200.1500 INSTITUTIONAL ACCREDITATION..... 37

7200.1550 AMERICAN PSYCHOLOGICAL ASSOCIATION ACCREDITED PROGRAMS. 37

7200.1600 DEGREES FROM FOREIGN INSTITUTIONS. 37

7200.2000 SUPERVISED EMPLOYMENT REQUIREMENTS FOR LICENSURE AS A LICENSED
PSYCHOLOGIST..... 38

7200.2030 APPLICANT'S RESPONSIBILITY..... 39

7200.2035 LICENSURE BY MOBILITY..... 39

7200.2040 DENIAL OF LICENSURE. 40

7200.3100 DISPLAY OF LICENSE..... 40

7200.3200 TERM OF LICENSE..... 40

7200.3250 NOTIFYING BOARD OF ADDRESS CHANGE..... 41

7200.3300 NOTICE OF LICENSE RENEWAL..... 41

7200.3400 RENEWAL DEADLINE; APPLICATION AND FEE. 41

7200.3500 LATE FEES. 41

7200.3510 TERMINATION FOR NONRENEWAL OF LICENSE. 42

7200.3610 RELICENSURE FOLLOWING TERMINATION. 42

7200.3620 PRACTICING WITHOUT A LICENSE. 43

7200.3700 VOLUNTARY TERMINATION..... 43

7200.3810 PURPOSE OF CONTINUING EDUCATION..... 43

7200.3820 CONTINUING EDUCATION REQUIREMENTS. 44

7200.3825 CALCULATION OF CONTINUING EDUCATION CREDIT..... 44

7200.3830 ELIGIBLE CONTINUING EDUCATION ACTIVITIES. 44

7200.3845 AUTOMATIC APPROVAL..... 46

7200.3850 DOCUMENTATION AND REPORTING COMPLIANCE. 46

7200.3860 CONTINUING EDUCATION AUDIT. 47

7200.4500 RULES OF CONDUCT. 48

7200.4600 COMPETENT PROVISION OF SERVICES. 48

7200.4700 PROTECTING THE PRIVACY OF CLIENTS..... 49

7200.4710 ACCESSING AND RELEASING PRIVATE INFORMATION. 50

7200.4720 INFORMED CONSENT..... 51

7200.4740 TERMINATION OF SERVICES. 52

7200.4750 RECORD KEEPING. 53

7200.4810 IMPAIRED OBJECTIVITY OR EFFECTIVENESS. 53

7200.4850 PROVIDER IMPAIRMENT. 55

7200.4905 CLIENT WELFARE. 55

7200.4910 WELFARE OF STUDENTS, SUPERVISEES, AND RESEARCH SUBJECTS. 56

7200.4950 MEDICAL AND OTHER HEALTH CARE CONSIDERATIONS. 57

7200.5010 CONCLUSIONS AND REPORTS. 57

7200.5100 PUBLIC STATEMENTS. 58

7200.5200 FEES AND STATEMENTS. 59

7200.5300 AIDING AND ABETTING UNLICENSED PRACTICE. 59

7200.5500 VIOLATION OF LAW. 60

7200.5600 DECEPTION OR FRAUD. 60

7200.5700 UNPROFESSIONAL CONDUCT. 60

7200.5750 COMPLAINTS TO BOARD. 60

7200.6000 WAIVERS AND VARIANCES. 61

7200.6100 FEES. 62

7200.6105 CONTINUING EDUCATION SPONSOR FEE. 62

MINNESOTA STATUTES – Chapter 148**Sections 148.79 – 148.99**

148.79 [Repealed, 1973 c 685 s 14; 1976 c 2 s 67]

148.80 [Repealed, 1973 c 685 s 14]

148.81 [Repealed, 1973 c 685 s 14; 1974 c 406 s 91]

148.82 [Repealed, 1973 c 685 s 14]

148.83 [Repealed, 1973 c 685 s 14]

148.84 [Repealed, 1973 c 685 s 14]

148.85 [Repealed, 1973 c 685 s 14; 1976 c 2 s 67]

148.86 [Repealed, 1973 c 685 s 14]

148.87 [Repealed, 1976 c 2 s 66]

148.88 CITATION.

Sections 148.88 to 148.98 and the rules adopted under them shall be cited as the "Minnesota Psychology Practice Act."

History: 1973 c 685 s 1; 1Sp1981 c 4 art 1 s 81; 1991 c 255 s 3; 1996 c 424 s 2

148.881 DECLARATION OF POLICY.

The practice of psychology in Minnesota affects the public health, safety, and welfare.

The regulations in sections 148.88 to 148.98 protect the public from the practice of psychology by unqualified persons and from unethical or unprofessional conduct by persons licensed to practice psychology.

History: 1991 c 255 s 4; 1996 c 424 s 3

148.89 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 148.88 to 148.98, the following terms have the meanings given them.

Subd. 2. **Board of Psychology or board.** "Board of Psychology" or "board" means the board established under section 148.90.

Subd. 2a. **Client.** "Client" means each individual or legal, religious, academic, organizational, business, governmental, or other entity that receives, received, or should have received, or arranged for another individual or entity to receive services from an individual regulated under sections 148.88 to 148.98. Client also means an individual's legally authorized representative, such as a parent or guardian. For the purposes of sections 148.88 to 148.98, "client" may include patient, resident, counselee, evaluatee, and, as limited in the rules of conduct, student, supervisee, or research subject. In the case of dual clients, the licensee or applicant for licensure must be aware of the responsibilities to each client, and of the potential for divergent interests of each client.

Subd. 2b. **Credentialed.** "Credentialed" means having a license, certificate, charter, registration, or similar authority to practice in an occupation regulated by a governmental board or agency.

Subd. 2c. **Designated supervisor.** "Designated supervisor" means a qualified individual who is designated by the primary supervisor to provide additional supervision and training to a licensed psychological practitioner or to an individual who is obtaining required predegree supervised professional experience or postdegree supervised employment.

Subd. 3. **Independent practice.** "Independent practice" means the practice of psychology without supervision.

Subd. 4. **Licensee.** "Licensee" means a person who is licensed by the board as a licensed psychologist or as a licensed psychological practitioner.

Subd. 4a. **Provider or provider of services.** "Provider" or "provider of services" means any individual who is regulated by the board, and includes a licensed psychologist, a licensed psychological practitioner, a licensee, or an applicant.

Subd. 4b. **Primary supervisor.** "Primary supervisor" means a psychologist licensed in Minnesota or other qualified individual who provides the principal supervision to a licensed psychological practitioner or to an individual who is obtaining required predegree supervised professional experience or postdegree supervised employment.

Subd. 5. **Practice of psychology.** "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, or procedures for any reason, including to prevent, eliminate, or manage symptomatic, maladaptive, or undesired behavior and to enhance interpersonal relationships, work, life and developmental adjustment, personal and organizational effectiveness, behavioral health, and mental health. The practice of psychology includes, but is not limited to, the following services, regardless of whether the provider receives payment for the services:

- (1) psychological research and teaching of psychology;
- (2) assessment, including psychological testing and other means of evaluating personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;
- (3) a psychological report, whether written or oral, including testimony of a provider as an expert witness, concerning the characteristics of an individual or entity;
- (4) psychotherapy, including but not limited to, categories such as behavioral, cognitive, emotive, systems, psychophysiological, or insight-oriented therapies; counseling; hypnosis; and diagnosis and treatment of:
 - (i) mental and emotional disorder or disability;
 - (ii) alcohol and substance dependence or abuse;
 - (iii) disorders of habit or conduct;
 - (iv) the psychological aspects of physical illness or condition, accident, injury, or disability, including the psychological impact of medications;
 - (v) life adjustment issues, including work-related and bereavement issues; and
 - (vi) child, family, or relationship issues;
- (5) psychoeducational services and treatment; and

(6) consultation and supervision.

Subd. 6. [Repealed, 1996 c 424 s 24]

Subd. 7. [Repealed, 1996 c 424 s 24]

Subd. 8. [Repealed, 1996 c 424 s 24]

History: 1973 c 685 s 2; 1991 c 255 s 5; 1993 c 206 s 13; 1996 c 424 s 4,5; 1999 c 109 s 1-4; 2000 c 363 s 1-3; 2003 c 122 s 2; 2005 c 147 art 3 s 1; 2009 c 159 s 37

148.90 BOARD OF PSYCHOLOGY.

Subdivision 1. Board of Psychology.

(a) The Board of Psychology is created with the powers and duties described in this section. The board has 11 members who consist of:

- (1) three individuals licensed as licensed psychologists who have doctoral degrees in psychology;
- (2) two individuals licensed as licensed psychologists who have master's degrees in psychology;
- (3) two psychologists, not necessarily licensed, one with a doctoral degree in psychology and one with either a doctoral or master's degree in psychology representing different training programs in psychology;
- (4) one individual licensed or qualified to be licensed as: (i) through December 31, 2010, a licensed psychological practitioner; and (ii) after December 31, 2010, a licensed psychologist; and
- (5) three public members.

(b) After the date on which fewer than 30 percent of the individuals licensed by the board as licensed psychologists qualify for licensure under section 148.907, subdivision 3, paragraph (b), vacancies filled under paragraph (a), clause (2), shall be filled by an individual with either a master's or doctoral degree in psychology licensed or qualified to be licensed as a licensed psychologist.

(c) After the date on which fewer than 15 percent of the individuals licensed by the board as licensed psychologists qualify for licensure under section 148.907, subdivision 3, paragraph (b), vacancies under paragraph (a), clause (2), shall be filled by an individual with either a master's or doctoral degree in psychology licensed or qualified to be licensed as a licensed psychologist.

Subd. 2. Members.

(a) The members of the board shall:

- (1) be appointed by the governor;
- (2) be residents of the state;
- (3) serve for not more than two consecutive terms;
- (4) designate the officers of the board; and
- (5) administer oaths pertaining to the business of the board.

(b) A public member of the board shall represent the public interest and shall not:

- (1) be a psychologist, psychological practitioner, or have engaged in the practice of psychology;

- (2) be an applicant or former applicant for licensure;
- (3) be a member of another health profession;
- (4) be a member of a household that includes a psychologist or psychological practitioner; or
- (5) have conflicts of interest or the appearance of conflicts with duties as a board member.

Subd. 3. **Terms; compensation; removal of members.** Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in chapter 214. The provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other activities relating to board operations shall be conducted according to chapter 214.

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

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

History: 1973 c 685 s 3; 1975 c 136 s 22,23; 1975 c 271 s 6; 1976 c 222 s 67; 1982 c 424 s 130; 1991 c 199 art 1 s 43; 1991 c 255 s 6; 1996 c 424 s 6,7; 2005 c 147 art 3 s 2; 2010 c 199 s 2

148.905 DUTIES OF THE BOARD.

Subdivision 1. **General.** The board shall:

- (1) adopt and enforce rules for licensing psychologists and psychological practitioners and for regulating their professional conduct;
- (2) adopt and enforce rules of conduct governing the practice of psychology;
- (3) adopt and implement rules for examinations which shall be held at least once a year to assess applicants' knowledge and skills. The examinations may be written or oral or both, and may be administered by the board or by institutions or individuals designated by the board;
- (4) issue licenses to individuals qualified under sections 148.907 and 148.908, according to the procedures for licensing in Minnesota Rules;
- (5) issue copies of the rules for licensing to all applicants;
- (6) establish and maintain annually a register of current licenses;
- (7) establish and collect fees for the issuance and renewal of licenses and other services by the board. Fees shall be set to defray the cost of administering the provisions of sections 148.88 to 148.98 including costs for applications, examinations, enforcement, materials, and the operations of the board;
- (8) educate the public about the requirements for licensing of psychologists and of psychological practitioners and about the rules of conduct, to enable the public to file complaints against applicants or licensees who may have violated the Psychology Practice Act; and
- (9) adopt and implement requirements for continuing education and establish or approve programs that qualify for professional psychology continuing educational credit. The board may hire consultants, agencies, or professional psychological associations to establish and approve continuing education courses.

Subd. 2. **Additional powers.** The board may adopt rules necessary to define standards or to carry out the provisions of sections 148.88 to 148.98. Rules shall be adopted according to chapter 14.

History: 1991 c 255 s 7; 1993 c 206 s 14; 1996 c 424 s 8

148.906 LEVELS OF PRACTICE.

The board may grant licenses for levels of psychological practice to be known as (1) licensed psychologist and (2) licensed psychological practitioner.

History: 1996 c 424 s 9

148.907 LICENSED PSYCHOLOGIST.

Subdivision 1. **Effective date.** After August 1, 1991, no person shall engage in the independent practice of psychology unless that person is licensed as a licensed psychologist.

Subd. 2. **Requirements for licensure as licensed psychologist.** To become licensed by the board as a licensed psychologist, an applicant shall comply with the following requirements:

- (1) pass an examination in psychology;
- (2) pass a professional responsibility examination on the practice of psychology;
- (3) pass any other examinations as required by board rules;
- (4) pay nonrefundable fees to the board for applications, processing, testing, renewals, and materials;
- (5) have attained the age of majority, be of good moral character, and have no unresolved disciplinary action or complaints pending in the state of Minnesota or any other jurisdiction;
- (6) have earned a doctoral degree with a major in psychology from a regionally accredited educational institution meeting the standards the board has established by rule; and
- (7) have completed at least one full year or the equivalent in part time of postdoctoral supervised psychological employment.

Subd. 3. **Master's level licensure as licensed psychologist after August 1, 1991.**

(a) A person licensed in this state as a licensed consulting psychologist or a licensed psychologist before August 1, 1991, qualifies for licensure as a licensed psychologist, as described in subdivision 2, at the time of license renewal.

(b) Providing all other licensure requirements have been satisfactorily met, the board shall grant licensure as a licensed psychologist to a person who:

- (1) before November 1, 1991, entered a graduate program at a regionally accredited educational institution granting a master's or doctoral degree with a major in psychology which meets the standards the board has established by rule;
- (2) before December 31, 1997, earned a master's degree or a master's equivalent in a doctoral program at a regionally accredited educational institution and complied with requirements of subdivision 2, clauses (1) to (5),

except that the nonrefundable fees for licensure are payable at the time an application for licensure is submitted; and

(3) before December 31, 1998, completed at least one full year or the equivalent in part time of post-master's supervised psychological employment.

(c) Notwithstanding paragraph (b), the board shall not grant licensure as a licensed psychologist under this subdivision unless the applicant demonstrates that the applicant was a resident of Minnesota on October 31, 1992, and meets all the requirements for licensure under this subdivision.

Subd. 4. Converting from master's to doctoral level licensure. To convert from licensure as a licensed psychologist at the master's or master's equivalent level to licensure at the doctoral level, a licensed psychologist shall have:

- (1) completed an application provided by the board;
- (2) had an official transcript documenting the conferral of the doctoral degree sent directly from the educational institution to the board;
- (3) paid a nonrefundable fee;
- (4) successfully completed one full year or the equivalent in part time of supervised psychological employment, which shall not include a predoctoral internship, after earning a master's degree or a master's equivalent in a doctoral program;
- (5) successfully completed a predoctoral internship meeting the standards the board has established by rule; and
- (6) earned a doctoral degree with a major in psychology from a regionally accredited educational institution meeting the standards the board has established by rule.

Subd. 5. Converting from licensed psychological practitioner to licensed psychologist.

Notwithstanding subdivision 3, to convert from licensure as a licensed psychological practitioner to licensure as a licensed psychologist, a licensed psychological practitioner shall have:

- (1) completed an application provided by the board for conversion from licensure as a licensed psychological practitioner to licensure as a licensed psychologist;
- (2) paid a nonrefundable fee of \$500;
- (3) documented successful completion of two full years, or the equivalent, of supervised postlicensure employment meeting the requirements of section 148.925, subdivision 5, as it relates to preparation for licensure as a licensed psychologist as follows:
 - (i) for individuals licensed as licensed psychological practitioners on or before December 31, 2006, the supervised practice must be completed by December 31, 2010; and
 - (ii) for individuals licensed as licensed psychological practitioners after December 31, 2006, the supervised practice must be completed within four years from the date of licensure; and
- (4) no unresolved disciplinary action or complaints pending, or incomplete disciplinary orders or corrective action agreements in Minnesota or any other jurisdiction.

History: 1996 c 424 s 10; 1997 c 102 s 1-3; 1997 c 134 s 1,2; 2005 c 147 art 3 s 3

148.908 LICENSED PSYCHOLOGICAL PRACTITIONER.

Subdivision 1. **Scope of practice.** A licensed psychological practitioner shall practice only under supervision that satisfies the requirements of section 148.925 and while employed by either a licensed psychologist or a health care or social service agency which employs or contracts with a

supervising licensed psychologist who shares clinical responsibility for the care provided by the licensed psychological practitioner.

Subd. 2. **Requirements for licensure as licensed psychological practitioner.** To become licensed by the board as a licensed psychological practitioner, an applicant shall comply with the following requirements:

- (1) have earned a doctoral or master's degree or the equivalent of a master's degree in a doctoral program with a major in psychology from a regionally accredited educational institution meeting the standards the board has established by rule. The degree requirements must be completed by December 31, 2005;
- (2) complete an application for admission to the examination for professional practice in psychology and pay the nonrefundable application fee by December 31, 2005;
- (3) complete an application for admission to the professional responsibility examination and pay the nonrefundable application fee by December 31, 2005;
- (4) pass the examination for professional practice in psychology by December 31, 2006;
- (5) pass the professional responsibility examination by December 31, 2006;
- (6) complete an application for licensure as a licensed psychological practitioner and pay the nonrefundable application fee by March 1, 2007; and
- (7) have attained the age of majority, be of good moral character, and have no unresolved disciplinary action or complaints pending in the state of Minnesota or any other jurisdiction.

Subd. 3. **Termination of licensure.** Effective December 31, 2011, the licensure of all licensed psychological practitioners shall be terminated without further notice and licensure as a licensed psychological practitioner in Minnesota shall be eliminated.

History: 1996 c 424 s 11; 1997 c 134 s 3; 2005 c 147 art 3 s 4,5

148.909 LICENSURE FOR VOLUNTEER PRACTICE.

Subdivision 1. **Application.** Retired providers who are or were licensed, certified, or registered to practice psychology in any jurisdiction may apply to the board for licensure to practice psychology as a licensed psychologist-volunteer provided the applicant meets the following requirements and the requirements in subdivision 2:

- (1) submits to the board a notarized application for licensure as a licensed psychologist-volunteer;
- (2) is of good moral character and has no complaints or corrective or disciplinary action pending in any jurisdiction;
- (3) if not currently licensed by the board, passes the most recent version of the professional responsibility examination administered by the board and pays the fee associated with sitting for the examination; and
- (4) pays the nonrefundable fee for licensure established in subdivision 8.

Subd. 2. **Education requirements.** An applicant who was formerly licensed by the board must meet the education, training, and experience requirements that were in place at the time of the original license. An applicant who was not formerly licensed by the board must meet the current requirements for licensure.

Subd. 3. **Pro bono service.** A provider licensed under this section shall only provide psychological services on a pro bono basis and shall not receive a commission, rebate, or remuneration, directly or indirectly, except that a provider may accept reimbursement for reasonable expenses incurred due to the provision of volunteer psychological services.

Subd. 4. **Documentation of status.** A provider licensed under this section shall receive a license documenting that they are licensed for volunteer practice.

Subd. 5. **Designation of license.** In addition to the descriptions allowed in section 148.96, providers granted licensure under this section shall use the designation "LP-V" to designate licensed psychologist-volunteer.

Subd. 6. **Return to previous licensure status.** Providers licensed under this section who request to return to their previous licensure status may do so upon submission of a written application provided by the board and payment of the applicable licensure fee. Providers may not concurrently hold a license as a licensed psychologist and a license as a licensed psychologist-volunteer.

Subd. 7. **Continuing education requirements.** A provider licensed under this section is subject to the same continuing education requirements as a licensed psychologist under section 148.911.

Subd. 8. **Fees.** The fee for licensure as a licensed psychologist-volunteer shall be 50 percent of the fee for licensure as a licensed psychologist. A provider licensed under this section shall not be subject to special board fees.

Subd. 9. **Violation.** A provider licensed under this section is subject to all of the provisions in the Minnesota Psychology Practice Act, violation of which is grounds for disciplinary action in accordance with section 148.941.

History: 1997 c 102 s 4; 2005 c 147 art 3 s 6; 2010 c 199 s 3

148.91 [Repealed, 1996 c 424 s 24]

148.9105 EMERITUS REGISTRATION.

Subdivision 1. **Application.** Retired providers who are licensed or were formerly licensed to practice psychology in the state according to the Minnesota Psychology Practice Act may apply to the board for psychologist emeritus registration or psychological practitioner emeritus registration if they declare that they are retired from the practice of psychology in Minnesota, have not been the subject of disciplinary action in any jurisdiction, and have no unresolved complaints in any jurisdiction. Retired providers shall complete the necessary forms provided by the board and pay a onetime, nonrefundable fee of \$150 at the time of application.

Subd. 2. **Status of registrant.** Emeritus registration is not a license to provide psychological services as defined in the Minnesota Psychology Practice Act. The registrant shall not engage in the practice of psychology.

Subd. 3. **Change to active status.** Emeritus registrants who request a change to active licensure status shall meet the requirements for relicensure following termination in the Minnesota Psychology Practice Act. Master's level emeritus registrants who request licensure at the doctoral level shall comply with current licensure requirements.

Subd. 4. **Documentation of status.** A provider granted emeritus registration shall receive a document certifying that emeritus status has been granted by the board and that the registrant has completed the registrant's active career as a psychologist or psychological practitioner licensed in good standing with the board.

Subd. 5. **Representation to public.** In addition to the descriptions allowed in section 148.96, subdivision 3, paragraph (e), former licensees who have been granted emeritus registration may represent themselves as "psychologist emeritus" or "psychological practitioner emeritus," but shall not represent themselves or allow themselves to be represented to the public as "licensed" or otherwise as current licensees of the board.

Subd. 6. **Continuing education requirements.** The continuing education requirements of the Minnesota Psychology Practice Act do not apply to emeritus registrants.

Subd. 7. **Renewal or special fees.** An emeritus registrant is not subject to license renewal or special fees.

History: 2003 c 122 s 3

148.911 CONTINUING EDUCATION.

Upon application for license renewal, a licensee shall provide the board with satisfactory evidence that the licensee has completed continuing education requirements established by the board. Continuing education programs shall be approved under section 148.905, subdivision 1, clause (9). The board shall establish by rule the number of continuing education training hours required each year and may specify subject or skills areas that the licensee shall address.

History: 1991 c 255 s 9; 1996 c 424 s 12

148.915 RECIPROCITY.

- (a) The board may grant a license to an applicant who meets the following requirements:
- (1) submits to the board a notarized application for licensure as a licensed psychologist by reciprocity;
 - (2) at the time of application, is licensed, certified, or registered to practice psychology in another state or jurisdiction, and has been for at least five consecutive years immediately preceding the date of application;
 - (3) has a doctoral degree in psychology, which formed the basis for current licensure in another state or jurisdiction;
 - (4) is of good moral character and has no pending complaints or active disciplinary or corrective actions in any jurisdiction; and
 - (5) passes the Professional Responsibility Examination administered by the board and pays the fee associated with sitting for the examination.

(b) 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 psychologists licensed and in good standing in this state, affecting the right of these licensed psychologists 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 psychologists licensed in that state.

History: 1996 c 424 s 13; 1999 c 109 s 5; 2010 c 199 s 4

148.916 GUEST LICENSURE.

Subdivision 1. **Generally.** If a nonresident of the state of Minnesota, who is not seeking licensure in this state, and who has been issued a license, certificate, or registration by another jurisdiction to practice psychology at the doctoral level, wishes to practice in Minnesota for more than seven calendar days, the person shall apply to the board for guest licensure, provided that the psychologist's practice in Minnesota is limited to no more than nine consecutive months per calendar year. Application under this section shall be made no less than 30 days prior to the expected date of practice in Minnesota and shall be subject to approval by the board or its designee. The board shall charge a nonrefundable fee for guest licensure. The board shall adopt rules to implement this section.

Subd. 1a. Applicants for licensure.

(a) An applicant who is seeking licensure in this state, and who, at the time of application, is licensed, certified, or registered to practice psychology in another jurisdiction at the doctoral level may apply to the board for guest licensure in order to begin practicing psychology in this state while their application is being processed if the applicant is of good moral character and has no complaints, corrective, or disciplinary action pending in any jurisdiction. Application under this section shall be made no less than 30 days prior to the expected date of practice in this state, and must be made concurrently or after submission of an application for licensure as a licensed psychologist. Applications under this section are subject to approval by the board or its designee.

(b) The board shall charge a nonrefundable fee for guest licensure under this subdivision.

(c) A guest license issued under this subdivision shall be valid for one year from the date of issuance, or until the board has either issued a license or has denied the applicant's application for licensure, whichever is earlier. Guest licenses issued under this section may be renewed annually until the board has denied the applicant's application for licensure.

Subd. 2. **Psychological consultations.** Notwithstanding subdivision 1, a nonresident of the state of Minnesota, who is not seeking licensure in this state, may serve as an expert witness, organizational consultant, presenter, or educator without obtaining guest licensure, provided the person is appropriately trained, educated, or has been issued a license, certificate, or registration by another jurisdiction.

Subd. 3. **Disaster or emergency relief workers.** The requirements of subdivision 1 do not apply to psychologists sent to this state for the sole purpose of responding to a disaster or emergency

relief effort of this state government, the federal government, the American Red Cross, or other disaster or emergency relief organization as long as the psychologist is not practicing in Minnesota for longer than 30 days and the American Red Cross, disaster or emergency relief organization, or government can certify the psychologist's assignment in this state. The board or its designee, at its discretion, may grant an extension to the 30-day time limitation of this subdivision.

Subd. 4. **Prohibitions and sanctions.** A person's privilege to practice under this section is subject to the prohibitions and sanctions for unprofessional or unethical conduct contained in Minnesota laws and rules.

History: 1996 c 424 s 14; 2005 c 147 art 3 s 7; 2010 c 199 s 5,6

148.92 [Repealed, 1991 c 255 s 20]

148.921 [Repealed, 1996 c 424 s 24]

148.925 SUPERVISION.

Subdivision 1. **Supervision.** For the purpose of meeting the requirements of this section, supervision means documented in-person consultation, which may include interactive, visual electronic communication, between either: (1) a primary supervisor and a licensed psychological practitioner; or (2) a primary or designated supervisor and an applicant for licensure as a licensed psychologist. The supervision shall be adequate to assure the quality and competence of the activities supervised. Supervisory consultation shall include discussions on the nature and content of the practice of the supervisee, including, but not limited to, a review of a representative sample of psychological services in the supervisee's practice.

Subd. 2. **Postdegree supervised employment.** Postdegree supervised employment means required paid or volunteer work experience and postdegree training of an individual seeking to be licensed as a licensed psychologist that involves the professional oversight by a primary supervisor and satisfies the supervision requirements in subdivisions 3 and 5.

Subd. 3. **Individuals qualified to provide supervision.**

(a) Supervision of a master's level applicant for licensure as a licensed psychologist shall be provided by an individual:

(1) who is a psychologist licensed in Minnesota with competence both in supervision in the practice of psychology and in the activities being supervised;

(2) who has a doctoral degree with a major in psychology, who is employed by a regionally accredited educational institution or employed by a federal, state, county, or local government institution, agency, or research facility, and who has competence both in supervision in the practice of psychology and in the activities being supervised, provided the supervision is being provided and the activities being supervised occur within that regionally accredited educational institution or federal, state, county, or local government institution, agency, or research facility;

(3) who is licensed or certified as a psychologist in another jurisdiction and who has competence both in supervision in the practice of psychology and in the activities being supervised; or

(4) who, in the case of a designated supervisor, is a master's or doctorally prepared mental health professional.

(b) Supervision of a doctoral level applicant for licensure as a licensed psychologist shall be provided by an individual:

(1) who is a psychologist licensed in Minnesota with a doctoral degree and competence both in supervision in the practice of psychology and in the activities being supervised;

(2) who has a doctoral degree with a major in psychology, who is employed by a regionally accredited educational institution or is employed by a federal, state, county, or local government institution, agency, or research facility, and who has competence both in supervision in the practice of psychology and in the activities being supervised, provided the supervision is being provided and the activities being supervised occur within that regionally accredited educational institution or federal, state, county, or local government institution, agency, or research facility;

(3) who is licensed or certified as a psychologist in another jurisdiction and who has competence both in supervision in the practice of psychology and in the activities being supervised;

(4) who is a psychologist licensed in Minnesota who was licensed before August 1, 1991, with competence both in supervision in the practice of psychology and in the activities being supervised; or

(5) who, in the case of a designated supervisor, is a master's or doctorally prepared mental health professional.

Subd. 4. **Supervisory consultation for a licensed psychological practitioner.** Supervisory consultation between a supervising licensed psychologist and a supervised licensed psychological practitioner shall be at least one hour in duration and shall occur on an individual, in-person basis. A minimum of one hour of supervision per month is required for the initial 20 or fewer hours of psychological services delivered per month. For each additional 20 hours of psychological services delivered per month, an additional hour of supervision per month is required. When more than 20 hours of psychological services are provided in a week, no more than one hour of supervision is required per week.

Subd. 5. **Supervisory consultation for an applicant for licensure as a licensed psychologist.** Supervision of an applicant for licensure as a licensed psychologist shall include at least two hours of regularly scheduled in-person consultations per week for full-time employment, one hour of which shall be with the supervisor on an individual basis. The remaining hour may be with a designated supervisor. The board may approve an exception to the weekly supervision requirement for a week when the supervisor was ill or otherwise unable to provide supervision. The board may prorate the two hours per week of supervision for individuals preparing for licensure on a part-time basis. Supervised psychological employment does not qualify for licensure when the supervisory consultation is not adequate as described in subdivision 1, or in the board rules.

Subd. 6. **Supervisee duties.** Individuals preparing for licensure as a licensed psychologist during their postdegree supervised employment may perform as part of their training any functions specified in section 148.89, subdivision 5, but only under qualified supervision.

Subd. 7. **Variance from supervision requirements.**

(a) An applicant for licensure as a licensed psychologist who entered supervised employment before August 1, 1991, may request a variance from the board from the supervision requirements in this section in order to continue supervision under the board rules in effect before August 1, 1991.

(b) After a licensed psychological practitioner has completed two full years, or the equivalent, of supervised post-master's degree employment meeting the requirements of subdivision 5 as it relates to preparation for licensure as a licensed psychologist, the board shall grant a variance from the supervision requirements of subdivision 4 or 5 if the licensed psychological practitioner presents evidence of:

- (1) endorsement for specific areas of competency by the licensed psychologist who provided the two years of supervision;
- (2) employment by a hospital or by a community mental health center or nonprofit mental health clinic or social service agency providing services as a part of the mental health service plan required by the Comprehensive Mental Health Act;
- (3) the employer's acceptance of clinical responsibility for the care provided by the licensed psychological practitioner; and
- (4) a plan for supervision that includes at least one hour of regularly scheduled individual in-person consultations per week for full-time employment. The board may approve an exception to the weekly supervision requirement for a week when the supervisor was ill or otherwise unable to provide supervision.

(c) Following the granting of a variance under paragraph (b), and completion of two additional full years or the equivalent of supervision and post-master's degree employment meeting the requirements of paragraph (b), the board shall grant a variance to a licensed psychological practitioner who presents evidence of:

- (1) endorsement for specific areas of competency by the licensed psychologist who provided the two years of supervision under paragraph (b);
- (2) employment by a hospital or by a community mental health center or nonprofit mental health clinic or social service agency providing services as a part of the mental health service plan required by the Comprehensive Mental Health Act;
- (3) the employer's acceptance of clinical responsibility for the care provided by the licensed psychological practitioner; and
- (4) a plan for supervision which includes at least one hour of regularly scheduled individual in-person supervision per month.

(d) The variance allowed under this section must be deemed to have been granted to an individual who previously received a variance under paragraph (b) or (c) and is seeking a new variance because of a change of employment to a different employer or employment setting. The deemed variance continues until the board either grants or denies the variance. An individual who has been denied a variance under this section is entitled to seek reconsideration by the board.

History: 1991 c 255 s 11; 1992 c 513 art 6 s 31-33; 1993 c 206 s 17; 1996 c 424 s 15; 1997 c 134 s 4; 1999 c 109 s 6; 2000 c 363 s 4-8; 2003 c 122 s 4; 2005 c 147 art 3 s 8

148.93 [Repealed, 1996 c 424 s 24]

148.94 [Repealed, 1976 c 222 s 209]

148.941 DISCIPLINARY ACTION; INVESTIGATION; PENALTY FOR VIOLATION.

Subdivision 1. **Generally.** Except as otherwise described in this section, all hearings shall be conducted under chapter 14.

Subd. 2. **Grounds for disciplinary action; forms of disciplinary action.**

(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 psychology, that adversely affects the person's ability or fitness to practice psychology;

(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 psychology;

(5) has employed fraud or deception in obtaining or renewing a license, in requesting approval of continuing education activities, or in passing an examination;

(6) has had a license, certificate, charter, registration, privilege to take an examination, or other similar authority denied, revoked, suspended, canceled, limited, reprimanded, or otherwise disciplined, 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 been subject to a corrective action or similar action in another jurisdiction or by another regulatory authority;

(8) 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 Psychology Practice Act;

(9) has failed to cooperate with an investigation of the board as required under subdivision 4;

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

(11) 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. This clause also does not apply to the charging of a general membership fee by a licensee or applicant to health care providers, as defined in sections 144.291 to 144.298, for participation in a

referral service, provided that the licensee or applicant discloses in advance to each referred client the financial nature of the referral arrangement. Fee splitting includes, but is not limited to:

- (i) paying, offering to pay, receiving, or agreeing to receive a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of clients;
- (ii) dividing client fees with another individual or entity, unless the division is in proportion to the services provided and the responsibility assumed by each party;
- (iii) referring an individual or entity to any health care provider, as defined in sections 144.291 to 144.298, or for other professional or technical services in which the referring licensee or applicant has a significant financial interest unless the licensee has disclosed the financial interest in advance to the client; and
- (iv) dispensing for profit or recommending any instrument, test, procedure, or device that for commercial purposes the licensee or applicant has developed or distributed, unless the licensee or applicant has disclosed any profit interest in advance to the client.

(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 psychology, 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 \$7,500 for each separate violation. The amount of the penalty shall be fixed so as to deprive the applicant or licensee of any economic advantage gained by reason of the violation charged, to discourage repeated violations, or to recover the board's costs that occur in bringing about a disciplinary order. For purposes of this clause, costs are limited to legal, paralegal, and investigative charges billed to the board by the Attorney General's Office, witness costs, consultant and expert witness fees, and charges attendant to the use of an administrative law judge.

(c) In lieu of or in addition to paragraph (b), the board may require, as a condition of 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;
- (2) complete to the satisfaction of the board educational courses specified by the board; and

(3) reimburse to the board all costs incurred by the board that are the result of a provider failing, neglecting, or refusing to fully comply, or not complying in a timely manner, with any part of the remedy section of a stipulation and consent order or the corrective action section of an agreement for corrective action. For purposes of this clause, costs are limited to legal, paralegal, and investigative charges billed to the board by the Attorney General's Office, witness costs, consultant and expert witness fees, and charges attendant to the use of an administrative law judge.

(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.

Subd. 3. Temporary suspension of license.

(a) In addition to any other remedy provided by law, the board may 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 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 psychology 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 pursuant 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 which 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. This 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.

Subd. 4. Cooperation of applicants or licensees with investigations.

(a) An applicant or licensee of the board who is the subject of an investigation or who is questioned in connection with 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, executing all releases requested by the board, providing copies of client records, as reasonably requested by the board to assist it in its investigation, and appearing at conferences or hearings scheduled by the board or its staff.

(b) If the board does not have a written consent from a client permitting access to the client's records, the licensee may delete any data in the record which identify the client before providing it to the board. The board shall maintain any records obtained pursuant to this section as investigative data pursuant to chapter 13.

Subd. 5. Evidence of past sexual conduct. In a proceeding for the suspension or revocation of a license or other disciplinary action for unethical or unprofessional conduct involving sexual contact with a client or former client, the board or administrative law judge shall not consider evidence of the client's previous sexual conduct nor shall any reference to this conduct be made during the proceedings or in the findings, except by motion of the client, unless the evidence would be admissible under applicable provisions of section 609.347, subdivision 3.

Subd. 6. Violation. Persons who engage in the unlicensed practice of psychology or who misrepresent themselves as psychologists or psychological practitioners are guilty of a gross misdemeanor.

Subd. 7. Limitation period. (a) For complaints against providers received by the board after July 31, 2001, a board proceeding against a provider must not be instituted unless it is begun within seven years from the date of some portion of the alleged misconduct that is complained of.

(b) The following are exceptions to the limitation period in paragraph (a):

(1) complaints alleging a violation of subdivision 2, paragraph (a), clauses (2), (4), (5), and (6);

(2) complaints alleging sexual intercourse or other physical intimacies with a client, or any verbal or physical behavior that is sexually seductive or sexually demeaning to the client; or complaints alleging sexual intercourse or other physical intimacies with a former client, or any verbal or physical behavior that is sexually demeaning to the former client, for a period of two years following the date of the last professional contact with the former client, whether or not the provider has formally terminated the professional relationship. Physical intimacies include handling of the breasts, genital areas, buttocks, or thighs of either sex by either the provider or the client.

(c) If a complaint is received by the board less than 12 months from the expiration of the limitation period in paragraph (a), the limitation period is extended for a period of 12 months from the date the complaint is received by the board.

(d) If alleged misconduct is complained of that involves a client who is a minor, the limitation period in paragraph (a) does not begin until the minor reaches the age of 18.

(e) For purposes of this subdivision only, "proceeding" means the service of a notice of conference, or in cases in which a notice of conference was not served, a notice of hearing.

Subd. 8. Mental, physical, or chemical dependency examination or evaluation.

(a) If the board has probable cause to believe that an individual who is regulated by the board has demonstrated an inability to practice psychology with reasonable skill and safety to clients due to any mental or physical illness or condition, the board may direct the individual to submit to an independent mental, physical, or chemical dependency

examination or evaluation. For the purpose of this subdivision, an individual regulated by the board is deemed to have consented to submit to the examination or evaluation when directed to do so by written notice by the board and to have waived all objections to the admissibility of the examiner's or evaluator's testimony or reports on the grounds that the same constitutes a privileged communication. Failure to submit to an examination or evaluation without just cause, as determined by the board, shall authorize the board to consider the allegations as true for the purposes of further action by the board. Such action may include an application being denied, a license being suspended, or a default and final order being entered without the taking of testimony or presentation of evidence, other than evidence that may be submitted by affidavit that explains why the individual did not submit to the examination or evaluation.

(b) An individual regulated by the board who is affected under this subdivision shall, at reasonable intervals, be given an opportunity to demonstrate that the individual is fit to resume the competent practice of psychology with reasonable skill and safety to the public.

(c) In a proceeding under this subdivision, neither the record of the proceedings nor the orders entered by the board is admissible, is subject to subpoena, or may be used against the individual regulated by the board in any proceeding not commenced by the board.

(d) Information obtained under this subdivision is classified as private under section 13.02, subdivision 12.

History: 1993 c 206 s 18; 1996 c 424 s 16-19; 1997 c 134 s 5; 1999 c 109 s 7,8; 2000 c 363 s 9; 2001 c 66 s 1,2; 2003 c 122 s 5; 2005 c 147 art 3 s 9; 2007 c 147 art 10 s 15

148.95 [Repealed, 1993 c 206 s 25]

148.951 [Repealed, 1996 c 424 s 24]

148.952 IMMUNITY.

(a) Any person, health care facility, business, or organization is immune from civil liability and criminal prosecution for reporting in good faith to the board violations or alleged violations of the Psychology Practice Act.

(b) Any person, health care facility, business, or organization is immune from civil liability and criminal prosecution for cooperating with the board in good faith in the investigation of violations or alleged violations of the Psychology Practice Act.

(c) Consultants, advisors, and experts retained by the board for the investigation of alleged violations and for the preparation, presentation, and provision of testimony pertaining to allegations, charges, or violations of the Psychology Practice Act are immune from civil liability and criminal prosecution for any actions, transactions, or publications made in good faith in the execution of, or relating to, their duties on behalf of the board.

(d) Paragraphs (a) and (b) do not apply to a person whose report pertains to the person's own conduct.

History: 1999 c 109 s 9

148.96 PRESENTATION TO PUBLIC.

Subdivision 1. **Requirements for professional identification.** All licensees, when representing themselves in activities relating to the practice of psychology, including in written materials or advertising, shall identify the academic degree upon which their licensure is based, as well as their level of licensure. Individuals licensed on the basis of the equivalent of a master's degree in a doctoral program shall similarly use the designation "M. Eq." to identify the educational status on which their licensure is based, as well as their level of licensure.

Subd. 2. **Disclosure of education.** At the initial meeting, a licensee shall display or make available to each new client accurate information about the qualifications and competencies of the licensee, in accordance with regulations of the board.

Subd. 3. **Requirements for representations to public.**

(a) Unless licensed under sections

148.88 to 148.98, except as provided in paragraphs (b) through (e), persons shall not represent themselves or permit themselves to be represented to the public by:

- (1) using any title or description of services incorporating the words "psychology," "psychological," "psychological practitioner," or "psychologist"; or
- (2) representing that the person has expert qualifications in an area of psychology.

(b) Psychologically trained individuals who are employed by an educational institution recognized by a regional accrediting organization, by a federal, state, county, or local government institution, agency, or research facility, may represent themselves by the title designated by that organization provided that the title does not indicate that the individual is credentialed by the board.

(c) A psychologically trained individual from an institution described in paragraph (b) may offer lecture services and is exempt from the provisions of this section.

(d) A person who is preparing for the practice of psychology under supervision in accordance with board statutes and rules may be designated as a "psychological intern," "psychological trainee," or by other terms clearly describing the person's training status.

(e) Former licensees who are completely retired from the practice of psychology may represent themselves using the descriptions in paragraph (a), clauses (1) and (2), but shall not represent themselves or allow themselves to be represented as current licensees of the board.

(f) Nothing in this section shall be construed to prohibit the practice of school psychology by a person licensed in accordance with chapters 122A and 129.

Subd. 4. **Persons or techniques not regulated by this board.**

(a) Nothing in sections 148.88 to 148.98 shall be construed to limit the occupational pursuits consistent with their training and codes of ethics of professionals such as teachers in recognized public and private schools, members of the clergy, physicians, social workers, school psychologists, alcohol or drug counselors, optometrists, or attorneys. However, in such performance any title used shall be in accordance with section 148.96.

(b) Use of psychological techniques by business and industrial organizations for their own personnel purposes or by employment agencies or state vocational rehabilitation agencies for the evaluation of their own clients prior to recommendation for employment is also specifically allowed. However, no representative of an industrial or

business firm or corporation may sell, offer, or provide any psychological services as specified in section 148.89 unless such services are performed or supervised by individuals licensed under sections 148.88 to 148.98.

Subd. 5. **Other professions not authorized.** Nothing in sections 148.88 to 148.98 shall be construed to authorize a person licensed under sections 148.88 to 148.98 to engage in the practice of any profession regulated under Minnesota law unless the person is duly licensed or registered in that profession.

History: 1973 c 685 s 9; 1986 c 444; 1991 c 255 s 14; 1996 c 424 s 20; 1997 c 102 s 5,6; 1998 c 397 art 11 s 3; 1999 c 109 s 10; 2000 c 260 s 26; 2005 c 147 art 3 s 10

148.965 TEST SECURITY.

Notwithstanding section 144.292, subdivisions 2 and 5, a provider shall not be required to provide copies of psychological tests, test materials, or scoring keys to any individual who has completed a test, or to an individual not qualified to administer, score, and interpret the test, 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 test, release the information either to another provider who is qualified to administer, score, and interpret the test or instead furnish a summary of the test results to the individual or to a third party designated by the individual.

History: 1999 c 58 s 1; 2007 c 147 art 10 s 15

148.97 [Repealed, 1996 c 424 s 24]

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

Subdivision 1. **Definitions.**

- (a) The definitions in this subdivision apply to this section.
- (b) "Other person" means an immediate family member or someone who personally knows the client and has reason to believe the client is capable of and will carry out the serious, specific threat of harm to a specific, clearly identified or identifiable victim.
- (c) "Reasonable efforts" means communicating the serious, specific threat to the potential victim and if unable to make contact with the potential victim, communicating the serious, specific threat to the law enforcement agency closest to the potential victim or the client.

Subd. 2. **Duty to warn.** The duty to predict, warn of, or take reasonable precautions to provide protection from, violent behavior arises only when a client or other person has communicated to the licensee a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim. If a duty to warn arises, the duty is discharged by the licensee if reasonable efforts, as defined in subdivision 1, paragraph (c), are made to communicate the threat.

Subd. 3. [Renumbered subd 2]

Subd. 3. **Liability standard.** If no duty to warn exists under subdivision 2, then no monetary liability and no cause of action may arise against a licensee for failure to predict, warn of, or take reasonable precautions to provide protection from, a client's violent behavior.

Subd. 4. **Disclosure of confidences.** Good faith compliance with the duty to warn shall not constitute a breach of confidence and shall not result in monetary liability or a cause of action against the licensee.

Subd. 5. **Continuity of care.** Nothing in subdivision 2 shall be construed to authorize a licensee to terminate treatment of a client as a direct result of a client's violent behavior or threat of physical violence unless the client is referred to another practitioner or appropriate health care facility.

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

Subd. 7. **Optional disclosure.** Nothing in section 148.975 shall be construed to prohibit a licensee from disclosing confidences to third parties in a good faith effort to warn against or take precautions against a client's violent behavior or threat to commit suicide for which a duty to warn does not arise.

Subd. 8. **Limitation on liability.** No monetary liability and no cause of action, or disciplinary action by the board may arise against a licensee for disclosure of confidences to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure of confidences to third parties in a good faith effort to warn against or take precautions against a client's violent behavior or threat of suicide for which a duty to warn does not arise.

History: 1986 c 380 s 1; 1996 c 424 s 21

148.976 [Repealed, 1998 c 254 art 1 s 48]

148.98 RULES OF CONDUCT.

The board shall adopt rules of conduct to govern an applicant's or licensee's practices or behavior. The board shall publish the rules in the State Register and file the rules with the secretary of state at least 30 days prior to the effective date of the rules. The rules of conduct shall include, but are not limited to, the principles in paragraphs (a) to (c).

(a) Applicants or licensees shall recognize the boundaries of their competence and the limitations of their techniques and shall not offer services or use techniques that fail to meet usual and customary professional standards.

(b) An applicant or licensee who engages in practice shall assist clients in obtaining professional help for all important aspects of the client's problems that fall outside the boundaries of the applicant's or licensee's competence.

(c) Applicants or licensees shall not claim either directly or by implication professional qualifications that differ from their actual qualifications, nor shall they misrepresent

their affiliations with any institution, organization, or individual, nor lead others to assume affiliations that do not exist.

History: 1973 c 685 s 11; 1976 c 222 s 72; 1986 c 444; 1991 c 255 s 16; 1993 c 206 s 19; 1996 c 424 s 22

148.99 Subdivision 1. [Repealed, 1976 c 222 s 209]
Subd. 2. [Expired]

MINNESOTA ADMINISTRATIVE RULES – Chapter 7200

Sections 7200.0100 – 7200.6105

LICENSURE

7200.0100

- Subpart 1. [Repealed, 37 SR 1085]
- Subp. 2. [Repealed, 37 SR 1085]
- Subp. 3. [Repealed, 37 SR 1085]
- Subp. 3a. [See part 7200.0110, subp 4]
- Subp. 4. [Repealed, 17 SR 2285]
- Subp. 4a. [Repealed, 37 SR 1085]
- Subp. 5. [Repealed, 37 SR 1085]
- Subp. 5a. [Repealed, 37 SR 1085]
- Subp. 5b. [Repealed, 37 SR 1085]
- Subp. 5c. [Repealed, 37 SR 1085]
- Subp. 5d. [Repealed, 37 SR 1085]
- Subp. 6. [Repealed, 37 SR 1085]
- Subp. 7. [Repealed, 37 SR 1085]
- Subp. 8. [Repealed, 37 SR 1085]
- Subp. 9. [Repealed, 37 SR 1085]
- Subp. 9a. [Repealed, 37 SR 1085]
- Subp. 9b. [Repealed, 37 SR 1085]
- Subp. 10. [Repealed, 17 SR 2285]
- Subp. 11. [Repealed, 37 SR 1085]
- Subp. 12. [Repealed, 37 SR 1085]
- Subp. 13. [Repealed, 37 SR 1085]

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7200.0110 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means an individual who has submitted to the board an application for licensure, registration, or admission to an examination.

Subp. 3. **Board.** "Board" means the Minnesota Board of Psychology.

Subp. 4. **Client.** "Client" means an individual or entity who is the recipient of any of the psychological services described in Minnesota Statutes, section 148.89, subdivision 5.

Subp. 5. **Competent practice.** "Competent practice" means the ability to provide services within the practice of psychology, as defined in the Psychology Practice Act, that:

- A. are rendered with reasonable skill and safety;
- B. meet minimum standards of acceptable and prevailing practice; and

C. take into account human diversity.

Subp. 6. **Continuing education.** "Continuing education" means postlicensure activities designed to contribute to competence in the practice of psychology.

Subp. 7. **Dependent on the provider.** "Dependent on the provider" means that the nature of a former client's emotional or cognitive condition and the nature of the services by the provider are such that the provider knows or should have known that the former client is unable to withhold consent to sexual or exploitative behavior by the provider.

Subp. 8. **Familial.** "Familial" means of, involving, related to, or common to a family member as defined in subpart 9.

Subp. 9. **Family member or member of the family.** "Family member" or "member of the family" means a spouse, parent, offspring, sibling, grandparent, grandchild, uncle, aunt, niece, or nephew, or an individual who serves in one of these roles.

Subp. 10. **Forensic.** "Forensic" means services within the practice of psychology, of which the purpose is to address questions and issues relating to parties to legal proceedings and to law and the legal system, including the courts, correctional agencies and facilities, attorneys, and administrative, judicial, and legislative agencies acting in an adjudicative capacity.

Subp. 11. **Human diversity.** "Human diversity" means individual client differences that are associated with the client's cultural group, including race, ethnicity, national origin, religious affiliation, language, age, gender, gender identity, physical and mental capabilities, sexual orientation, or socioeconomic status.

Subp. 12. **Informed consent.** "Informed consent" means an agreement between a provider and a client that authorizes the provider to engage in a professional activity affecting the client that was made after the client was given sufficient information to decide knowingly whether to agree to the proposed professional activity according to part 7200.4720. The information shall be discussed in language that the client can reasonably be expected to understand. The consent shall be given without undue influence by the provider.

Subp. 13. **Internship.** "Internship" means an advanced predoctoral or postdegree remediated supervised professional experience beyond beginning and advanced practicum experiences and following completion of all doctoral degree coursework, excluding credits awarded for completion of the dissertation.

Subp. 14. **Multiple clients.** "Multiple clients" means two or more individuals or entities that are each a corecipient of psychological services. Multiple clients may include, but are not limited to, two or more family members, when each is the direct recipient of services; each client receiving group psychological services; a court and a client under court order to receive a psychological service; or an employer and employee when the employee receives services in order to provide the employer with information regarding an employment matter.

Subp. 15. **Multiple relationship.** "Multiple relationship" means a relationship between a provider and a client that is both professional and one or more of the following:

A. cohabitational;

- B. familial;
- C. one in which there is or has been personal involvement with a client or a family member of the client that is reasonably likely to adversely affect the client's welfare or ability to benefit from services; or
- D. one in which there is financial involvement, other than legitimate payment for professional services rendered, that is reasonably likely to adversely affect the client's welfare or ability to benefit from services.

Subp. 16. **Objective.** "Objective" means a manner of administering a test and recording, scoring, and interpreting responses that is independent, insofar as is possible, of the subjective judgment of the particular examiner.

Subp. 17. **Practice foundation.** "Practice foundation" means that a continuing education activity is based upon observations, methods, procedures, or theories that are generally accepted by the professional community in psychology.

Subp. 18. **Practicum.** "Practicum" means supervised professional experience that is pre-internship and provides the opportunity to develop initial competence in the provision of psychological services.

Subp. 19. **Private information.** "Private information" means any information, including but not limited to, client records, test results, or test interpretations, developed during a professional relationship between a provider and a client.

Subp. 20. **Professional relationship.** "Professional relationship" means the relationship between a provider and the provider's client.

Subp. 21. **Professional standards foundation.** "Professional standards foundation" means that a continuing education activity is based upon practice-related statutes, licensure rules, legal decisions, ethics codes, or practice guidelines in psychology or related disciplines.

Subp. 22. **Psychologist or licensed psychologist.** "Psychologist" or "licensed psychologist" means an individual who is licensed by the board to engage in the independent practice of psychology, or an individual exempted by statute.

Subp. 23. **Public statements.** "Public statements" means any statements, communications, or representations by providers to the public regarding themselves or their professional services or products. Public statements include but are not limited to advertising, representations in reports or letters, descriptions of credentials and qualifications, brochures and other descriptions of services, directory listings, personal resumes or curricula vitae, comments for use in the media, Web sites, grant and credentialing applications, or product endorsements.

Subp. 24. **Report.** "Report" means any written or oral professional communication, including a letter, regarding a client or subject that includes one or more of the following: historical data, behavioral observations, test interpretations, opinions, diagnostic or evaluative statements, or recommendations. The testimony of a provider as an expert or fact witness in a legal proceeding also constitutes a report. For purposes of this chapter, letters of recommendation for academic or career purposes are not considered reports.

Subp. 25. **Research subject.** "Research subject" means an individual participating in a research study for the period of time during which the individual is providing data for the study.

Subp. 26. **Rules of conduct.** "Rules of conduct" means the rules contained in parts 7200.4500 to 7200.5750.

Subp. 27. **Scientific foundation.** "Scientific foundation" means that a continuing education activity is based upon quantitative or qualitative research, such as, but not limited to, published peer-reviewed experiments or correlational, observational, or ethnographic studies, or upon research presented at professional meetings.

Subp. 28. **Sexual contact.** "Sexual contact" means any of the following, whether or not occurring with the consent of a client or former client:

A. sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the genital or anal openings of the client's or former client's body by any part of the provider's body or by any object used by the provider for this purpose, or any intrusion, however slight, into the genital or anal openings of the provider's body by any part of the client's or former client's body or by any object used by the client or former client for this purpose, if agreed to by the provider;

B. kissing of, or the intentional touching by the provider of the client's or former client's genital area, groin, inner thigh, buttocks, or breast or the clothing covering any of these body parts;

C. kissing of, or the intentional touching by the client or former client of the provider's genital area, groin, inner thigh, buttocks, or breast or the clothing covering any of these body parts if the provider agrees to the kissing or intentional touching. Sexual contact includes requests by the provider for conduct described in items A to C.

Subp. 29. **Significant risks and benefits.** "Significant risks and benefits" means those risks and benefits that are known or reasonably foreseeable by the provider, including the possible range and likelihood of outcomes, and that are necessary for the client to know in order to decide whether to give consent to proposed services or to reasonable alternative services.

Subp. 30. **Sponsor.** "Sponsor" means an individual or entity that organizes a sponsored continuing education activity.

Subp. 31. **Standardized test.** "Standardized test" means a test that is administered, recorded, and scored in a uniform and objective manner, is interpreted by means of normative data, and includes a manual or other published information that fully describes its development, rationale, validity, reliability, and normative data.

Subp. 32. **Student.** "Student" means an individual over whom the provider has evaluative academic authority, including an individual who is enrolled in a graduate program in psychology at an educational institution or who is taking a psychology course for credit. This does not apply to an individual who is taking a psychology course to receive continuing education credit from a board or who is auditing a course.

Subp. 33. **Supervisee.** "Supervisee" means an individual whose supervision is required to obtain credentialing by a board of psychology or to comply with a board order.

Subp. 34. **Test.** "Test" means any instrument, device, survey, questionnaire, technique, scale, inventory, or other process which is designed or constructed for the purpose of measuring, evaluating, assessing, describing, or predicting personality, behavior, traits, cognitive functioning, aptitudes, attitudes, skills, values, interests, abilities, or other psychological characteristics of individuals.

Subp. 35. **Unprofessional conduct.** "Unprofessional conduct" means any conduct that fails to conform to the minimum standards of acceptable and prevailing practice.

Subp. 36. **Variance.** "Variance" means board-authorized permission to comply with a rule in a manner other than that generally specified in the rule.

Subp. 37. **Waiver.** "Waiver" means board-authorized permission not to comply with a rule.

Subp. 38. **Written informed consent.** "Written informed consent" means informed consent that is in writing and signed by the client.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

Published Electronically: *January 31, 2013*

7200.0200 LICENSURE PROCESS.

The process of obtaining licensure from the board involves three separate parts: specified educational requirements, including academic and experiential training; specified board examinations; and specified postdegree supervised employment experiences for licensure.

Statutory Authority: *MS s 148.90; 148.905; 148.98*

History: *37 SR 1085*

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7200.0300 [Repealed, 37 SR 1085]

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7200.0400 [Repealed, 37 SR 1085]

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7200.0500 [Repealed, 37 SR 1085]

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7200.0550 EXAMINATION REQUIREMENTS FOR LICENSURE.

Subpart 1. **Two examinations.** To qualify for licensure, an applicant is required to pass two examinations:

A. a national standardized examination in psychology specified by the board; and

B. a professional responsibility examination specified by the board.

Subp. 2. **Passing scores.** The passing score for a national standardized examination is the recommended score defined by the Association of State and Provincial Psychology Boards for that examination. The passing score for the professional responsibility examination is specified by the board.

Subp. 3. **Requirements for admission to examination.** An applicant shall not apply for the national standardized examination or the professional responsibility examination until after the requirements for the degree have been completed. In order to be admitted to examination an applicant shall:

A. file with the board a completed application for admission to examination that includes an affirmation that the statements made on the application are true and correct to the best of the knowledge and belief of the applicant, and that is accompanied by payment in a manner specified by the board. This payment covers the current nonrefundable examination application fee;

B. provide official transcripts of all graduate work, including verification of the degree granted, to be submitted directly to the board from the institution granting the degree. Official transcripts shall be received in the board office prior to processing the application;

C. for an application based upon the equivalent of a master's degree in a doctoral program, provide for that equivalency to be verified in writing directly to the board by the degree program director or equivalent. Verification shall be received in the board office prior to processing the application; and

D. have met the applicable requirements of part 7200.1300 and the requirements of part 7200.1500 or 7200.1600, if applicable.

Subp. 4. **Denial of admission to examination.** An applicant who has failed to meet the requirements in subpart 3, items A to C, shall be denied admission to the examination and informed in writing of the denial and the reasons for it. An applicant who has been denied admission to an examination may reapply and shall pay the current nonrefundable application fee with each application.

Subp. 5. **Passing national examination while in another jurisdiction.** An applicant for licensure who has passed the national standardized examination required in subpart 1, item A, in another jurisdiction is considered to have met the requirements of this part with respect to that examination, provided performance on the examination in another jurisdiction is at least at the same level deemed satisfactory by Minnesota board standards at the time of application.

Subp. 6. **Failure to pass or take examination.** An applicant who has failed an examination or failed to appear for an examination may reapply to take the examination, subject to any limitations imposed by the Association of State and Provincial Psychology Boards or the test vendor. The applicant shall pay the current nonrefundable application fee with each application.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.0600 REQUIREMENTS FOR LICENSURE.

To be eligible for licensure, an applicant must:

- A. meet the requirements for admission to the examinations specified in part 7200.0550, subpart 3;
- B. file with the board an application for licensure, which includes an affirmation that the statements made in the application are true and correct to the best knowledge and belief of the applicant, and includes the current nonrefundable licensure application fee;
- C. have completed the supervised employment requirements in part 7200.2000, which is independently verified by the board;
- D. have performed satisfactorily on the examinations listed in part 7200.0550; and
- E. provide names for endorsement from at least two individuals meeting the qualifications in part 7200.0900 who can attest that the applicant has met the requirements of Minnesota Statutes, section 148.907, subdivision 2, clause (5).

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 17 SR 2285; 37 SR 1085*

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7200.0650 [Repealed, 37 SR 1085]

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7200.0700 [Repealed, 37 SR 1085]

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7200.0800 SUPERVISED EMPLOYMENT FOR LICENSED PSYCHOLOGISTS.

The application for licensure as a licensed psychologist must include for each postdegree supervised employment the setting, nature, and extent, the time period involved, the number of hours per week engaged in professional duties, the number of hours of individual, in-person supervision which may include interactive, visual, or electronic communication, per week provided by the primary supervisor, the number of hours of designated supervision per week, as defined by statute, and the name, address, and qualifications of the supervisor.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 17 SR 2285; 37 SR 1085*

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7200.0810 [Repealed, 37 SR 1085]

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7200.0900 REQUIREMENTS FOR ENDORSEMENT.

For an endorsement to meet the requirements of part 7200.0600, item E, the endorser must be a licensee of the board, an individual who is licensed to practice psychology by another jurisdiction, or an individual with a doctoral degree in psychology. The endorser must have observed the applicant while the applicant was engaged in the practice of psychology within the previous three years. The endorser cannot be an employee or family member of the applicant.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.1000 [Repealed, 37 SR 1085]

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7200.1100 [Repealed, 37 SR 1085]

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7200.1200 [Repealed, 37 SR 1085]

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7200.1300 EDUCATIONAL REQUIREMENTS FOR LICENSURE.

Subpart 1. **Licensed psychologist.** The educational requirement for licensure as a licensed psychologist is a doctoral degree with a major in psychology. The degree shall be obtained in an institution accredited by a regional accrediting association to grant the doctoral degree being submitted for licensure and shall meet the standards the board has established by rule.

Subp. 2. **Grandparenting provision.** Notwithstanding the provisions of subpart 1, the educational requirement for licensure as a licensed psychologist for any applicant who has met the requirements of Minnesota Statutes, section 148.907, subdivision 3, paragraph (b), clause (1), is a master's degree, including a master's equivalent in a doctoral program, with a major in psychology obtained in an institution accredited by a regional accrediting association. The applicant must have been accepted into the program by November 1, 1991, whether or not the applicant had enrolled in a class by that date. An applicant who entered the program by November 1, 1991, and who later transferred to another program leading to a degree in psychology is considered having met the admission requirements of Minnesota Statutes, section 148.907, subdivision 3, paragraph (b), clause (1).

Subp. 2a. [Repealed, 37 SR 1085]

Subp. 3. [Repealed, 37 SR 1085]

Subp. 4. [Repealed, 37 SR 1085]

Subp. 5. **Degree requirements.** The doctoral degree must be from a program that is an organized sequence of study in psychology and must meet the requirements in items A and B.

A. The degree must include the completion of graduate credits as specified in subitems (1) to (3).

(1) A minimum of the specified number of graduate semester or quarter credits of coursework earned in each of the foundational areas of psychology listed in units (a) to (g). Coursework relating to the application of psychological principles to the identification or solution of problems, as described in subitems (2) and (3), cannot be used to meet the requirements of units (a) to (g):

- (a) research design, statistics, and psychological measurement theory, six semester credits or nine quarter credits required, of which at least one semester or 1-1/2 quarter credits must be in each of the following areas: research design, statistics, and psychological measurement theory;
 - (b) biological bases of behavior, three semester credits or five quarter credits required;
 - (c) cognitive-affective bases of behavior, three semester credits or five quarter credits required;
 - (d) social bases of behavior, three semester credits or five quarter credits required;
 - (e) personality theory and human development, three semester credits or five quarter credits required;
 - (f) human diversity, three semester credits or five quarter credits required; and
 - (g) professional ethics and standards of conduct, three semester credits or five quarter credits required.
- (2) A minimum of six additional semester credits or nine quarter credits earned in the application of psychological principles to problem identification. The coursework must be in the areas of assessment, evaluation, or data collection, or a combination of these areas. Graduate credits in the foundational areas of psychology, as described in subitem (1), cannot be used to meet this requirement.
- (3) A minimum of six additional semester credits or nine quarter credits in the application of psychological principles to problem solution. The coursework must be in the areas of psychological intervention or data analysis or a combination of these areas. Graduate credits in the foundational areas of psychology, as described in subitem (1), cannot be used to meet this requirement.
- B. A minimum of 24 semester credit hours or 384 clock hours must be earned in residence from the educational institution through in-person psychological instruction with multiple program faculty and students. Acceptable academic residency experience shall be accumulated over a period of 12 consecutive months.
- C. The applicant shall complete a predegree supervised experience in psychology. The experience must meet the criteria in subitems (1) to (10).
- (1) For licensure based on a doctoral degree, the internship shall be an organized training program subject to:
- (a) a minimum of an 1,800-hour predoctoral internship in psychology;
 - (b) a minimum of 20 hours per week of supervised experience;
 - (c) completion in no fewer than 12, and within 30, consecutive months;
 - (d) a minimum of two hours of regularly scheduled supervision per week up to 40 hours worked;
 - (e) a minimum of one hour of supervision for each 20 hours, or portion of this, worked beyond 40 hours per week; and
 - (f) one hour per week of supervision provided by the primary supervisor on an individual, in-person basis. Supervision beyond the one hour per week may be conducted on an individual or group basis by the primary supervisor or designated supervisor.

(2) For licensure based on a master's degree or a master's equivalent in a doctoral program, the practicum must be an organized training program subject to:

- (a) a 600-hour practicum in psychology;
- (b) a minimum of 15 hours per week of supervised experience;
- (c) completion in no fewer than six, and within 12, consecutive months;
- (d) a minimum of one hour of regularly scheduled supervision for each 20 hours, or portion thereof, worked; and
- (e) all supervision shall be provided by the primary supervisor on an individual, in-person basis.

(3) Hours that qualify as predegree supervised professional experience may include those spent in supervision, research, teaching, record keeping, report writing, staff meetings, client care conferences, and required training sessions, as well as hours spent in direct client contact.

(4) The primary supervisor may designate other master's or doctoral prepared mental health professionals to provide training and supervision in specific skills for all or part of the required supervision beyond one hour per week.

(5) The primary supervisor shall establish procedures that adequately provide communication with designated supervisors regarding the supervisee's training experiences. The primary supervisor shall retain supervisory responsibility for all of the supervised professional experience, which must include discussions that incorporate the applicable ethical and practice standards of psychology.

(6) All supervisors shall be readily available for supervision, including both regularly scheduled supervisory meetings with the supervisee and additional contacts as needed. All supervisors needed shall know the rules, policies, and procedures at the supervisee's work site or agency, and shall personally review the work of the supervisee on a regular basis.

(7) The primary supervisor shall be competent in supervision, including the areas supervised and the populations served, and shall know the prevailing ethical and practice standards of psychology.

(8) The primary supervisor shall be:

- (a) a Minnesota licensed psychologist;
- (b) an individual who is credentialed as a psychologist in another jurisdiction; or
- (c) an individual who has a doctoral degree with a major in psychology and who is employed by a regionally accredited educational institution or by a federal, state, county, or local government, institution, agency, or research facility.

(9) The supervisor shall not be in a multiple relationship with the supervisee as defined in part 7200.0110, subpart 15, such as being an employee of the supervisee or a member of the supervisee's family.

(10) Reports by the supervisee shall be cosigned by the supervisor or issued with a cover letter stating that the report has been reviewed and approved by the supervisor.

D. The requirement in item C is considered met if the predegree internship completed by the applicant has been accredited by the American Psychological Association (APA) or

the program is a member of the Association of Predoctoral Psychology Internship Centers (APPIC).

E. The applicant's official transcript of the degree on which licensure is based shall document successful completion of the requirements of items A and C. If not documented by the transcript, the applicant shall document successful completion of the requirements described in item C by a letter sent directly to the board from the degree program director or equivalent that certifies successful completion of the 1,800-hour doctoral internship or the 600-hour master's practicum.

Subp. 6. **Completion of APA or CPA accredited program.** The requirements of subpart 5, items A and B, are considered met for applicants based on a doctoral degree if the applicant provides acceptable evidence that the degree was earned in a doctoral program that was accredited by the APA or CPA at the time the degree was conferred.

Statutory Authority: *MS s 148.90; 148.905; 148.91; 148.98; 214.06*

History: *14 SR 74; 14 SR 2988; 17 SR 2285; 37 SR 1085*

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7200.1400 [Repealed, 14 SR 74]

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7200.1410 [Repealed, 37 SR 1085]

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7200.1450 [Repealed, 37 SR 1085]

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7200.1455 INCOMPLETE EDUCATIONAL REQUIREMENTS.

A. An applicant with a doctoral or master's degree in psychology or a master's equivalent in a doctoral program in psychology whose degree program does not meet the educational requirements for licensure, may complete them postdegree as follows:

(1) an applicant may earn up to 12 semester credits or equivalent toward the educational requirements for licensure that may be completed outside of an organized sequence of study; or

(2) an applicant who needs more than 12 semester credits or equivalent must complete them as part of an organized sequence of study.

B. Acceptable documentation for item A, subitem (1), consists of an official transcript sent directly to the board documenting the successful completion of educational requirements and acceptable documentation for item A, subitem (2), consists of a letter from the degree program director or equivalent certifying that the program is an organized sequence of study.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.1500 INSTITUTIONAL ACCREDITATION.

For a degree to meet the standards for licensure, the institution granting the degree must be regionally accredited at the time the degree is granted.

Statutory Authority: *MS s 148.90; 148.905; 148.98*

History: *37 SR 1085*

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7200.1550 AMERICAN PSYCHOLOGICAL ASSOCIATION ACCREDITED PROGRAMS.

The requirements of part 7200.1300 are met for an application based on a doctoral degree if the applicant provides evidence that the degree was earned in a doctoral program that was accredited by the American Psychological Association at the time of graduation.

Statutory Authority: *MS s 148.905; 148.98*

History: *30 SR 1291; 37 SR 1085*

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7200.1600 DEGREES FROM FOREIGN INSTITUTIONS.

Subpart 1. **Canadian institutions.** A degree from a Canadian institution regulated by the provincial government shall be accepted as equivalent to a degree obtained from a regionally accredited domestic institution.

Subp. 2. **Other foreign institutions.** An applicant for licensure trained in an educational institution outside of the United States or Canada shall demonstrate to the satisfaction of the board that the applicant possesses a doctorate degree in psychology that meets the requirements of part 7200.1300. The applicant shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) and any other documentation the board deems necessary. The applicant shall be responsible for the expenses incurred as a result of the evaluation.

Subp. 3. **Translation services.** Upon board request, an applicant shall obtain translations of any documents relevant to licensure. The translator must be approved by the board. The cost of translating any transcript or other documentation shall be borne by the applicant.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.1700 [Repealed, 37 SR 1085]

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7200.1800 [Repealed, 37 SR 1085]

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7200.1900 [Repealed, 37 SR 1085]

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7200.2000 SUPERVISED EMPLOYMENT REQUIREMENTS FOR LICENSURE AS A LICENSED PSYCHOLOGIST.

Subpart 1. **General.** All applicants shall complete one full year of postdegree supervised employment or the equivalent in part-time employment. Employment shall consist of a minimum of 1,800 hours of actual work experience that are accrued in no less than 12 months and in no more than 30 months from the first date of employment. Postdegree employment for licensure as a licensed psychologist shall comply with subparts 2 and 3.

Subp. 2. **Supervision.** All postdegree employment shall be supervised. Supervision of postdegree employment for licensure shall meet the requirements in items A to I.

A. The supervision shall be provided according to Minnesota Statutes, section 148.925, subdivisions 1 to 3, 5, and 6.

B. A minimum of one hour of regularly scheduled supervision per week up to 20 hours worked and a minimum of one hour of supervision for each 20 hours, or a portion, worked beyond 20 hours per week. Hours worked beyond 50 in a week shall not count to the total required hours.

C. One hour per week of supervision shall be provided by the primary supervisor on an individual, in-person basis. The primary supervisor may designate other master's or doctoral prepared mental health professionals to provide training and supervision in specific skills for the required supervision beyond one hour per week, which may be conducted on an individual or group basis.

D. The primary supervisor shall establish procedures that adequately provide for communication with designated supervisors regarding the supervisee's training experiences. In complying with Minnesota Statutes, section 148.925, the primary supervisor shall retain supervisory responsibility for all supervised professional experience. Supervisory sessions with the primary supervisor shall include discussions that incorporate the applicable ethical and practice standards of psychology.

E. Both primary and designated supervisors shall be readily available for supervision, including both regularly scheduled supervisory meetings with the supervisee and ad hoc contacts as needed, and shall know the rules, policies, procedures, and populations served at the supervisee's work site. Both supervisors shall personally review the work of the supervisee on a regular basis.

F. Primary supervisors shall meet the competency and other requirements of supervision in Minnesota Statutes, section 148.925.

G. The supervisor shall not be in a multiple relationship with the supervisee, as defined in part 7200.0110, subpart 15.

H. The primary supervisor shall certify that the supervision requirements for licensure have been met.

I. An applicant who completes the required amount of postdegree supervised employment shall continue to receive supervision for any professional services meeting the definition of the practice of psychology until notified of licensure by the board.

Subp. 3. **Eligible employment.** Employment may be paid or unpaid and shall consist of the practice of psychology as defined in Minnesota Statutes, section 148.89, subdivision 5.

A. Employment that qualifies may include time spent in supervision, research, teaching, case management, program development, administration or evaluation, staff consultation, peer review, primary or secondary prevention, attendance at workshops, seminars, or other scientific or professional training activities, record keeping, report writing, staff meetings, client care conferences, required training sessions, and direct client contact.

B. Employment that does not qualify includes employment required as preparation for the master's or doctoral degree, or a professional training program completed in association with earning a master's or doctoral degree, such as an internship, assistantship, associateship, clerkship, or practicum.

C. Employment between the time all requirements for the degree were met and the time of conferral of the degree may be credited toward the employment requirements for licensure if the date of completion of all degree requirements is verified directly to the board in writing by the degree program director or equivalent.

D. The employment shall be performed competently as judged by the supervisor.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 14 SR 2988; 17 SR 2285; 37 SR 1085*

Published Electronically: *January 31, 2013*

7200.2030 APPLICANT'S RESPONSIBILITY.

It is the applicant's responsibility to demonstrate to the board that the applicant has met all requirements for licensure under the Minnesota Psychology Practice Act.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

Published Electronically: *January 31, 2013*

7200.2035 LICENSURE BY MOBILITY.

Subpart 1. **General.** Applicants for licensure by mobility shall meet all requirements for licensure under the Minnesota Psychology Practice Act.

Subp. 2. **Certification or diplomate or credential.** The educational requirements of part 7200.1300, the national standardized examination requirement of part 7200.0550, subpart 1, item A, and the postdegree employment requirements of part 7200.2000 shall be considered met if, at the time of application, the applicant provides acceptable evidence of certification as a current holder of the Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or of a diplomate from the American Board of Professional Psychology (ABPP) or a health service provider in psychology. An applicant seeking to qualify for licensure under this part who is a graduate of a program that is not APA accredited and earned the degree after adoption of this rule, shall meet the human diversity requirement of part 7200.1300, subpart 5, item A, subitem (1), unit (f).

Statutory Authority: *MS s 148.905; 148.98*

History: 37 SR 1085

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7200.2040 DENIAL OF LICENSURE.

An applicant who fails to meet all requirements for licensure under the Minnesota Psychology Practice Act shall be denied licensure and informed in writing of the denial and the reason for it. An application submitted following denial is a new application and must be accompanied by the current licensure application fee. An applicant who has been denied licensure may reapply and shall pay the current nonrefundable application fee with each application.

Statutory Authority: MS s 148.905; 148.98

History: 37 SR 1085

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7200.2600 [Repealed, 37 SR 1085]

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7200.3000 [Repealed, 37 SR 1085]

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7200.3100 DISPLAY OF LICENSE.

Upon request, a provider shall present the license for review.

Statutory Authority: MS s 148.90; 148.905; 148.98

History: 37 SR 1085

Published Electronically: January 31, 2013

7200.3200 TERM OF LICENSE.

A license is valid for the period beginning with the date on which the license is originally granted or granted after termination pursuant to part 7200.3700 and ending two years later on the last

day of the month in which the license is granted. Thereafter the license is renewable for periods of two years, ending with the last day of the month in which the license is granted.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.3250 NOTIFYING BOARD OF ADDRESS CHANGE.

Licensees and applicants shall designate to the board a public mailing address for all board correspondence. Licensees and applicants shall notify the board in writing within 30 days of a change of mailing address. Licensees shall also designate a public telephone number.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.3300 NOTICE OF LICENSE RENEWAL.

At least one month before the renewal date, a renewal notice identifying the renewal date and the amount of the current nonrefundable renewal fee shall be provided to each licensee. Failure to receive the notice shall not relieve the licensee of the obligation to renew the license according to part 7200.3400, subpart 1.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *37 SR 1085*

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7200.3400 RENEWAL DEADLINE; APPLICATION AND FEE.

Subpart 1. **Payment of renewal fee.** Applications for renewal and fee must be received by the board or postmarked on or before the last day of the last month during which the license is valid.

Subp. 2. [Repealed, 37 SR 1085]

Subp. 3. [Repealed, 37 SR 1085]

Subp. 4. [Repealed, 37 SR 1085]

Statutory Authority: *MS s 148.90; 148.905; 148.91; 148.911; 148.98; 214.06*

History: *17 SR 2285; 37 SR 1085*

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7200.3500 LATE FEES.

An application for renewal postmarked or received after the last day of the last month during which the license is in effect must be accompanied by both the renewal fee and the late fee.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.3510 TERMINATION FOR NONRENEWAL OF LICENSE.

Subpart 1. **Notice.** Within 30 days after the renewal date, a licensee who has not renewed the license, including submission of a completed application and affirmation of continuing education requirements, shall be notified by registered or certified letter sent to the last known address of the licensee in the file of the board that the renewal is overdue and that failure to pay the current renewal fee and current late fee within 60 days after the renewal date will result in termination of the license. A second notice shall be sent at least seven days before a board meeting occurring 60 days or more after the renewal date to each licensee who has failed to renew.

Subp. 2. **Termination of license.** The board shall terminate the license of a licensee whose license renewal is at least 60 days overdue and to whom notification has been sent as provided in subpart 1. Failure of a licensee to receive notification is not grounds for later challenge of the termination. The former licensee shall be notified of the termination by registered or certified letter within seven days after the board action, in the same manner as provided in subpart 1.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.3600 [Repealed, 14 SR 74]

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7200.3605 [Repealed, 37 SR 1085]

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7200.3610 RELICENSURE FOLLOWING TERMINATION.

Subpart 1. **Relicensure requirements.** A former licensee whose license has been voluntarily terminated or terminated as provided in part 7200.3510, subpart 2, may be relicensed after complying with all laws and rules required of applicants for examination and licensure and verifying that the former licensee has not engaged in the practice of psychology in this state since the date of termination, except according to the exemptions from licensure in Minnesota Statutes, section 148.96, subdivision 3. The verification must be accompanied by an affirmation that the statement is true and correct to the best knowledge and belief of the former licensee. The fee for relicensure following termination is the licensure fee in effect at the time of application for relicensure, and statutes and rules governing relicensure are the statutes and rules in effect at the time the initial license was granted.

Subp. 2. [Repealed, 37 SR 1085]

Statutory Authority: *MS s 148.90; 148.905; 148.911; 148.98; 214.06*

History: 14 SR 74; 17 SR 2285; 37 SR 1085
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7200.3620 PRACTICING WITHOUT A LICENSE.

A former licensee seeking relicensure following termination as provided in part 7200.3510, subpart 2, who has engaged in the independent practice of psychology in this state since the date of termination is subject to disciplinary action at the time the new license is granted or to denial of licensure.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*
History: 14 SR 74; 17 SR 2285; 37 SR 1085
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7200.3700 VOLUNTARY TERMINATION.

A license may be voluntarily terminated at any time upon written notification to the board, unless a complaint is pending against the licensee. The notification must be received by the board prior to termination of the license for failure to renew. The board retains jurisdiction over a former licensee for complaints received after termination regarding conduct that occurred while licensed. A former licensee may be licensed again only after complying with all laws and rules, as provided in part 7200.3610, subpart 1, for relicensure following termination.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*
History: 14 SR 74; 37 SR 1085
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7200.3800 [Repealed, 14 SR 74]

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CONTINUING EDUCATION

7200.3810 PURPOSE OF CONTINUING EDUCATION.

The purpose of mandatory continuing education is to:

- A. promote the health, safety, and welfare of the residents of Minnesota who receive services from licensees; and
- B. promote the professional competence of providers of these services.

The continued development and maintenance of competence, including the ability to address competently the psychological needs of individuals from culturally diverse populations, are ongoing activities and are the ethical responsibilities of each licensee.

Statutory Authority: *MS s 148.905; 148.911; 148.98*
History: 17 SR 2285; 37 SR 1085
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7200.3820 CONTINUING EDUCATION REQUIREMENTS.

As a requirement for license renewal, each licensee shall have completed during the preceding renewal period a minimum of 40 hours of continuing education activities approved by the board according to part 7200.3830.

Statutory Authority: *MS s 148.905; 148.911; 148.98*

History: *17 SR 2285; 37 SR 1085*

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7200.3825 CALCULATION OF CONTINUING EDUCATION CREDIT.

Unless otherwise stated, one continuing education hour equals 60 minutes. Credit is given in one-half hour increments to the nearest one-half or full hour.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.3830 ELIGIBLE CONTINUING EDUCATION ACTIVITIES.

Subpart 1. **Continuing education activities eligible for approval.** The activities in items A to G are eligible for approval, provided they meet the definition and purpose of continuing education in parts 7200.0110, subpart 6, and 7200.3810.

A. Developing and teaching an academic course in psychology in an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the licensee teaches the course. One academic credit equals ten continuing education hours. Acceptable documentation is verification from the degree program director or the equivalent at the institution that the licensee taught the course for the first time and the number of academic credits assigned by the institution.

B . Attending presentations based on scientific, practice, or professional standards foundations.

Attendance may include participation by means of audio or audio-visual electronic communication.

Acceptable documentation of completion is a certificate of attendance. For activities that do not provide a certificate of attendance, acceptable documentation of completion is a registration receipt with a printed program or brochure.

C. Completing home study and computer-based courses offered by a vendor. Acceptable documentation of completion includes verification by the vendor that the licensee has passed all post-tests, or a completion certificate issued by the vendor. Hours of credit listed by the vendor shall be used in determining the hours to be credited by the board.

D. Completing satisfactorily a graduate level course in psychology offered by an institution accredited by a regional accrediting association. Acceptable documentation is an academic transcript showing graduate credits earned. One academic credit equals 20 continuing education hours. Audited courses earn ten continuing education hours per academic credit.

E. Developing and presenting a presentation based on scientific, practice, or professional standards foundations. Acceptable documentation of completion is a printed program agenda, or copies of the presentation materials or slides. One presentation hour equals three continuing education hours for each hour of presentation. Continuing education hours may be earned only for the licensee's first presentation of the content.

F. Developing taped or computerized materials based on scientific, practice, or professional standards foundations. Acceptable documentation of completion is a copy of the materials. Three continuing education hours may be claimed for each hour of published running time.

G. Authoring, editing, or reviewing a psychological publication. Continuing education hours may be earned only in the year of publication or first distribution. Acceptable documentation includes a publication cover sheet, masthead, table of contents, or marketing materials. The maximum hours earned are as follows:

(1) author of a professional or scientific book equals 40 hours, and acceptable documentation is a copy of the title page and other pages that document the date of publication;

(2) author of a professional or scientific book chapter or peer-reviewed journal article, equals 20 hours, and acceptable documentation is the table of contents showing the title and author and other pages that document the date of publication;

(3) author of a professional or scientific article in an edited newsletter of a professional association equals five hours, and acceptable documentation is a copy of the article and the publication cover sheet;

(4) editor of a professional or scientific book or peer-reviewed journal equals 30 hours, and acceptable documentation is a copy of the title page and any pages that document the date of publication;

(5) editor-in-chief of a professional or scientific journal equals 40 hours, and acceptable documentation is a copy of the journal masthead and pages that document the dates that the licensee is the editor-in-chief;

(6) journal article review, three hours per manuscript, and for this activity only, continuing education hours may be earned in the year the review is received by the editor, and acceptable documentation is a letter from the editor verifying the review has been provided; and

(7) author of a test based on scientific foundations equals 30 hours, and acceptable documentation is a copy of the test and the test manual.

Subp. 2. Request for board approval.

A. A sponsor or licensee may request board approval for activities in subpart 1. The sponsor or licensee shall be notified within 45 days after receipt of a request whether the activity has been approved or denied. The board may approve all, a portion, or none of the submitted activity according to this part. The request shall be in writing, and in the case of a sponsor application for approval, it shall be accompanied by the applicable fee. Sponsor and licensee requests shall include the following:

(1) the name and address of the sponsor;

(2) the names, academic degrees, and credentials of the presenters, if appropriate;

(3) the title of the activity and an outline of topics covered;

- (4) an agenda that specifies the timetable of instruction and other didactic activities;
- (5) the location and dates of the activity;
- (6) a statement of the educational objectives and targeted participants;
- (7) the mechanism for monitoring and clarifying attendance;
- (8) upon request, an explanation of how the activity contributes to the development or maintenance of the licensee's competence; and
- (9) upon request, documentation of the scientific, practice, or professional standards foundation for the topics covered.

B. When an activity is approved, the sponsor shall include the board's approval log number on the activity's brochure and certificate of attendance. The sponsor's brochures advertising approved activities shall include the information required under item A, subitems (1) to (7).

Materials advertising approved activities may include the statement: "THIS PROGRAM HAS BEEN APPROVED BY THE MINNESOTA BOARD OF PSYCHOLOGY FOR (NUMBER) CONTINUING EDUCATION HOURS." Materials advertising activities that have not been approved may not include such a statement or otherwise imply board approval.

Subp. 3. [Repealed, 37 SR 1085]

Subp. 4. [Repealed, 37 SR 1085]

Subp. 5. [Repealed, 37 SR 1085]

Subp. 6. [Repealed, 37 SR 1085]

Statutory Authority: *MS s 148.905; 148.911; 148.98*

History: *17 SR 2285; 37 SR 1085*

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7200.3840 [Repealed, 37 SR 1085]

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7200.3845 AUTOMATIC APPROVAL.

Any activity approved for continuing education credit by the American Psychological Association (APA), the Association of State and Provincial Psychology Boards (ASPPB), or other national professional organization as determined by the board, shall automatically be approved for continuing education credit without further application by the sponsor or licensee.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.3850 DOCUMENTATION AND REPORTING COMPLIANCE.

Subpart 1. **Renewal requirements.** Every two years, when the licensee applies for renewal of the license, the licensee must complete and submit an affidavit of continuing education

compliance showing that the licensee has completed a minimum of 40 approved continuing education hours since the last renewal.

The licensee's renewal application shall be deemed incomplete and void upon failure to submit the affidavit when required.

Subp. 2. **Record retention.** All licensees shall retain original documentation of attendance and completion of continuing education hours for a period of eight years after the renewal date.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.3860 CONTINUING EDUCATION AUDIT.

The board shall randomly audit a percentage of renewing licensees each month for compliance with continuing education requirements.

A. During the first ten days of the month following the renewal date, the board shall send a notice to the licensee that the licensee has been selected for an audit of continuing education hours. The notice shall include the reporting period selected for audit.

B. Selected licensees shall submit copies of the original documentation of continuing education hours completed during the reporting period. Upon specific request, the licensee shall submit original documentation. Failure to submit required documentation shall result in the renewal application being considered incomplete and void and constitute grounds for termination for nonrenewal of the license and disciplinary action.

C. The continuing education list must include the names of the sponsors, the dates and titles of the activity, the number of hours credited, and supportive documentation. A license renewal certificate shall not be issued unless the licensee has demonstrated that the requirements in parts 7200.3820 to 7200.3830 have been met.

D. If the licensee fails to meet the continuing education requirements by the renewal date, the license renewal is deemed late and the licensee will not be permitted to renew electronically. The renewal application must then be submitted in writing along with all documentation, renewal fee, and renewal late fee. The licensee may request a time-limited variance to fulfill the continuing education requirements after the renewal date. The variance request must meet the requirements of part 7200.6000, subpart 1, and must include a written plan listing the activities including the dates and the number of hours for each activity offered to meet the requirement. Continuing education activities completed after the renewal date pursuant to the written plan shall count toward meeting only the requirements of the previous renewal period. A variance granted under this part expires six months after the renewal date.

E. A provider who has submitted a request for a time-limited variance for continuing education requirements according to item D, or whose continuing education is under review by the board, may continue to practice until the board has taken action on the variance request, or the review is complete.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.3900 [Repealed, 17 SR 2285]

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RULES OF CONDUCT

7200.4500 RULES OF CONDUCT.

Subpart 1. **Scope.** The rules of conduct required by Minnesota Statutes, section 148.98, apply to the conduct of all providers, including conduct during the period of education, training, and employment that is required for licensure.

Subp. 2. **Purpose.** The rules of conduct constitute the standards by which the professional conduct of the provider is measured.

Subp. 3. **Violations.** A violation of the rules of conduct is a sufficient reason for disciplinary action, corrective action, or denial of licensure.

Subp. 4. [Repealed, 37 SR 1085]

Subp. 5. **Conflicts between rules and organizational demands.** If the organizational requirements at the provider's work setting conflict with the rules of conduct, the provider shall clarify to the employer the nature of the conflict, make known the requirement to comply with the rules of conduct, and resolve the conflict in a manner that results in compliance with the rules of conduct.

Statutory Authority: *MS s 148.90; 148.905; 148.98*

History: *17 SR 2285; 37 SR 1085*

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7200.4600 COMPETENT PROVISION OF SERVICES.

Subpart 1 **Competent practice.** Providers shall limit practice to the services that they can provide competently as defined in part 7200.0110, subpart 5.

Subp. 2. [Repealed, 37 SR 1085]

Subp. 2a. [Repealed, 37 SR 1085]

Subp. 3. [Repealed, 37 SR 1085]

Subp. 3a. **Developing new services.** While the provider is developing a new service, the provider shall obtain professional education, training, continuing education, consultation, supervision, experience, or a combination thereof necessary to ensure that the service is provided competently. If a complaint is submitted alleging a violation of this subpart, the provider has the burden of proof to demonstrate that the provider took the necessary steps to ensure the competent provision of services during the period of development.

Subp. 4. [Repealed, 37 SR 1085]

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.4700 PROTECTING THE PRIVACY OF CLIENTS.

Subpart 1. **Safeguarding private information.** The provider shall safeguard the private information obtained in the course of the practice of psychology. Private information may be disclosed to others only according to part 7200.4710 and with the exceptions in subparts 2 to 13.

Subp. 2. **Limited disclosure to others without consent.** Private information may be disclosed without the consent of the client when disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another individual, including the provider. In such case the private information is to be disclosed only to law enforcement agencies, the potential victim, the family of the client, or appropriate third parties in a position to prevent or avert the harm.

Subp. 3. **Services to multiple clients.** Whenever psychological services are provided to multiple clients, the provider shall initially inform each client of the provider's responsibility to treat any information gained in the course of rendering the services as private information, including any limitations to each client's right to privacy.

Subp. 3a. **Obtaining collateral information.** Prior to obtaining collateral information about a client from other individuals, the provider shall inform the other individuals that the information obtained may become part of the client's records and may be accessed or released by the client, unless prohibited by law. A provider is not required to give prior informed consent to other individuals when those individuals are credentialed health care providers acting in their professional capacities.

Subp. 4. **Minor clients.** At the beginning of a professional relationship, the provider shall inform a minor client, to the extent that the client can understand, that the law imposes limitations on the right of privacy of the minor with respect to the minor's communications with the provider.

Subp. 5. **Limited access to client records.** The provider shall limit access to client records. The provider shall make reasonable efforts to inform, or cause to be informed, individuals associated with the provider's agency or facility, such as staff members, students, volunteers, or community aides, that access to client records shall be limited only to the provider with whom the client has a professional relationship, individuals associated with the agency or facility whose duties require access, and individuals authorized to have access by the written informed consent of the client.

Subp. 6. [Repealed, 37 SR 1085]

Subp. 7. **Case reports.** All client information used in teaching, presentations, professional meetings, or publications shall be disguised to prevent identification of the client unless the provider has obtained a signed release of information.

Subp. 8. **Observation and recording.** Diagnostic interviews or therapeutic sessions with a client may be observed or electronically recorded only with written informed consent, except as otherwise provided by law or court order.

Subp. 9. **Continued privacy of client information.** The provider shall continue to maintain the privacy of client information, including the records of a client, after the professional relationship between the provider and the client has ceased.

Subp. 10. **Court-ordered or other mandated disclosures.** The proper disclosure of private information upon a court order or to conform with state or federal law, rule, or regulation shall not be considered a violation of the Psychology Practice Act.

Subp. 11. **Abuse or neglect of minors or vulnerable adults.** In the course of professional practice, the provider shall comply with all laws concerning the reporting of abuse or neglect of minors or vulnerable adults.

Subp. 12. [Repealed, 37 SR 1085]

Subp. 13. **Communication to initiate services.** When the provider is initially contacted to establish psychological services to a potential client, the provider or another individual designated by the provider may, with oral consent from the potential client, contact third-party payers or guarantors to determine payment or benefits information or to arrange for precertification of services when required by the individual's health plan.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.4710 ACCESSING AND RELEASING PRIVATE INFORMATION.

Subpart 1. **Right to access and release private information.** A client has the right to access and consent to release of private information maintained by the provider, including client records as provided in Minnesota Statutes, sections 144.291 to 144.298, relating to the provider's psychological services to that client, except as otherwise provided by law or court order.

Subp. 2. **Release of private information.** When a client initiates a request for the release of private information, the provider shall comply with Minnesota Statutes, sections 144.291 to 144.298. However, if the provider initiates the release of private information to a third party, a written authorization for release of information must be obtained that minimally includes:

- A. the name of the client;
- B. the name of the individual or entity providing the information;
- C. the name of the individual or entity to which release is to be made;
- D. the specific information to be released;

- E. the purpose of the release, such as whether the release is to coordinate professional care with another provider, to obtain insurance payments for services, or for other specified purposes;
- F. the time period covered by the release;
- G. a statement that the release is valid for one year, except as otherwise allowed by law, or for a period that is specified in the release;
- H. a declaration that the individual signing the statement has been told of and understands the nature and purpose of the authorized release;
- I. a statement that the release may be rescinded, except to the extent that the release has already been acted upon;
- J. the signature of the client or the client's legally authorized representative, whose relationship to the client shall be stated; and
- K. the date on which the release is signed.

Subp. 3. **Multiple client records.** Whenever psychological services are provided to multiple psychotherapy clients, each client has a right to access only that part of the records that includes information provided directly by the client or authorized by the client to be part of the record, unless otherwise directed by law or court order. Upon a request by one client to access or release multiple client records, that part of the records that contains information that has not been provided directly or by authorization of the requesting client shall be redacted unless written authorization to disclose this information has been obtained from the other client. Alternatively, the provider may, at the beginning of the service, obtain written informed consent from the clients stating that each client has the right to access or authorize release of all information that is part of the record.

Subp. 4. **Board investigations.** The provider shall release to the board and its agents private information that the board and its agents consider to be germane to the investigation of all matters pending before the board that relate to its lawful regulation activities. Redacting identifying information of individuals in the record is not required when providing information to the board as part of a board investigation.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.4720 INFORMED CONSENT.

Subpart 1. **Obtaining informed consent for services.** The provider shall obtain informed consent for services to a client, provided informed consent is not required for initial consultation to evaluate a client's need for services. The informed consent may be oral or written, except as provided in subpart 2. The informed consent shall include:

- A. the goals, purpose, and procedures of the proposed service;
- B. a discussion of factors that may impact the duration of the service;
- C. the applicable fee schedule;
- D. the limits to the client's privacy;
- E. the significant risks and benefits of the service;
- F. information and uncertainty of benefits, if the proposed service, method, or procedure is of an experimental, emerging, or innovative nature;

- G. where applicable, advisement to the client that the provider is developing a new service; and
- H. alternatives to the service, if any.

Subp. 2. **Written informed consent.** Written informed consent shall be required for forensic services, except as otherwise provided by law or court order, or as required by part 7200.4710, subpart 3.

Subp. 3. **Modification to service.** If the nature or purpose of a service changes substantially, it is necessary to obtain informed consent again.

Subp. 4. **Emergency or crisis services.** When emergency or crisis services are provided, the provider shall not be required to obtain informed consent. If services continue after the emergency or crisis has abated, informed consent shall then be obtained.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.4740 TERMINATION OF SERVICES.

Subpart 1. **Right to terminate services.** Either the provider or client may terminate professional services unless prohibited by law or court order.

Subp. 2. **Mandatory termination of services.** The provider shall promptly terminate services to a client, except as otherwise provided by law or court order, whenever:

- A. the provider's objectivity or effectiveness is impaired, unless a resolution can be achieved as permitted in part 7200.4810; or
- B. the client is unlikely to benefit from continued professional services by the provider.

Subp. 3. **Notification of termination.** Whenever the provider initiates a termination of professional services, the provider shall promptly inform the client in a manner that minimizes harm. This requirement shall not apply when the termination is due to the successful completion of a predefined service such as an assessment or time-limited therapy.

Subp. 4. **Recommendation upon termination.** Upon the termination of psychological services, the provider shall:

- A. offer to make a recommendation to the client for appropriate mental health services whenever the provider believes they are needed by the client; or
- B. provide such a recommendation upon the request of the client.

Subp. 5. **Exception to required recommendation.** The requirements of subpart 4 shall not apply whenever an assessment of an individual for a third party is conducted in which a recommendation for mental health services is not part of the requested service.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.4750 RECORD KEEPING.

Subpart 1. **Record-keeping requirements.** Providers shall maintain accurate and legible records of their services for each client. Records shall minimally contain:

- A. client personal data;
- B. an accurate chronological listing of all client visits, fees charged to the client or a third-party payer, and payments received;
- C. documentation of services, including, where applicable:
 - (1) assessment methods, data, and reports;
 - (2) an initial treatment plan and any subsequent revisions;
 - (3) the name of the individual providing the services;
 - (4) case notes for each date of service, including any interventions;
 - (5) consultations with collateral sources;
 - (6) diagnoses or problem descriptions;
 - (7) documentation that informed consent for services was given, including written informed consent documents, where applicable;
 - (8) documentation of supervision or consultation received; and
 - (9) the name of the individual who is clinically responsible for the services provided;
- D. copies of all correspondence relating to the client; and
- E. copies of all client authorizations for release of information and any other documents pertaining to the client.

Subp. 2. **Duplicate records.** The provider need not maintain client records that duplicate those maintained by the agency, clinic, or other facility at which services are provided.

Subp. 3. **Records retention.** The provider shall retain a client's records for a minimum of eight years after the date of the provider's last professional service to the client, except as otherwise provided by law. If the client is a minor, the records retention period shall not commence until the client reaches the age of 18, except as otherwise provided by law.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

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7200.4800 [Repealed, 14 SR 74]

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7200.4810 IMPAIRED OBJECTIVITY OR EFFECTIVENESS.

Subpart 1. **Situations involving impaired objectivity or effectiveness.** Items A to F involve impaired objectivity or effectiveness and are prohibited as specified.

- A. The provider shall not provide psychological services to a client if doing so would create a multiple relationship. If an unforeseen multiple relationship arises after services have been initiated, the provider shall promptly terminate the professional relationship. This item shall not apply if the psychological services involve teaching or research, if such a relationship cannot reasonably be avoided.

B. The provider shall not provide to a client psychotherapy or assessment services and concurrently either supervision or teaching. If an unforeseen situation arises in which both types of services are required or requested by the client or a third party, the provider shall decline to provide one or both of the services.

C. The provider shall not provide concurrently to a client two or more types of psychological services in which a fundamental conflict arises between the psychological services. If the conflict cannot be resolved in the manner required in subpart 2a, the provider shall decline to provide one or more of the services that give rise to the conflict.

D. The provider shall not provide psychotherapy services to multiple clients whose psychotherapy goals are fundamentally irreconcilable. If this situation arises after services have been initiated, the provider shall promptly terminate services to one or both clients.

E. The provider shall not provide psychological services to a client when the provider is biased for or against the client for any reason that interferes with the provider's impartial judgment, except if the provider is resolving the impairment in the manner required in subpart 2a.

F. The provider shall not provide services to a client when there is a fundamental divergence or conflict of service goals, interests, values, or attitudes between the client and the provider that adversely affects the professional relationship, except if the provider is resolving the impairment in the manner required in subpart 2a.

Subp. 2. [Repealed, 37 SR 1085]

Subp. 2a. **Resolution of impaired objectivity or effectiveness.** When an impairment occurs that is listed in subpart 1, item C, E, or F, the provider may provide services only if the provider actively pursues a resolution of the impairment and is able to do so in a manner that minimizes the potential for adverse effects on the client or potential client. If the provider attempts to resolve the impairment, it shall be by means of relevant professional education, training, study, continuing education, consultation, psychotherapy, intervention, supervision, or discussion with the client or potential client, or an appropriate combination thereof. If resolution of the impairment is not possible, the provider shall terminate services.

Subp. 3. **Termination of services due to impaired objectivity or effectiveness.** Termination of services required by subpart 2a must conform with the requirements of part 7200.4740.

Subp. 4. **Burden of proof.** If a complaint is submitted to the board alleging a violation of this part, the provider has the burden of proof to demonstrate that there was no impaired objectivity or effectiveness or that the provider was compliant with subpart 2a.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

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7200.4850 PROVIDER IMPAIRMENT.

The provider shall not offer psychological services to clients when the provider is unable to offer such services with reasonable skill and safety as a result of a physical or mental illness or condition, including, but not limited to, substance abuse or dependence.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

Published Electronically: *January 31, 2013*

7200.4900 [Repealed, 37 SR 1085]

Published Electronically: *January 31, 2013*

7200.4905 CLIENT WELFARE.

Subpart 1. **Bill of rights.** The provider shall display prominently on the premises of the professional practice or make available as a handout the bill of rights of clients which must include a statement that consumers of psychological services have the right:

- A. to expect that the provider has met the minimum qualifications of education, training, and experience required by state law for licensure;
- B. to examine public records maintained by the Board of Psychology that contain the credentials of the provider;
- C. to report complaints to the Board of Psychology;
- D. to be informed of the cost of professional services before receiving the services;
- E. to privacy as defined and limited by rule and law;
- F. to be free from being the object of unlawful discrimination while receiving psychological services;
- G. to have access to their records as provided in Minnesota Statutes, sections 144.291 to 144.298, except as otherwise provided by law or a prior written agreement;
- H. to be free from exploitation for the benefit or advantage of the provider;
- I. to terminate services at any time, except as otherwise provided by law or court order;
- J. to know the intended recipients of psychological assessment results;
- K. to withdraw consent to release assessment results, unless that right is prohibited by law or court order or is waived by prior written agreement;
- L. to a nontechnical description of assessment procedures; and
- M. to a nontechnical explanation and interpretation of assessment results, unless that right is prohibited by law or court order or is waived by prior written agreement. The handout must include the Board of Psychology's current mailing address, Web site address, and telephone number.

Subp. 2. **Stereotyping.** The provider shall consider the client as an individual and shall not impose on the client any stereotypes of behavior, values, or roles related to human diversity.

Subp. 3. **Misusing client relationship.** The provider shall not misuse the relationship with a client due to a relationship with another individual or entity.

Subp. 4. **Prohibiting exploitation of client.** The provider shall not exploit in any manner the professional relationship with a client for the provider's emotional, financial, sexual, or personal

advantage or benefit. This prohibition is extended indefinitely to former clients who are vulnerable or dependent on the provider. If a complaint is submitted to the board alleging violation of this subpart with respect to a former client, the provider has the burden of proof to demonstrate that the former client was not vulnerable or dependent.

Subp. 5. **Sexual behavior with client.** A provider shall not engage in any sexual behavior with a client, including:

- A. sexual contact with the client; or
- B. any physical, verbal, written, interactive, or electronic communication, conduct, or act that may be reasonably interpreted to be sexually seductive, demeaning, or harassing to the client.

Subp. 6. **Sexual behavior with former client.** The prohibitions against sexual behavior with clients established in subpart 5 also apply to former clients for a period of two years following the date of the last psychological service, whether or not the provider has formally terminated the professional relationship. This prohibition is extended indefinitely for a former client who is vulnerable or dependent on the provider. If a complaint is submitted to the board alleging a violation of this subpart with respect to a former client, the provider has the burden of proof to demonstrate that the former client was not vulnerable or dependent.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

Published Electronically: *January 31, 2013*

7200.4910 WELFARE OF STUDENTS, SUPERVISEES, AND RESEARCH SUBJECTS.

Subpart 1. **General.** Providers who teach, evaluate, supervise, or conduct research have authority over their students, supervisees, or research subjects, and must protect the welfare of these individuals.

Subp. 2. **Protections.** To protect the welfare of students, supervisees, or research subjects, providers shall not:

- A. impose any stereotypes of behavior, values, or roles related to race, ethnicity, national origin, religious affiliation, language, age, gender, physical disabilities, mental capabilities, sexual orientation or identity, or socioeconomic status;
- B. exploit or misuse in any manner the professional relationship for the emotional, financial, sexual, or personal advantage or benefit of the provider or another individual or entity;
- C. engage in any sexual behavior with a current supervisee, including sexual contact, as defined in part 7200.0110, subpart 28, or any physical, verbal, written, interactive, or electronic communication, conduct, or act that may be reasonably interpreted to be sexually seductive, demeaning, or harassing;
- D. engage in any deceptive or fraudulent behavior;
- E. disclose evaluative information except for legitimate professional or scientific purposes; or
- F. engage in any other unprofessional conduct.

Statutory Authority: *MS s 148.905; 148.98*

History: 37 SR 1085

Published Electronically: January 31, 2013

7200.4950 MEDICAL AND OTHER HEALTH CARE CONSIDERATIONS.

Subpart 1. **Coordinating services.** With authorization from the client, the provider shall coordinate services for the client with other health care professionals, consistent with the best interests of the client.

Subp. 2. **Medications.**

A. If competent to do so, providers may discuss prescription or nonprescription medications and their effects with a client or the client's physician or other prescribing health care provider, or in a report.

B. Providers shall make clear in medication discussions with a client or in a report or in other communications with other health care providers that the ultimate decision whether to prescribe, alter, or discontinue a medication lies solely with a physician or other prescribing health care provider.

Statutory Authority: *MS s 148.905; 148.98*

History: 37 SR 1085

Published Electronically: January 31, 2013

7200.5000 [Repealed, 37 SR 1085]

Published Electronically: January 31, 2013

7200.5010 CONCLUSIONS AND REPORTS.

Subpart 1. **Bases for assessments.** An assessment process must be appropriate and sufficient for the purposes for which it is intended.

Subp. 2. **Bases for conclusions.** Providers shall base their conclusions on information and procedures sufficient to substantiate those conclusions.

Subp. 3. **Administration and interpretation of tests.** Providers shall use psychological tests as follows:

- A. standardized tests shall be used preferentially over nonstandardized tests;
- B. all tests shall be administered and responses shall be recorded, scored, and interpreted based on practice or scientific foundations;
- C. whether a test is used in a nonstandard manner, the limitations of the test and the reasons for its nonstandard use shall be clearly stated in the report;
- D. a test's reliability, validity, and normative data shall be taken into account in its selection, use, and interpretation; and
- E. the reliability and validity of test statements and interpretations in reports shall be the responsibility of the provider, including when automated testing services are used.

Subp. 4. **Reports.** Reports shall include:

- A. a description of all sources of information upon which the provider's conclusions are based;

- B. any reservations or qualifications concerning the validity or reliability of the opinions and conclusions formulated and recommendations made, taking into account the conditions under which the procedures were carried out, including any nonstandard use of a test, the limitations of scientific procedures and psychological descriptions, base rate and baseline considerations, and the impossibility of absolute predictions;
- C. a statement concerning any discrepancy, disagreement, or inconsistent or conflicting information regarding the circumstances of the case that may have a bearing on the provider's conclusions;
- D. a statement of the nature of and reasons for any use of a procedure that differs from the purposes, populations, or referral questions for which it has been designed or validated, or that is administered, recorded, scored, or interpreted in other than a standard and objective manner; and
- E. a statement indicating if any test interpretations or report conclusions are not based on direct contact between the provider and the client.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

Published Electronically: *January 31, 2013*

7200.5100 PUBLIC STATEMENTS.

Subpart 1. **Prohibition against false or misleading information.** Public statements by providers shall not include false or misleading information. False or misleading information means any public statement that contains a material misrepresentation or omission of fact. The provider shall make reasonable efforts to ensure that public statements by others on behalf of the provider are truthful and shall make reasonable remedial efforts to bring a public statement into compliance with this part when the provider becomes aware of a violation.

Subp. 2. **Misrepresentation.** The provider shall not misrepresent directly or by implication professional qualifications including education, training, experience, competence, credentials, certification by a specialty board, or areas of specialization. The provider shall not misrepresent, directly or by implication, professional affiliations or the purposes and characteristics of institutions and organizations with which the provider is professionally associated.

Subp. 3. **Limit on use of degree.** An applicant for licensure or a provider licensed by virtue of a master's degree who has a doctorate from an institution that is not accredited by a regional accrediting association or whose doctoral major does not meet the education requirements for licensure shall not use the term "Doctor," "Ph.D.," "Psy.D.," or "Ed.D." with the provider's name in any situation or circumstance involving the practice of psychology.

Subp. 4. **Testimonials.** Providers shall not solicit or use testimonials by quotation or implication from current clients or from former clients who are vulnerable to undue influence.

Subp. 5. **Use of specialty board designations.** Providers may represent themselves as having an area of specialization from a specialty board, such as a designation as diplomate or fellow, if the specialty board used at minimum the following criteria to award the designation and the provider minimally meets the following four criteria:

- A. specified educational requirements defined by the specialty board;

- B. specified experience requirements defined by the specialty board;
- C. a work product evaluated by other specialty board members; and
- D. an in-person examination by a committee of specialty board members or a comprehensive written examination in the area of specialization.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 17 SR 2285; 37 SR 1085*

Published Electronically: *January 31, 2013*

7200.5200 FEES AND STATEMENTS.

Subpart 1. **Disclosure of fees.** The provider shall disclose the fees for professional services to a client before providing the services.

Subp. 2. **Itemized fee statement.** Upon request, the provider shall itemize fees for all services for which the client or a third party is billed. The statement shall identify minimally the date on which the service was provided, the nature of the service, and the name of the individual providing the service.

Subp. 3. **Representation of billed services.** The provider shall not directly or by implication misrepresent to the client or to a third party billed for services the nature of the services or the extent to which the provider has provided the services.

Subp. 4. **Claiming fees.** The provider shall not claim a fee for psychological services unless the provider is either the direct provider of the services or the individual who is clinically responsible for the provision of the services.

Subp. 5. [Repealed, 37 SR 1085]

Subp. 6. [Repealed, 14 SR 74]

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

Published Electronically: *January 31, 2013*

7200.5300 AIDING AND ABETTING UNLICENSED PRACTICE.

The provider shall not aid or abet:

- A. an unlicensed individual engaging in the practice of psychology; or
- B. an applicant or student in engaging in the independent practice of psychology. However, a licensed psychologist who supervises an individual preparing for licensure by the board is not in violation of this part if the supervision is conducted according to the Psychology Practice Act. Properly qualified individuals who administer and score psychological instruments under the direction of a licensee who maintains responsibility for the service are not considered to be in violation of this part. The licensee assumes responsibility for adequate training, experience, and oversight to ensure proper qualifications to administer and score the instruments.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 17 SR 2285; 37 SR 1085*

Published Electronically: *January 31, 2013*

7200.5400 [Repealed, 37 SR 1085]

Published Electronically: *January 31, 2013*

7200.5500 VIOLATION OF LAW.

The provider shall not violate any law in which the facts giving rise to the violation involve the practice of psychology as defined in the Psychology Practice Act.

In any board proceeding alleging a violation of this rule the proof of a conviction of a crime shall constitute proof of the underlying factual elements necessarily underlying that conviction.

Statutory Authority: *MS s 148.90; 148.905; 148.98*

History: *37 SR 1085*

Published Electronically: *January 31, 2013*

7200.5600 DECEPTION OR FRAUD.

The provider shall not engage in any conduct likely to deceive or defraud the public or the board.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

Published Electronically: *January 31, 2013*

7200.5700 UNPROFESSIONAL CONDUCT.

The provider shall not engage in any unprofessional conduct.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 37 SR 1085*

Published Electronically: *January 31, 2013*

7200.5750 COMPLAINTS TO BOARD.

Subpart 1. **Mandatory reporting requirements.** The provider shall file a complaint with the board when the provider has reason to believe that another provider:

- A. is unable to practice with reasonable skill and safety as a result of a physical or mental illness or condition, including but not limited to substance abuse or dependence, except that this mandated reporting requirement is deemed fulfilled by a report made to the health professionals services program (HPSP) under Minnesota Statutes, section 214.33, subdivision 1;
- B. is engaging in or has engaged in sexual behavior with a client or former client in violation of part 7200.4905, subpart 5, unless the information is obtained in the course of treating the other provider for the sexual behavior;
- C. has failed to report abuse or neglect of minors or vulnerable adults in violation of part 7200.4700, subpart 11; or
- D. has employed fraud or deception in obtaining or renewing a psychology license.

Subp. 2. **Communicating complaints to board.** A provider who knows or has reason to believe that the conduct of another provider is in violation of the Psychology Practice Act other than conduct listed in subpart 1 may file a complaint with the board.

Subp. 3. **Right to file complaint.** A provider shall not attempt to induce a client or another individual, either by request or other means, to waive the right to file a complaint with the board.

Statutory Authority: *MS s 148.905; 148.98*

History: *37 SR 1085*

Published Electronically: *January 31, 2013*

WAIVERS AND FEES

7200.6000 WAIVERS AND VARIANCES.

Subpart 1. **Application.** A licensee or applicant for licensure may petition the board for a time-limited waiver or variance of any rule except for any part of a rule which incorporates a statutory requirement. The waiver or variance shall be granted if:

- A. adherence to the rule would impose an undue burden on the petitioner;
- B. the granting of a waiver or variance will not adversely affect the public welfare; and
- C. in the case of a variance, the rationale for the rule in question can be met by alternative practices or measures specified by the petitioner.

Subp. 2. **Renewal, reporting, and revocation.** A waiver or variance shall be renewed upon reapplication according to the procedure described in subpart 1 if the circumstances justifying its granting continue to exist. Any petitioner who is granted a waiver or variance shall immediately notify the board in writing of any material change in the circumstances which justify its granting. A waiver or variance shall be revoked if a material change in the circumstances which justify its granting occurs or, in the case of a variance, if the petitioner has not complied with the alternative practices or measures specified in the petition.

Subp. 3. [Repealed, 17 SR 2285]

Subp. 4. [Repealed, 17 SR 2285]

Subp. 5. [Repealed, 17 SR 2285]

Subp. 6. **Burden of proof.** The burden of proof is upon the petitioner to demonstrate to the board that the requirements in subpart 1 have been met.

Subp. 7. **Statement of reasons.** The minutes of any meeting at which a waiver or variance is granted, denied, renewed, or revoked shall include the reason for the action.

Statutory Authority: *MS s 148.90; 148.905; 148.98; 214.06*

History: *14 SR 74; 17 SR 2285*

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7200.6100 FEES.

The nonrefundable fees for licensure payable to the board are as follows:

- A. application for admission to national standardized examination, \$150;
- B. application for professional responsibility examination, \$150;
- C. application for licensure as a licensed psychologist, \$500;
- D. renewal of license for a licensed psychologist, \$500;
- E. late renewal of license for a licensed psychologist, \$250;
- F. application for converting from master's to doctoral level licensure, \$150; and
- G. application for guest licensure, \$150.

Statutory Authority: *MS s 148.90; 148.905; 148.91; 148.98; 214.06*

History: *10 SR 1266; 12 SR 2789; 14 SR 2988; 15 SR 1542; 17 SR 2285; 21 SR 559; 25 SR 1894; 37 SR 1085*

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7200.6105 CONTINUING EDUCATION SPONSOR FEE.

A sponsor applying for approval of a continuing education activity pursuant to part 7200.3830, subpart 2, shall submit with the application a fee of \$80 for each activity.

Statutory Authority: *MS s 148.905; 214.06*

History: *21 SR 979; 25 SR 1894*

Published Electronically: *January 31, 2013*

7200.6150 [Repealed, 21 SR 559]

Published Electronically: *January 31, 2013*

7200.6160 [Repealed, 21 SR 559]

Published Electronically: *January 31, 2013*

7200.6170 [Repealed, 25 SR 1894]

Published Electronically: *January 31, 2013*

7200.6175 [Repealed, 37 SR 1085]

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THE PAGES THAT FOLLOW ARE NOT PART OF THE PSYCHOLOGY PRACTICE ACT.

THESE REGULATIONS ARE SOME OTHER LAWS RELATING TO THE PRACTICE OF PSYCHOLOGY IN MINNESOTA.

HOWEVER, THIS IS NOT INTENDED TO BE AN EXHAUSTIVE COLLECTION OF ALL LAWS REGULATING PSYCHOLOGY IN THIS STATE.

Table of Contents

MINNESOTA STATUTES – Chapter 13	68
13.41 LICENSING DATA.	68
MINNESOTA STATUTES – Chapter 144	70
144.291 MINNESOTA HEALTH RECORDS ACT.	70
144.292 PATIENT RIGHTS.	71
144.293 RELEASE OR DISCLOSURE OF HEALTH RECORDS.	73
144.294 RECORDS RELATING TO MENTAL HEALTH.	75
144.295 DISCLOSURE OF HEALTH RECORDS FOR EXTERNAL RESEARCH.	76
144.296 COPIES OF VIDEOTAPES.	77
144.297 INDEPENDENT MEDICAL EXAMINATION.	77
144.298 PENALTIES.	78
144.341 LIVING APART FROM PARENTS AND MANAGING FINANCIAL AFFAIRS.	79
144.342 MARRIAGE OR GIVING BIRTH, CONSENT FOR HEALTH SERVICE FOR SELF OR CHILD.	79
144.343 PREGNANCY, VENEREAL DISEASE, ALCOHOL OR DRUG ABUSE, ABORTION.	79
144.344 EMERGENCY TREATMENT.	81
144.3441 HEPATITIS B VACCINATION.	81
144.345 REPRESENTATIONS TO PERSONS RENDERING SERVICE.	81
144.346 INFORMATION TO PARENTS.	82
144.347 FINANCIAL RESPONSIBILITY.	82
144.4171 SCOPE.	83
144.4172 DEFINITIONS.	83
144.4173 CAUSE OF ACTION.	85
144.4174 STANDING.	85
144.4175 REPORTING.	85
MINNESOTA STATUTES – Chapter 147	87
147.111 REPORTING OBLIGATIONS.	87
147.121 IMMUNITY.	90
MINNESOTA STATUTES – Chapter 604	91
604.20 DEFINITIONS.	91

604.201 CAUSE OF ACTION FOR SEXUAL EXPLOITATION.	92
604.202 LIABILITY OF EMPLOYER.....	92
604.203 SCOPE OF DISCOVERY.	93
604.204 ADMISSION OF EVIDENCE.....	93
604.205 LIMITATION PERIOD.....	93
MINNESOTA STATUTES – Chapter 214	94
214.10 COMPLAINT, INVESTIGATION, AND HEARING.	94
214.101 CHILD SUPPORT; SUSPENSION OF LICENSE.	98
214.103 HEALTH-RELATED LICENSING BOARDS; COMPLAINT, INVESTIGATION, AND HEARING.	99
214.104 HEALTH-RELATED LICENSING BOARDS; SUBSTANTIATED MALTREATMENT.	102
214.105 HEALTH-RELATED LICENSING BOARDS; DEFAULT ON FEDERAL LOANS OR SERVICE OBLIGATIONS.	103
214.106 HEALTH-RELATED BOARDS; RESPONSE TO INSURANCE FRAUD.....	103
214.11 ADDITIONAL REMEDY.	104
214.12 CONTINUING EDUCATION.	104
214.15 TRADE REGULATION.	105
214.16 DATA COLLECTION; HEALTH CARE PROVIDER TAX.	105
214.28 DIVERSION PROGRAM.	106
214.29 PROGRAM REQUIRED.	106
214.31 AUTHORITY.	107
214.32 PROGRAM OPERATIONS AND RESPONSIBILITIES.	107
214.33 REPORTING.	109
214.34 IMMUNITY.....	109
214.35 CLASSIFICATION OF DATA.....	110
214.36 BOARD PARTICIPATION.....	110
214.37 RULEMAKING.	110
MINNESOTA STATUTES – Chapter 270C	111
270C.72 TAX CLEARANCE; ISSUANCE OF LICENSES.....	111
MINNESOTA STATUTES – Chapter 319B	113
319B.01 PROFESSIONAL FIRMS ACT; CITATION.....	113
319B.02 DEFINITIONS.	113

319B.03 AUTHORITY OF MINNESOTA FIRMS TO FURNISH PROFESSIONAL SERVICES; ELECTION BY MINNESOTA FIRMS TO INVOKE THE ACT.....	116
319B.04 AUTHORITY OF FOREIGN FIRMS TO FURNISH PROFESSIONAL SERVICES; ELECTION BY FOREIGN FIRMS TO INVOKE THE ACT.	117
319B.05 FIRM NAME.....	118
319B.06 FURNISHING SERVICES.....	118
319B.07 OWNERSHIP INTERESTS.....	120
319B.08 EFFECT OF DEATH OR DISQUALIFICATION OF OWNER.....	121
319B.09 GOVERNANCE.	123
319B.10 MERGERS AND OTHER REORGANIZATIONS.....	124
319B.11 PROFESSIONAL REGULATION.....	125
319B.12 TRANSITION PROVISIONS.	128
319B.40 PROFESSIONAL HEALTH SERVICES.....	129
MINNESOTA STATUTES – Chapter 609	130
609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.....	130
609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.	132
609.3451 CRIMINAL SEXUAL CONDUCT IN THE FIFTH DEGREE.....	134
MINNESOTA STATUTES – Chapter 626	135
626.556 REPORTING OF MALTREATMENT OF MINORS.....	135
626.5561 REPORTING OF PRENATAL EXPOSURE TO CONTROLLED SUBSTANCES.....	163
626.557 REPORTING OF MALTREATMENT OF VULNERABLE ADULTS.	165
626.5572 DEFINITIONS.....	182
626.5573 NEGLIGENCE ACTIONS.	188
626.561 INTERVIEWS WITH CHILD ABUSE VICTIMS.	189
MINNESOTA RULES – Chapter 4605	190
4605.7000 DEFINITIONS.....	190
4605.7010 PURPOSE.	191
4605.7020 APPLICABILITY.	191
4605.7030 PERSONS REQUIRED TO REPORT DISEASE.....	191
4605.7040 DISEASE AND REPORTS; CLINICAL MATERIALS SUBMISSIONS.....	193
4605.7042 VARICELLA ZOSTER DISEASE.	195
4605.7044 CHRONIC INFECTIONS; PERINATALLY TRANSMISSIBLE.....	195

4605.7046 SENTINEL SURVEILLANCE..... 196
4605.7050 UNUSUAL CASE INCIDENCE..... 196
4605.7060 CASES, SUSPECTED CASES, CARRIERS, AND DEATHS DUE TO DISEASE ACQUIRED OUTSIDE
THE STATE. 197
4605.7070 OTHER REPORTS..... 197
4605.7075 TUBERCULOSIS; SPECIAL REPORTING. 197
4605.7080 NEW DISEASES AND SYNDROMES; REPORTING AND SUBMISSIONS..... 198
4605.7090 DISEASE REPORT INFORMATION. 198

MINNESOTA STATUTES – Chapter 13

Government Data Practices

13.41 LICENSING DATA.

Subdivision 1. **Definition.** As used in this section "licensing agency" means any board, department or agency of this state which is given the statutory authority to issue professional or other types of licenses, except the various agencies primarily administered by the commissioner of human services. Data pertaining to persons or agencies licensed or registered under authority of the commissioner of human services shall be administered pursuant to section 13.46.

Subd. 2. **Private data; designated addresses and telephone numbers.**

(a) The following data collected, created or maintained by any licensing agency are classified as private, pursuant to section 13.02, subdivision 12: data, other than their names and designated addresses, submitted by applicants for licenses; the identity of complainants who have made reports concerning licensees or applicants which appear in inactive complaint data unless the complainant consents to the disclosure; the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action; the identity of patients whose medical records are received by any health licensing agency for purposes of review or in anticipation of a contested matter; inactive investigative data relating to violations of statutes or rules; and the record of any disciplinary proceeding except as limited by subdivision 5.

(b) An applicant for a license shall designate on the application a residence or business address and telephone number at which the applicant can be contacted in connection with the license application. A licensee shall designate a residence or business address and telephone number at which the licensee can be contacted in connection with the license. By designating an address under this paragraph other than a residence address, the applicant or licensee consents to accept personal service of process by service on the licensing agency for legal or administrative proceedings. The licensing agency shall mail a copy of the documents to the applicant or licensee at the last known residence address.

Subd. 3. **Board of Peace Officer Standards and Training.** The following government data of the Board of Peace Officer Standards and Training are private data:

- (1) home addresses of licensees and applicants for licenses; and
- (2) data that identify the government entity that employs a licensed peace officer.

The board may disseminate private data on applicants and licensees as is necessary to administer law enforcement licensure or to provide data under section 626.845, subdivision 1, to law enforcement agencies who are conducting employment background investigations.

Subd. 4. **Confidential data.** The following data collected, created or maintained by any licensing agency are classified as confidential, pursuant to section 13.02, subdivision 3: active investigative data relating to the investigation of complaints against any licensee.

Subd. 5. **Public data.** Licensing agency minutes, application data on licensees except nondesignated addresses, orders for hearing, findings of fact, conclusions of law and specification of the final disciplinary action contained in the record of the disciplinary action are classified as public, pursuant to section 13.02, subdivision 15. The entire record concerning the disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action. If the licensee and the licensing agency agree to resolve a complaint without a hearing, the agreement and the specific reasons for the agreement are public data. The license numbers, the license status, and continuing education records issued or maintained by the Board of Peace Officer Standards and Training are classified as public data, pursuant to section 13.02, subdivision 15.

Subd. 6. **Releasing data.** Any licensing agency may make any data classified as private or confidential pursuant to this section accessible to an appropriate person or agency if the licensing agency determines that failure to make the data accessible is likely to create a clear and present danger to public health or safety.

History: 1981 c 311 s 27,39; 1982 c 545 s 12-14,24; 1984 c 436 s 16; 1984 c 654 art 5 s 58; 1987 c 351 s 6; 1990 c 573 s 5; 1993 c 351 s 5; 1994 c 618 art 1 s 8; 1997 c 214 s 1; 1Sp1997 c 3 s 4; 1999 c 227 s 22; 2000 c 468 s 11; 2002 c 375 art 1 s 1; 2002 c 389 s 1; 2007 c 129 s 22

MINNESOTA STATUTES – Chapter 144

MINNESOTA HEALTH RECORDS ACT

144.291 MINNESOTA HEALTH RECORDS ACT.

Subdivision 1. **Short title.** Sections 144.291 to 144.298 may be cited as the Minnesota Health Records Act.

Subd. 2. **Definitions.** For the purposes of sections 144.291 to 144.298, the following terms have the meanings given.

(a) "Group purchaser" has the meaning given in section 62J.03, subdivision 6.

(b) "Health information exchange" means a legal arrangement between health care providers and group purchasers to enable and oversee the business and legal issues involved in the electronic exchange of health records between the entities for the delivery of patient care.

(c) "Health record" means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient.

(d) "Identifying information" means the patient's name, address, date of birth, gender, parent's or guardian's name regardless of the age of the patient, and other nonclinical data which can be used to uniquely identify a patient.

(e) "Individually identifiable form" means a form in which the patient is or can be identified as the subject of the health records.

(f) "Medical emergency" means medically necessary care which is immediately needed to preserve life, prevent serious impairment to bodily functions, organs, or parts, or prevent placing the physical or mental health of the patient in serious jeopardy.

(g) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the surviving spouse and parents of a deceased patient, or a person the patient appoints in writing as a representative, including a health care agent acting according to chapter 145C, unless the authority of the agent has been limited by the principal in the principal's health care directive. Except for minors who have received health care services under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

(h) "Provider" means:

(1) any person who furnishes health care services and is regulated to furnish the services under chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148D, 148F, 150A, 151, 153, or 153A;

(2) a home care provider licensed under section 144A.46;

(3) a health care facility licensed under this chapter or chapter 144A; and

(4) a physician assistant registered under chapter 147A.

(i) "Record locator service" means an electronic index of patient identifying information that directs providers in a health information exchange to the location of patient health records held by providers and group purchasers.

(j) "Related health care entity" means an affiliate, as defined in section 144.6521, subdivision 3, paragraph (b), of the provider releasing the health records.

History: 2007 c 147 art 10 s 2; 2012 c 187 art 1 s 21; 2012 c 197 art 2 s 44

144.292 PATIENT RIGHTS.

Subdivision 1. **Scope.** Patients have the rights specified in this section regarding the treatment the patient receives and the patient's health record.

Subd. 2. **Patient access.** Upon request, a provider shall supply to a patient complete and current information possessed by that provider concerning any diagnosis, treatment, and prognosis of the patient in terms and language the patient can reasonably be expected to understand.

Subd. 3. **Additional patient rights.** A patient's right specified in this section and sections 144.293 to 144.298 are in addition to the rights specified in sections 144.651 and 144.652 and any other provision of law relating to the access of a patient to the patient's health records.

Subd. 4. **Notice of rights; information on release.** A provider shall provide to patients, in a clear and conspicuous manner, a written notice concerning practices and rights with respect to access to health records. The notice must include an explanation of:

- (1) disclosures of health records that may be made without the written consent of the patient, including the type of records and to whom the records may be disclosed; and
- (2) the right of the patient to have access to and obtain copies of the patient's health records and other information about the patient that is maintained by the provider. The notice requirements of this subdivision are satisfied if the notice is included with the notice and copy of the patient and resident bill of rights under section 144.652 or if it is displayed prominently in the provider's place of business. The commissioner of health shall develop the notice required in this subdivision and publish it in the State Register.

Subd. 5. **Copies of health records to patients.** Except as provided in section 144.296, upon a patient's written request, a provider, at a reasonable cost to the patient, shall promptly furnish to the patient:

- (1) copies of the patient's health record, including but not limited to laboratory reports, x-rays, prescriptions, and other technical information used in assessing the patient's health conditions; or
- (2) the pertinent portion of the record relating to a condition specified by the patient. With the consent of the patient, the provider may instead furnish only a summary of the record. The provider may exclude from the health record written speculations about the patient's health condition, except that all information necessary for the patient's informed consent must be provided.

Subd. 6. **Cost.**

- (a) When a patient requests a copy of the patient's record for purposes of reviewing current medical care, the provider must not charge a fee.
- (b) When a provider or its representative makes copies of patient records upon a patient's request under this section, the provider or its representative may charge the

patient or the patient's representative no more than 75 cents per page, plus \$10 for time spent retrieving and copying the records, unless other law or a rule or contract provide for a lower maximum charge. This limitation does not apply to x-rays. The provider may charge a patient no more than the actual cost of reproducing x-rays, plus no more than \$10 for the time spent retrieving and copying the x-rays.

(c) The respective maximum charges of 75 cents per page and \$10 for time provided in this subdivision are in effect for calendar year 1992 and may be adjusted annually each calendar year as provided in this subdivision. The permissible maximum charges shall change each year by an amount that reflects the change, as compared to the previous year, in the Consumer Price Index for all Urban Consumers, Minneapolis-St. Paul (CPI-U), published by the Department of Labor.

(d) A provider or its representative may charge the \$10 retrieval fee, but must not charge a per page fee to provide copies of records requested by a patient or the patient's authorized representative if the request for copies of records is for purposes of appealing a denial of Social Security disability income or Social Security disability benefits under title II or title XVI of the Social Security Act; except that no fee shall be charged to a person who is receiving public assistance, who is represented by an attorney on behalf of a civil legal services program or a volunteer attorney program based on indigency. For the purpose of further appeals, a patient may receive no more than two medical record updates without charge, but only for medical record information previously not provided. For purposes of this paragraph, a patient's authorized representative does not include units of state government engaged in the adjudication of Social Security disability claims.

Subd. 7. Withholding health records from patient.

(a) If a provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (1), reasonably determines that the information is detrimental to the physical or mental health of the patient, or is likely to cause the patient to inflict self harm, or to harm another, the provider may withhold the information from the patient and may supply the information to an appropriate third party or to another provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (1). The other provider or third party may release the information to the patient.

(b) A provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (3), shall release information upon written request unless, prior to the request, a provider, as defined in section 144.291, subdivision 2, paragraph (h), clause (1), has designated and described a specific basis for withholding the information as authorized by paragraph (a).

Subd. 8. Form. By January 1, 2008, the Department of Health must develop a form that may be used by a patient to request access to health records under this section. A form developed by the commissioner must be accepted by a provider as a legally enforceable request under this section.

History: 2007 c 147 art 10 s 3; 2012 c 247 art 2 s 4

144.293 RELEASE OR DISCLOSURE OF HEALTH RECORDS.

Subdivision 1. **Release or disclosure of health records.** Health records can be released or disclosed as specified in subdivisions 2 to 9 and sections 144.294 and 144.295.

Subd. 2. **Patient consent to release of records.** A provider, or a person who receives health records from a provider, may not release a patient's health records to a person without:

- (1) a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release;
- (2) specific authorization in law; or
- (3) a representation from a provider that holds a signed and dated consent from the patient authorizing the release.

Subd. 3. **Release from one provider to another.** A patient's health record, including, but not limited to, laboratory reports, x-rays, prescriptions, and other technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition, or a summary of the record, shall promptly be furnished to another provider upon the written request of the patient. The written request shall specify the name of the provider to whom the health record is to be furnished. The provider who furnishes the health record or summary may retain a copy of the materials furnished. The patient shall be responsible for the reasonable costs of furnishing the information.

Subd. 4. **Duration of consent.** Except as provided in this section, a consent is valid for one year or for a period specified in the consent or for a different period provided by law.

Subd. 5. **Exceptions to consent requirement.** This section does not prohibit the release of health records:

- (1) for a medical emergency when the provider is unable to obtain the patient's consent due to the patient's condition or the nature of the medical emergency;
- (2) to other providers within related health care entities when necessary for the current treatment of the patient; or
- (3) to a health care facility licensed by this chapter, chapter 144A, or to the same types of health care facilities licensed by this chapter and chapter 144A that are licensed in another state when a patient:
 - (i) is returning to the health care facility and unable to provide consent; or
 - (ii) who resides in the health care facility, has services provided by an outside resource under Code of Federal Regulations, title 42, section 483.75(h), and is unable to provide consent.

Subd. 6. **Consent does not expire.** Notwithstanding subdivision 4, if a patient explicitly gives informed consent to the release of health records for the purposes and restrictions in clauses (1) and (2), the consent does not expire after one year for:

- (1) the release of health records to a provider who is being advised or consulted with in connection with the releasing provider's current treatment of the patient;
- (2) the release of health records to an accident and health insurer, health service plan corporation, health maintenance organization, or third-party administrator for purposes of payment of claims, fraud investigation, or quality of care review and studies, provided that:

- (i) the use or release of the records complies with sections 72A.49 to 72A.505;
- (ii) further use or release of the records in individually identifiable form to a person other than the patient without the patient's consent is prohibited; and
- (iii) the recipient establishes adequate safeguards to protect the records from unauthorized disclosure, including a procedure for removal or destruction of information that identifies the patient.

Subd. 7. **Exception to consent.** Subdivision 2 does not apply to the release of health records to the commissioner of health or the Health Data Institute under chapter 62J, provided that the commissioner encrypts the patient identifier upon receipt of the data.

Subd. 8. **Record locator service.**

(a) A provider or group purchaser may release patient identifying information and information about the location of the patient's health records to a record locator service without consent from the patient, unless the patient has elected to be excluded from the service under paragraph (d). The Department of Health may not access the record locator service or receive data from the record locator service. Only a provider may have access to patient identifying information in a record locator service. Except in the case of a medical emergency, a provider participating in a health information exchange using a record locator service does not have access to patient identifying information and information about the location of the patient's health records unless the patient specifically consents to the access. A consent does not expire but may be revoked by the patient at any time by providing written notice of the revocation to the provider.

(b) A health information exchange maintaining a record locator service must maintain an audit log of providers accessing information in a record locator service that at least contains information on:

- (1) the identity of the provider accessing the information;
- (2) the identity of the patient whose information was accessed by the provider;
- and
- (3) the date the information was accessed.

(c) No group purchaser may in any way require a provider to participate in a record locator service as a condition of payment or participation.

(d) A provider or an entity operating a record locator service must provide a mechanism under which patients may exclude their identifying information and information about the location of their health records from a record locator service. At a minimum, a consent form that permits a provider to access a record locator service must include a conspicuous check-box option that allows a patient to exclude all of the patient's information from the record locator service. A provider participating in a health information exchange with a record locator service who receives a patient's request to exclude all of the patient's information from the record locator service or to have a specific provider contact excluded from the record locator service is responsible for removing that information from the record locator service.

Subd. 9. **Documentation of release.**

(a) In cases where a provider releases health records without patient consent as authorized by law, the release must be documented in the patient's health record. In the case of a release under section 144.294, subdivision 2, the documentation must

include the date and circumstances under which the release was made, the person or agency to whom the release was made, and the records that were released.

(b) When a health record is released using a representation from a provider that holds a consent from the patient, the releasing provider shall document:

- (1) the provider requesting the health records;
- (2) the identity of the patient;
- (3) the health records requested; and
- (4) the date the health records were requested.

Subd. 10. Warranties regarding consents, requests, and disclosures.

(a) When requesting health records using consent, a person warrants that the consent:

- (1) contains no information known to the person to be false; and
- (2) accurately states the patient's desire to have health records disclosed or that there is specific authorization in law.

(b) When requesting health records using consent, or a representation of holding a consent, a provider warrants that the request:

- (1) contains no information known to the provider to be false;
- (2) accurately states the patient's desire to have health records disclosed or that there is specific authorization in law; and
- (3) does not exceed any limits imposed by the patient in the consent.

(c) When disclosing health records, a person releasing health records warrants that the person:

- (1) has complied with the requirements of this section regarding disclosure of health records;
- (2) knows of no information related to the request that is false; and
- (3) has complied with the limits set by the patient in the consent.

History: 2007 c 147 art 10 s 4; 1Sp2010 c 1 art 20 s 7

144.294 RECORDS RELATING TO MENTAL HEALTH.

Subdivision 1. **Provider inquiry.** Upon the written request of a spouse, parent, child, or sibling of a patient being evaluated for or diagnosed with mental illness, a provider shall inquire of a patient whether the patient wishes to authorize a specific individual to receive information regarding the patient's current and proposed course of treatment. If the patient so authorizes, the provider shall communicate to the designated individual the patient's current and proposed course of treatment. Section 144.293, subdivisions 2 and 4, apply to consents given under this subdivision.

Subd. 2. **Disclosure to law enforcement agency.** Notwithstanding section 144.293, subdivisions 2 and 4, a provider must disclose health records relating to a patient's mental health to a law enforcement agency if the law enforcement agency provides the name of the patient and communicates that the:

- (1) patient is currently involved in an emergency interaction with the law enforcement agency; and
- (2) disclosure of the records is necessary to protect the health or safety of the patient or of another person. The scope of disclosure under this subdivision is limited to the

minimum necessary for law enforcement to respond to the emergency. A law enforcement agency that obtains health records under this subdivision shall maintain a record of the requestor, the provider of the information, and the patient's name. Health records obtained by a law enforcement agency under this subdivision are private data on individuals as defined in section 13.02, subdivision 12, and must not be used by law enforcement for any other purpose.

Subd. 3. Records release for family and caretaker; mental health care.

(a) Notwithstanding section 144.293, a provider providing mental health care and treatment may disclose health record information described in paragraph (b) about a patient to a family member of the patient or other person who requests the information if:

- (1) the request for information is in writing;
- (2) the family member or other person lives with, provides care for, or is directly involved in monitoring the treatment of the patient;
- (3) the involvement under clause (2) is verified by the patient's mental health care provider, the patient's attending physician, or a person other than the person requesting the information, and is documented in the patient's medical record;
- (4) before the disclosure, the patient is informed in writing of the request, the name of the person requesting the information, the reason for the request, and the specific information being requested;
- (5) the patient agrees to the disclosure, does not object to the disclosure, or is unable to consent or object, and the patient's decision or inability to make a decision is documented in the patient's medical record; and
- (6) the disclosure is necessary to assist in the provision of care or monitoring of the patient's treatment.

(b) The information disclosed under this paragraph is limited to diagnosis, admission to or discharge from treatment, the name and dosage of the medications prescribed, side effects of the medication, consequences of failure of the patient to take the prescribed medication, and a summary of the discharge plan.

(c) If a provider reasonably determines that providing information under this subdivision would be detrimental to the physical or mental health of the patient or is likely to cause the patient to inflict self harm or to harm another, the provider must not disclose the information.

(d) This subdivision does not apply to disclosures for a medical emergency or to family members as authorized or required under subdivision 1 or section 144.293, subdivision 5, clause (1).

History: 2007 c 147 art 10 s 5

144.295 DISCLOSURE OF HEALTH RECORDS FOR EXTERNAL RESEARCH.

Subdivision 1. Methods of release.

(a) Notwithstanding section 144.293, subdivisions 2 and 4, health records may be released to an external researcher solely for purposes of medical or scientific research only as follows:

- (1) health records generated before January 1, 1997, may be released if the patient has not objected or does not elect to object after that date;
 - (2) for health records generated on or after January 1, 1997, the provider must:
 - (i) disclose in writing to patients currently being treated by the provider that health records, regardless of when generated, may be released and that the patient may object, in which case the records will not be released; and
 - (ii) use reasonable efforts to obtain the patient's written general authorization that describes the release of records in item (i), which does not expire but may be revoked or limited in writing at any time by the patient or the patient's authorized representative;
 - (3) the provider must advise the patient of the rights specified in clause (4); and
 - (4) the provider must, at the request of the patient, provide information on how the patient may contact an external researcher to whom the health record was released and the date it was released.
- (b) Authorization may be established if an authorization is mailed at least two times to the patient's last known address with a postage prepaid return envelope and a conspicuous notice that the patient's medical records may be released if the patient does not object, and at least 60 days have expired since the second notice was sent.

Subd. 2. **Duties of researcher.** In making a release for research purposes, the provider shall make a reasonable effort to determine that:

- (1) the use or disclosure does not violate any limitations under which the record was collected;
- (2) the use or disclosure in individually identifiable form is necessary to accomplish the research or statistical purpose for which the use or disclosure is to be made;
- (3) the recipient has established and maintains adequate safeguards to protect the records from unauthorized disclosure, including a procedure for removal or destruction of information that identifies the patient; and
- (4) further use or release of the records in individually identifiable form to a person other than the patient without the patient's consent is prohibited.

History: 2007 c 147 art 10 s 6

144.296 COPIES OF VIDEOTAPES.

A provider may not release a copy of a videotape of a child victim or alleged victim of physical or sexual abuse without a court order under section 13.03, subdivision 6, or as provided in section 611A.90. This section does not limit the right of a patient to view the videotape.

History: 2007 c 147 art 10 s 7

144.297 INDEPENDENT MEDICAL EXAMINATION.

Sections 144.291 to 144.298 apply to the subject and provider of an independent medical examination requested by or paid for by a third party. Notwithstanding section 144.293, a provider may release health records created as part of an independent medical examination to the third party who requested or paid for the examination.

History: 2007 c 147 art 10 s 8

144.298 PENALTIES.

Subdivision 1. **Licensing action.** A violation of sections 144.291 to 144.298 may be grounds for disciplinary action against a provider by the appropriate licensing board or agency.

Subd. 2. **Liability of provider or other person.** A person who does any of the following is liable to the patient for compensatory damages caused by an unauthorized release or an intentional, unauthorized access, plus costs and reasonable attorney fees:

- (1) negligently or intentionally requests or releases a health record in violation of sections 144.291 to 144.297;
- (2) forges a signature on a consent form or materially alters the consent form of another person without the person's consent;
- (3) obtains a consent form or the health records of another person under false pretenses; or
- (4) intentionally violates sections 144.291 to 144.297 by intentionally accessing a record locator service without authorization.

Subd. 3. **Liability for record locator service.** A patient is entitled to receive compensatory damages plus costs and reasonable attorney fees if a health information exchange maintaining a record locator service, or an entity maintaining a record locator service for a health information exchange, negligently or intentionally violates the provisions of section 144.293, subdivision 8.

History: 2007 c 147 art 10 s 9; 2012 c 247 art 2 s 5

CONSENT OF MINORS FOR HEALTH SERVICES

144.341 LIVING APART FROM PARENTS AND MANAGING FINANCIAL AFFAIRS.

Notwithstanding any other provision of law, any minor who is living separate and apart from parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing personal financial affairs, regardless of the source or extent of the minor's income, may give effective consent to personal medical, dental, mental and other health services, and the consent of no other person is required.

History: 1971 c 544 s 1; 1986 c 444

144.342 MARRIAGE OR GIVING BIRTH, CONSENT FOR HEALTH SERVICE FOR SELF OR CHILD.

Any minor who has been married or has borne a child may give effective consent to personal medical, mental, dental and other health services, or to services for the minor's child, and the consent of no other person is required.

History: 1971 c 544 s 2; 1986 c 444

144.343 PREGNANCY, VENEREAL DISEASE, ALCOHOL OR DRUG ABUSE, ABORTION.

Subdivision 1. **Minor's consent valid.** Any minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required.

Subd. 2. **Notification concerning abortion.** Notwithstanding the provisions of section 13.02, subdivision 8, no abortion operation shall be performed upon an unemancipated minor or upon a woman for whom a guardian has been appointed pursuant to sections 524.5-101 to 524.5-502 because of a finding of incapacity, until at least 48 hours after written notice of the pending operation has been delivered in the manner specified in subdivisions 2 to 4.

(a) The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

(b) In lieu of the delivery required by clause (a), notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee which means postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

[See Note.]

Subd. 3. **Parent, abortion; definitions.** For purposes of this section, "parent" means both parents of the pregnant woman if they are both living, one parent of the pregnant woman if only one is living or if the second one cannot be located through reasonably diligent effort, or

the guardian or conservator if the pregnant woman has one. For purposes of this section, "abortion" means the use of any means to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus and "fetus" means any individual human organism from fertilization until birth.

Subd. 4. **Limitations.** No notice shall be required under this section if:

- (a) The attending physician certifies in the pregnant woman's medical record that the abortion is necessary to prevent the woman's death and there is insufficient time to provide the required notice; or
- (b) The abortion is authorized in writing by the person or persons who are entitled to notice; or
- (c) The pregnant minor woman declares that she is a victim of sexual abuse, neglect, or physical abuse as defined in section 626.556. Notice of that declaration shall be made to the proper authorities as provided in section 626.556, subdivision 3.

Subd. 5. **Penalty.** Performance of an abortion in violation of this section shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant woman regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

Subd. 6. **Substitute notification provisions.** If subdivision 2 of this law is ever temporarily or permanently restrained or enjoined by judicial order, subdivision 2 shall be enforced as though the following paragraph were incorporated as paragraph (c) of that subdivision; provided, however, that if such temporary or permanent restraining order or injunction is ever stayed or dissolved, or otherwise ceases to have effect, subdivision 2 shall have full force and effect, without being modified by the addition of the following substitute paragraph which shall have no force or effect until or unless an injunction or restraining order is again in effect.

(c)(i) If such a pregnant woman elects not to allow the notification of one or both of her parents or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if said judge determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant woman is not mature, or if the pregnant woman does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parents, guardian, or conservator would be in her best interests and shall authorize a physician to perform the abortion without such notification if said judge concludes that the pregnant woman's best interests would be served thereby.

(ii) Such a pregnant woman may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court appointed counsel, and shall, upon her request, provide her with such counsel.

(iii) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(iv) An expedited confidential appeal shall be available to any such pregnant woman for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant woman at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant woman 24 hours a day, seven days a week.

Subd. 7. **Severability.** If any provision, word, phrase or clause of this section or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or application of this section which can be given effect without the invalid provision, word, phrase, clause, or application, and to this end the provisions, words, phrases, and clauses of this section are declared to be severable.

History: 1971 c 544 s 3; 1981 c 228 s 1; 1981 c 311 s 39; 1982 c 545 s 24; 1986 c 444; 2004 c 146 art 3 s 1

NOTE: The two-parent notification requirement in subdivision 2 was found constitutional by incorporation of paragraph (c) of subdivision 6. *Hodgson v. Minnesota*, 497 U.S. 417 (1990).

144.344 EMERGENCY TREATMENT.

Medical, dental, mental and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.

History: 1971 c 544 s 4

144.3441 HEPATITIS B VACCINATION.

A minor may give effective consent for a hepatitis B vaccination. The consent of no other person is required.

History: 1993 c 167 s 1

144.345 REPRESENTATIONS TO PERSONS RENDERING SERVICE.

The consent of a minor who claims to be able to give effective consent for the purpose of receiving medical, dental, mental or other health services but who may not in fact do so, shall be

deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.

History: *1971 c 544 s 5; 1986 c 444*

144.346 INFORMATION TO PARENTS.

The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, failure to inform the parent or guardian would seriously jeopardize the health of the minor patient.

History: *1971 c 544 s 6*

144.347 FINANCIAL RESPONSIBILITY.

A minor so consenting for such health services shall thereby assume financial responsibility for the cost of said services.

History: *1971 c 544 s 7*

HEALTH THREAT PROCEDURES

144.4171 SCOPE.

Subdivision 1. **Authority.** Under the powers and duties assigned to the commissioner in sections 144.05 and 144.12, the commissioner shall proceed according to sections 144.4171 to 144.4186 with respect to persons who pose a health threat to others or who engage in noncompliant behavior.

Subd. 2. **Preemption.** Sections 144.4171 to 144.4186 preempt and supersede any local ordinance or rule concerning persons who pose a health threat to others or who engage in noncompliant behavior.

History: 1987 c 209 s 4

144.4172 DEFINITIONS.

Subdivision 1. **Carrier.** "Carrier" means a person who serves as a potential source of infection and who harbors or who the commissioner reasonably believes to be harboring a specific infectious agent whether or not there is present discernible clinical disease. In the absence of a medically accepted test, the commissioner may reasonably believe an individual to be a carrier only when a determination based upon specific facts justifies an inference that the individual harbors a specific infectious agent.

Subd. 2. **Communicable disease.** "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 4. **Contact notification program.** "Contact notification program" means an ongoing program established by the commissioner to encourage carriers of a communicable disease whose primary route of transmission is through an exchange of blood, semen, or vaginal secretions, such as treponema pallidum, neisseria gonorrhoea, chlamydia trachomatis, and human immunodeficiency virus, to identify others who may be at risk by virtue of contact with the carrier.

Subd. 5. **Directly transmitted.** "Directly transmitted" means predominately:

- (1) sexually transmitted;
- (2) bloodborne; or
- (3) transmitted through direct or intimate skin contact.

Subd. 6. **Health directive.** "Health directive" means a written statement, or, in urgent circumstances, an oral statement followed by a written statement within three days, from the commissioner, or board of health as defined in section 145A.02, subdivision 2, with delegated authority from the commissioner, issued to a carrier who constitutes a health threat to others. A health directive must be individual, specific, and cannot be issued to a class of persons. The

directive may require a carrier to cooperate with health authorities in efforts to prevent or control transmission of communicable disease, including participation in education, counseling, or treatment programs, and undergoing medical tests necessary to verify the person's carrier status. The written directive shall be served in the same manner as a summons and complaint under the Minnesota Rules of Civil Procedure.

Subd. 7. **Licensed health professional.** "Licensed health professional" means a person licensed in Minnesota to practice those professions described in section 214.01, subdivision 2.

Subd. 8. **Health threat to others.** "Health threat to others" means that a carrier demonstrates an inability or unwillingness to act in such a manner as to not place others at risk of exposure to infection that causes serious illness, serious disability, or death. It includes one or more of the following:

(1) With respect to an indirectly transmitted communicable disease:

(a) behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others; or

(b) a substantial likelihood that a carrier will transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention.

(2) With respect to a directly transmitted communicable disease:

(a) repeated behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others;

(b) a substantial likelihood that a carrier will repeatedly transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention;

(c) affirmative misrepresentation by a carrier of the carrier's status prior to engaging in any behavior which has been demonstrated epidemiologically to transmit the disease; or

(d) the activities referenced in clause (1) if the person whom the carrier places at risk is:

(i) a minor,

(ii) of diminished capacity by reason of mood altering chemicals, including alcohol,

(iii) has been diagnosed as having significantly subaverage intellectual functioning,

(iv) has an organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation, or memory which substantially impairs judgment, behavior, reasoning, or understanding;

(v) adjudicated as an incompetent; or (vi) a vulnerable adult as defined in section 626.5572.

(3) Violation by a carrier of any part of a court order issued pursuant to this chapter.

Subd. 9. **Indirectly transmitted.** "Indirectly transmitted" means any transmission not defined by subdivision 5.

Subd. 10. **Noncompliant behavior.** "Noncompliant behavior" means a failure or refusal by a carrier to comply with a health directive.

Subd. 11. **Respondent.** "Respondent" means any person against whom an action is commenced under sections 144.4171 to 144.4186.

History: 1986 c 444; 1987 c 209 s 5; 1987 c 309 s 24; 1995 c 229 art 4 s 4

144.4173 CAUSE OF ACTION.

Subdivision 1. **Compliance with directive.** Failure or refusal of a carrier to comply with a health directive is grounds for proceeding under subdivision 2.

Subd. 2. **Commencement of action.** The commissioner, or a board of health as defined in section 145A.02, subdivision 2, with express delegated authority from the commissioner, may commence legal action against a carrier who is a health threat to others and, unless a court order is sought under section 144.4182, who engages in noncompliant behavior, by filing with the district court in the county in which respondent resides, and serving upon respondent, a petition for relief and notice of hearing.

History: 1987 c 209 s 6; 1987 c 309 s 24

144.4174 STANDING.

Only the commissioner, or a board of health as defined in section 145A.02, subdivision 2, with express delegated authority from the commissioner, may commence an action under sections 144.4171 to 144.4186.

History: 1987 c 209 s 7; 1987 c 309 s 24

144.4175 REPORTING.

Subdivision 1. **Voluntary reporting.** Any licensed health professional or other human services professional regulated by the state who has knowledge or reasonable cause to believe that a person is a health threat to others or has engaged in noncompliant behavior, as defined in section 144.4172, may report that information to the commissioner.

Subd. 2. **Liability for reporting.** A licensed health professional or other human services professional regulated by the state who has knowledge or reasonable cause to believe that a person is a health threat to others or has engaged in noncompliant behavior, and who makes a report in good faith under subdivision 1, is not subject to liability for reporting in any civil, administrative, disciplinary, or criminal action.

Subd. 3. **Falsified reports.** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

Subd. 4. **Waiver of privilege.** Any privilege otherwise created in section 595.02, clauses (d), (e), (g), and (j), with respect to persons who make a report under subdivision 1, is waived regarding any information about a carrier as a health threat to others or about a carrier's noncompliant behavior in any investigation or action under sections 144.4171 to 144.4186.

History: 1987 c 209 s 8

MINNESOTA STATUTES – Chapter 147

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 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 524.5-101 to 524.5-502 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.

Subd. 10. **Failure to report.** On or after August 1, 2012, any person, health care facility, business, or organization that fails to report as required under subdivisions 2 to 6 shall be subject to civil penalties for failing to report as required by law.

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; 2003 c 62 s 1; 2004 c 146 art 3 s 47; 2012 c 278 art 2 s 9

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) Members of the board and persons employed by the board or engaged in maintaining records and making reports regarding adverse health care events are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of or relating to their duties under section 147.155.

(c) 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; 2004 c 186 s 3

MINNESOTA STATUTES – Chapter 604

ACTION FOR SEXUAL EXPLOITATION; PSYCHOTHERAPISTS

604.20 DEFINITIONS.

Subdivision 1. **General.** The definitions in this section apply to sections 604.20 to 604.205.

Subd. 2. **Emotionally dependent.** "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to believe that the patient or former patient is unable to withhold consent to sexual contact by the psychotherapist.

Subd. 3. **Former patient.** "Former patient" means a person who was given psychotherapy within two years prior to sexual contact with the psychotherapist.

Subd. 4. **Patient.** "Patient" means a person who seeks or obtains psychotherapy.

Subd. 5. **Psychotherapist.** "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, licensed professional counselor, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Subd. 6. **Psychotherapy.** "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Subd. 7. **Sexual contact.** "Sexual contact" means any of the following, whether or not occurring with the consent of a patient or former patient:

(1) sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, into the genital or anal openings of the patient's or former patient's body by any part of the psychotherapist's body or by any object used by the psychotherapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the psychotherapist's body by any part of the patient's or former patient's body or by any object used by the patient or former patient for this purpose, if agreed to by the psychotherapist;

(2) kissing of, or the intentional touching by the psychotherapist of the patient's or former patient's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts;

(3) kissing of, or the intentional touching by the patient or former patient of the psychotherapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the psychotherapist agrees to the kissing or intentional touching.

"Sexual contact" includes requests by the psychotherapist for conduct described in clauses (1) to (3).

"Sexual contact" does not include conduct described in clause (1) or (2) that is a part of standard medical treatment of a patient.

Subd. 8. **Therapeutic deception.** "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

History: 1986 c 372 s 1; 1Sp1986 c 3 art 2 s 22; 1987 c 347 art 1 s 19; 2003 c 118 s 3

604.201 CAUSE OF ACTION FOR SEXUAL EXPLOITATION.

A cause of action against a psychotherapist for sexual exploitation exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred:

- (1) during the period the patient was receiving psychotherapy from the psychotherapist; or
- (2) after the period the patient received psychotherapy from the psychotherapist if (a) the former patient was emotionally dependent on the psychotherapist; or (b) the sexual contact occurred by means of therapeutic deception. The patient or former patient may recover damages from a psychotherapist who is found liable for sexual exploitation. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

History: 1986 c 372 s 2

604.202 LIABILITY OF EMPLOYER.

(a) An employer of a psychotherapist may be liable under section 604.201 if:

- (1) the employer fails or refuses to take reasonable action when the employer knows or has reason to know that the psychotherapist engaged in sexual contact with the plaintiff or any other patient or former patient of the psychotherapist; or
- (2) the employer fails or refuses to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the psychotherapist as a psychotherapist within the last five years, concerning the occurrence of sexual contacts by the psychotherapist with patients or former patients of the psychotherapist.

(b) An employer or former employer of a psychotherapist may be liable under section 604.201 if the employer or former employer:

- (1) knows of the occurrence of sexual contact by the psychotherapist with patients or former patients of the psychotherapist;
- (2) receives a specific written request by another employer or prospective employer of the psychotherapist, engaged in the business of psychotherapy, concerning the existence or nature of the sexual contact; and
- (3) fails or refuses to disclose the occurrence of the sexual contacts.

(c) An employer or former employer may be liable under section 604.201 only to the extent that the failure or refusal to take any action required by paragraph (a) or (b) was a proximate and actual cause of any damages sustained.

(d) No cause of action arises, nor may a licensing board in this state take disciplinary action, against a psychotherapist's employer or former employer who in good faith complies with this section.

History: 1986 c 372 s 3

604.203 SCOPE OF DISCOVERY.

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not subject to discovery except when the plaintiff claims damage to sexual functioning; or

- (1) the defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history; and
- (2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

History: 1986 c 372 s 4

604.204 ADMISSION OF EVIDENCE.

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not admissible except when:

- (1) the defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the history; and
- (2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Violation of the terms of the order may be grounds for a new trial.

History: 1986 c 372 s 6

604.205 LIMITATION PERIOD.

An action for sexual exploitation shall be commenced within five years after the cause of action arises.

History: 1986 c 372 s 7

MINNESOTA STATUTES – Chapter 214

214.10 COMPLAINT, INVESTIGATION, AND HEARING.

Subdivision 1. **Receipt of complaint; notice.** The executive director or executive secretary of a board, a board member or any other person who performs services for the board who receives a complaint or other communication, whether oral or written, which complaint or communication alleges or implies a violation of a statute or rule which the board is empowered to enforce, shall promptly forward the substance of the communication on a form prepared by the attorney general to the designee of the attorney general responsible for providing legal services to the board. Before proceeding further with the communication, the designee of the attorney general may require the complaining party to state the complaint in writing on a form prepared by the attorney general. Complaints which relate to matters within the jurisdiction of another governmental agency shall be forwarded to that agency by the executive director or executive secretary. An officer of that agency shall advise the executive director or executive secretary of the disposition of that complaint. A complaint received by another agency which relates to a statute or rule which a licensing board is empowered to enforce shall be forwarded to the executive director or executive secretary of the board to be processed in accordance with this section. No complaint alleging a matter within the jurisdiction of the board shall be dismissed by a board unless at least two board members have reviewed the matter. If a board makes a determination to investigate a complaint, it shall notify a licensee who is the subject of an investigation that an investigation has been initiated at a time when such notice will not compromise the investigation.

Subd. 2. **Investigation and hearing.** The designee of the attorney general providing legal services to a board shall evaluate the communications forwarded by the board or its members or staff. If the communication alleges a violation of statute or rule which the board is to enforce, the designee is empowered to investigate the facts alleged in the communication. In the process of evaluation and investigation, the designee shall consult with or seek the assistance of the executive director, executive secretary, or, if the board determines, a member of the board who has been appointed by the board to assist the designee. The designee may also consult with or seek the assistance of any other qualified persons who are not members of the board who the designee believes will materially aid in the process of evaluation or investigation. The executive director, executive secretary, or the consulted board member may attempt to correct improper activities and redress grievances through education, conference, conciliation and persuasion, and in these attempts may be assisted by the designee of the attorney general. If the attempts at correction or redress do not produce satisfactory results in the opinion of the executive director, executive secretary, or the consulted board member, or if after investigation the designee providing legal services to the board, the executive director, executive secretary, or the consulted board member believes that the communication and the investigation suggest illegal or unauthorized activities warranting board action, the person having the belief shall inform the executive director or executive secretary of the board who shall schedule a disciplinary hearing in accordance with chapter 14. Before directing the holding of a disciplinary hearing, the executive director, executive secretary, or the designee of the attorney general shall have considered the recommendations of the consulted board member. Before scheduling a disciplinary hearing, the executive director or executive secretary must have received a verified written complaint from the complaining party. A board member who was consulted

during the course of an investigation may participate at the hearing but may not vote on any matter pertaining to the case. The executive director or executive secretary of the board shall promptly inform the complaining party of the final disposition of the complaint. Nothing in this section shall preclude the board from scheduling, on its own motion, a disciplinary hearing based upon the findings or report of the board's executive director or executive secretary, a board member or the designee of the attorney general assigned to the board. Nothing in this section shall preclude a member of the board, executive director, or executive secretary from initiating a complaint.

Subd. 2a. **Proceedings.** A board shall initiate proceedings to suspend or revoke a license or shall refuse to renew a license of a person licensed by the board who is convicted in a court of competent jurisdiction of violating section 609.224, subdivision 2, paragraph (c), 609.23, 609.231, 609.2325, 609.233, 609.2335, 609.234, 609.465, 609.466, 609.52, or 609.72, subdivision 3.

Subd. 3. **Discovery; subpoenas.** In all matters pending before it relating to its lawful regulation activities, a board 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 produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so may, upon application to the district court in any district, be ordered to comply therewith; provided that in matters to which the Peace Officers Standards and Training Board is a party, application shall be made to the district court having jurisdiction where the event giving rise to the matter occurred. The chair of the board acting on behalf of the board may issue subpoenas and any board member 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 any person named therein, anywhere within the state by any officer authorized to serve subpoenas or other process or paper in civil actions, with the same fees and mileage and in the same manner as prescribed by law for service of process issued out of the district court of this state. Fees and mileage and other costs shall be paid as the board directs.

Subd. 4. [Repealed, 1993 c 326 art 7 s 22]

Subd. 5. [Repealed, 1993 c 326 art 7 s 22]

Subd. 6. [Repealed, 1993 c 326 art 7 s 22]

Subd. 7. [Repealed, 1993 c 326 art 7 s 22]

Subd. 8. **Special requirements for health-related licensing boards.** In addition to the provisions of this section that apply to all examining and licensing boards, the requirements in this subdivision apply to all health-related licensing boards, except the Board of Veterinary Medicine.

(a) If the executive director or consulted board member determines that a communication received alleges a violation of statute or rule that involves sexual contact with a patient or client, the communication shall be forwarded to the designee of the attorney general for an investigation of the facts alleged in the communication. If, after an investigation it is the opinion of the executive director or consulted board member that there is sufficient evidence to justify disciplinary action, the board shall conduct a disciplinary conference or hearing. If, after a hearing or disciplinary conference the board determines that misconduct involving sexual contact with a patient or client occurred, the board shall take disciplinary action. Notwithstanding subdivision 2, a board may not attempt to correct improper activities or redress grievances through education, conciliation, and persuasion, unless in the opinion of the executive director or consulted board member there is insufficient evidence to justify disciplinary action. The board may settle a case by stipulation prior to, or during, a hearing if the stipulation provides for disciplinary action.

(b) A board member who has a direct current or former financial connection or professional relationship to a person who is the subject of board disciplinary activities must not participate in board activities relating to that case.

(c) Each health-related licensing board shall establish procedures for exchanging information with other Minnesota state boards, agencies, and departments responsible for regulating health-related occupations, facilities, and programs, and for coordinating investigations involving matters within the jurisdiction of more than one regulatory body. The procedures must provide for the forwarding to other regulatory bodies of all information and evidence, including the results of investigations, that are relevant to matters within that licensing body's regulatory jurisdiction. Each health-related licensing board shall have access to any data of the Department of Human Services relating to a person subject to the jurisdiction of the licensing board. The data shall have the same classification under chapter 13, the Minnesota Government Data Practices Act, in the hands of the agency receiving the data as it had in the hands of the Department of Human Services.

(d) Each health-related licensing board shall establish procedures for exchanging information with other states regarding disciplinary actions against licensees. The procedures must provide for the collection of information from other states about disciplinary actions taken against persons who are licensed to practice in Minnesota or who have applied to be licensed in this state and the dissemination of information to other states regarding disciplinary actions taken in Minnesota. In addition to any authority in chapter 13 permitting the dissemination of data, the board may, in its discretion, disseminate data to other states regardless of its classification under chapter 13. Before transferring any data that is not public, the board shall obtain reasonable assurances from the receiving state that the data will not be made public.

Subd. 9. Acts against minors.

(a) As used in this subdivision, the following terms have the meanings given them.

(1) "Licensed person" means a person who is licensed under this chapter by the Board of Nursing, the Board of Psychology, the Social Work Licensing Board, the Board of Marriage and Family Therapy, the Board of Unlicensed Mental Health Service Providers, the Board of Behavioral Health and Therapy, or the Board of Teaching.

(2) "Crime against a minor" means conduct that constitutes a violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, 609.215, 609.221, 609.222, 609.223, 609.342, 609.343, 609.345, or a felony violation of section 609.377.

(b) In any license revocation proceeding, there is a rebuttable presumption that a licensed person who is convicted in a court of competent jurisdiction of committing a crime against a minor is unfit to practice the profession or occupation for which that person is licensed.

Subd. 10. Board of Peace Officers Standards and Training; receipt of complaint. Notwithstanding the provisions of subdivision 1 to the contrary, when the executive director or any member of the Board of Peace Officer Standards and Training produces or receives a written statement or complaint that alleges a violation of a statute or rule that the board is empowered to enforce, the executive director shall designate the appropriate law enforcement agency to investigate the complaint and shall order it to conduct an inquiry into the complaint's allegations. The investigating agency must complete the inquiry and submit a written summary of it to the executive director within 30 days of the order for inquiry.

Subd. 11. Board of Peace Officers Standards and Training; reasonable grounds determination.

(a) After the investigation is complete, the executive director shall convene a three-member committee of the board to determine if the complaint constitutes reasonable grounds to believe that a violation within the board's enforcement jurisdiction has occurred. At least two members of the committee must be board members who are peace officers. No later than 30 days before the committee meets, the executive director shall give the licensee who is the subject of the complaint and the complainant written notice of the meeting. The executive director shall also give the licensee a copy of the complaint. Before making its determination, the committee shall give the complaining party and the licensee who is the subject of the complaint a reasonable opportunity to be heard.

(b) The committee shall, by majority vote, after considering the information supplied by the investigating agency and any additional information supplied by the complainant or the licensee who is the subject of the complaint, take one of the following actions:

(1) find that reasonable grounds exist to believe that a violation within the board's enforcement jurisdiction has occurred and order that an administrative hearing be held;

(2) decide that no further action is warranted; or

(3) continue the matter. The executive director shall promptly give notice of the committee's action to the complainant and the licensee.

(c) If the committee determines that a complaint does not relate to matters within its enforcement jurisdiction but does relate to matters within another state or local agency's enforcement jurisdiction, it shall refer the complaint to the appropriate agency for disposition.

Subd. 12. Board of Peace Officers Standards and Training; administrative hearing; board action.

(a) Notwithstanding the provisions of subdivision 2 to the contrary, an administrative hearing shall be held if ordered by the committee under subdivision 11, paragraph (b). After the administrative hearing is held, the administrative law judge shall refer the matter to the full board for final action.

(b) Before the board meets to take action on the matter and the executive director must notify the complainant and the licensee who is the subject of the complaint. After the board meets, the executive director must promptly notify these individuals and the chief law enforcement officer of the agency employing the licensee of the board's disposition.

Subd. 13. **Board of Peace Officers Standards and Training; definition.** As used in subdivisions 10 to 12, "appropriate law enforcement agency" means the law enforcement agency assigned by the executive director and the chair of the committee of the board convened under subdivision 11.

History: 1976 c 222 s 5; 1977 c 326 s 10; 1979 c 117 s 1-5; 1981 c 310 s 15; 1982 c 424 s 130; 1985 c 247 s 22,23,25; 1986 c 444; 1987 c 384 art 2 s 1; 1988 c 557 s 5; 1991 c 265 art 9 s 62; 1993 c 326 art 7 s 4-7; 1995 c 164 s 33; 1995 c 229 art 4 s 10; 1Sp1997 c 3 s 25; 1999 c 227 s 22; 2000 c 284 s 7; 2003 c 118 s 21

214.101 CHILD SUPPORT; SUSPENSION OF LICENSE.

Subdivision 1. **Court order; hearing on suspension.**

(a) For purposes of this section, "licensing board" means a licensing board or other state agency that issues an occupational license.

(b) If a licensing board receives an order from a court or a child support magistrate or a notice from a public authority responsible for child support enforcement under section 518A.66 dealing with suspension of a license of a person found by the court or the public authority to be in arrears in child support or maintenance payments, or both, the board shall, within 30 days of receipt of the order or public authority notice, suspend the license as directed by the order or notice.

Subd. 2. [Repealed, 1995 c 257 art 1 s 36]

Subd. 3. [Repealed, 1995 c 257 art 1 s 36]

Subd. 4. **Verification of payments.** A board may not issue, reinstate, or renew a license of a person who has been suspended or is the subject of an order or notice under this section until it receives notification from the court, child support magistrate, or public authority that referred the matter to the board confirming that the applicant is not in arrears in either child support or maintenance payments, or confirming that the person is in compliance with a written payment plan regarding both current support and arrearages.

Subd. 5. **Application.** This section applies to support obligations ordered by any state, territory, or district of the United States.

History: 1991 c 292 art 5 s 4; 1993 c 322 s 1,2; 1993 c 340 s 2; 1994 c 630 art 11 s 3; 1995 c 257 art 1 s 12,13; 1999 c 196 art 2 s 5,6; 2005 c 164 s 29; 1Sp2005 c 7 s 28

214.103 HEALTH-RELATED LICENSING BOARDS; COMPLAINT, INVESTIGATION, AND HEARING.

Subdivision 1. **Application.** For purposes of this section, "board" means "health-related licensing board" and does not include the non-health-related licensing boards. Nothing in this section supersedes section 214.10, subdivisions 2a, 3, 8, and 9, as they apply to the health-related licensing boards.

Subd. 1a. Notifications and resolution.

(a) No more than 14 calendar days after receiving a complaint regarding a licensee, the board shall notify the complainant that the board has received the complaint and shall provide the complainant with the written description of the board's complaint process. The board shall periodically, but no less than every 120 days, notify the complainant of the status of the complaint consistent with section 13.41.

(b) Except as provided in paragraph (d), no more than 60 calendar days after receiving a complaint regarding a licensee, the board must notify the licensee that the board has received a complaint and inform the licensee of:

- (1) the substance of the complaint;
- (2) the sections of the law that have allegedly been violated;
- (3) the sections of the professional rules that have allegedly been violated; and
- (4) whether an investigation is being conducted.

(c) The board shall periodically, but no less than every 120 days, notify the licensee of the status of the complaint consistent with section 13.41.

(d) Paragraphs (b) and (c) do not apply if the board determines that such notice would compromise the board's investigation and that such notice cannot reasonably be accomplished within this time.

(e) No more than one year after receiving a complaint regarding a licensee, the board must resolve or dismiss the complaint unless the board determines that resolving or dismissing the complaint cannot reasonably be accomplished in this time and is not in the public interest.

(f) Failure to make notifications or to resolve the complaint within the time established in this subdivision shall not deprive the board of jurisdiction to complete the investigation or to take corrective, disciplinary, or other action against the licensee that is authorized by law. Such a failure by the board shall not be the basis for a licensee's request for the board to dismiss a complaint, and shall not be considered by an administrative law judge, the board, or any reviewing court.

Subd. 2. **Receipt of complaint.** The boards shall receive and resolve complaints or other communications, whether oral or written, against regulated persons. Before resolving an oral complaint, the executive director or a board member designated by the board to review complaints shall require the complainant to state the complaint in writing or authorize transcribing the complaint. The executive director or the designated board member shall determine whether the complaint alleges or implies a violation of a statute or rule which the board is empowered to enforce. The executive director or the designated board member may consult with the designee of the attorney general as to a board's jurisdiction over a complaint. If the executive director or the designated board member determines that it is necessary, the executive director may seek additional information to determine whether the complaint is

jurisdictional or to clarify the nature of the allegations by obtaining records or other written material, obtaining a handwriting sample from the regulated person, clarifying the alleged facts with the complainant, and requesting a written response from the subject of the complaint.

Subd. 3. **Referral to other agencies.** The executive director shall forward to another governmental agency any complaints received by the board which do not relate to the board's jurisdiction but which relate to matters within the jurisdiction of another governmental agency. The agency shall advise the executive director of the disposition of the complaint. A complaint or other information received by another governmental agency relating to a statute or rule which a board is empowered to enforce must be forwarded to the executive director of the board to be processed in accordance with this section. Governmental agencies may coordinate and conduct joint investigations of complaints that involve more than one governmental agency.

Subd. 4. **Role of attorney general.** The executive director or the designated board member shall forward a complaint and any additional information to the designee of the attorney general when the executive director or the designated board member determines that a complaint is jurisdictional and:

- (1) requires investigation before the executive director or the designated board member may resolve the complaint;
- (2) that attempts at resolution for disciplinary action or the initiation of a contested case hearing is appropriate;
- (3) that an agreement for corrective action is warranted; or
- (4) that the complaint should be dismissed, consistent with subdivision 8.

Subd. 5. **Investigation by attorney general.**

- (a) If the executive director or the designated board member determines that investigation is necessary before resolving the complaint, the executive director shall forward the complaint and any additional information to the designee of the attorney general. The designee of the attorney general shall evaluate the communications forwarded and investigate as appropriate.
- (b) The designee of the attorney general may also investigate any other complaint forwarded under subdivision 3 when the designee of the attorney general determines that investigation is necessary.
- (c) In the process of evaluation and investigation, the designee shall consult with or seek the assistance of the executive director or the designated board member. The designee may also consult with or seek the assistance of other qualified persons who are not members of the board who the designee believes will materially aid in the process of evaluation or investigation.
- (d) Upon completion of the investigation, the designee shall forward the investigative report to the executive director with recommendations for further consideration or dismissal.

Subd. 6. **Attempts at resolution.**

- (a) At any time after receipt of a complaint, the executive director or the designated board member may attempt to resolve the complaint with the regulated person. The available means for resolution include a conference or any other written or oral communication with the regulated person. A conference may be held for the purposes

of investigation, negotiation, education, or conciliation. Neither the executive director nor any member of a board's staff shall be a voting member in any attempts at resolutions which may result in disciplinary or corrective action. The results of attempts at resolution with the regulated person may include a recommendation to the board for disciplinary action, an agreement between the executive director or the designated board member and the regulated person for corrective action, or the dismissal of a complaint. If attempts at resolution are not in the public interest, a contested case hearing may be initiated.

(1) The designee of the attorney general shall represent the board in all attempts at resolution which the executive director or the designated board member anticipate may result in disciplinary action. A stipulation between the executive director or the designated board member and the regulated person shall be presented to the board for the board's consideration. An approved stipulation and resulting order shall become public data.

(2) The designee of the attorney general shall represent the board upon the request of the executive director or the designated board member in all attempts at resolution which the executive director or the designated board member anticipate may result in corrective action. Any agreement between the executive director or the designated board member and the regulated person for corrective action shall be in writing and shall be reviewed by the designee of the attorney general prior to its execution. The agreement for corrective action shall provide for dismissal of the complaint upon successful completion by the regulated person of the corrective action.

(b) Upon receipt of a complaint alleging sexual contact or sexual conduct with a client, the board must forward the complaint to the designee of the attorney general for an investigation. If, after it is investigated, the complaint appears to provide a basis for disciplinary action, the board shall resolve the complaint by disciplinary action or initiate a contested case hearing. Notwithstanding paragraph (a), clause (2), a board may not take corrective action or dismiss a complaint alleging sexual contact or sexual conduct with a client unless, in the opinion of the executive director, the designated board member, and the designee of the attorney general, there is insufficient evidence to justify disciplinary action.

Subd. 7. Contested case hearing. If the executive director or the designated board member determines that attempts at resolution of a complaint are not in the public interest, the executive director or the designated board member, after consultation with the designee of the attorney general, and the concurrence of a second board member, may initiate a contested case hearing under chapter 14. The designated board member or any board member who was consulted during the course of an investigation may participate at the contested case hearing. A designated or consulted board member may not deliberate or vote in any proceeding before the board pertaining to the case.

Subd. 8. Dismissal and reopening of a complaint.

(a) A complaint may not be dismissed without the concurrence of at least two board members and, upon the request of the complainant, a review by a representative of the attorney general's office. The designee of the attorney general must review before dismissal any complaints which allege any violation of chapter 609, any conduct which

would be required to be reported under section 626.556 or 626.557, any sexual contact or sexual conduct with a client, any violation of a federal law, any actual or potential inability to practice the regulated profession or occupation by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental or physical condition, any violation of state medical assistance laws, or any disciplinary action related to credentialing in another jurisdiction or country which was based on the same or related conduct specified in this subdivision.

(b) The board may reopen a dismissed complaint if the board receives newly discovered information that was not available to the board during the initial investigation of the complaint, or if the board receives a new complaint that indicates a pattern of behavior or conduct.

Subd. 9. **Information to complainant.** A board shall furnish to a person who made a complaint a written description of the board's complaint process, and actions of the board relating to the complaint.

Subd. 10. **Prohibited participation by board member.** A board member who has actual bias or a current or former direct financial or professional connection with a regulated person may not vote in board actions relating to the regulated person.

History: 1Sp1993 c 1 art 9 s 70; 1994 c 465 art 1 s 26; 1995 c 164 s 34; 2005 c 147 art 5 s 24; 2007 c 123 s 129,130; 2009 c 157 art 1 s 15; 2012 c 278 art 4 s 2

214.104 HEALTH-RELATED LICENSING BOARDS; SUBSTANTIATED MALTREATMENT.

(a) A health-related licensing board shall make determinations as to whether regulated persons who are under the board's jurisdiction should be the subject of disciplinary or corrective action because of substantiated maltreatment under section 626.556 or 626.557. The board shall make a determination upon receipt, and after the review, of an investigation memorandum or other notice of substantiated maltreatment under section 626.556 or 626.557, or of a notice from the commissioner of human services that a background study of a regulated person shows substantiated maltreatment.

(b) Upon completion of its review of a report of substantiated maltreatment, the board shall notify the commissioner of human services of its determination. The board shall notify the commissioner of human services if, following a review of the report of substantiated maltreatment, the board determines that it does not have jurisdiction in the matter and the commissioner shall make the appropriate disqualification decision regarding the regulated person as otherwise provided in chapter 245C. The board shall also notify the commissioner of health or the commissioner of human services immediately upon receipt of knowledge of a facility or program allowing a regulated person to provide direct contact services at the facility or program while not complying with requirements placed on the regulated person.

(c) In addition to any other remedy provided by law, the board may, through its designated board member, temporarily suspend the license of a licensee; deny a credential to an applicant; or require the regulated person to be continuously supervised, if the board finds there is probable cause to believe the regulated person referred to the board according to paragraph (a) poses an immediate risk of harm to vulnerable persons. The board shall consider all relevant information available, which may include but is not limited to:

- (1) the extent the action is needed to protect persons receiving services or the public;
- (2) the recency of the maltreatment;
- (3) the number of incidents of maltreatment;
- (4) the intrusiveness or violence of the maltreatment; and
- (5) the vulnerability of the victim of maltreatment.

The action shall take effect upon written notice to the regulated person, served by certified mail, specifying the statute violated. The board shall notify the commissioner of health or the commissioner of human services of the suspension or denial of a credential. The action shall remain in effect until the board issues a temporary stay or a final order in the matter after a hearing or upon agreement between the board and the regulated person. At the time the board issues the notice, the regulated person shall inform the board of all settings in which the regulated person is employed or practices. The board shall inform all known employment and practice settings of the board action and schedule a disciplinary hearing to be held under chapter 14. The board shall provide the regulated person with at least 30 days' notice of the hearing, unless the parties agree to a hearing date that provides less than 30 days' notice, and shall schedule the hearing to begin no later than 90 days after issuance of the notice of hearing.

History: 2000 c 319 s 2; 1Sp2001 c 9 art 14 s 3; 2002 c 379 art 1 s 113; 2003 c 15 art 1 s 33

214.105 HEALTH-RELATED LICENSING BOARDS; DEFAULT ON FEDERAL LOANS OR SERVICE OBLIGATIONS.

A health-related licensing board may refuse to grant a license or may impose disciplinary action against a person regulated by the board if the person is intentionally in nonpayment, default, or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program. The board shall consider the reasons for nonpayment, default, or breach of a repayment or service obligation and may not impose disciplinary action against a person in cases of total and permanent disability or long-term temporary disability lasting more than a year.

History: 1Sp2001 c 9 art 13 s 6; 2002 c 379 art 1 s 113

214.106 HEALTH-RELATED BOARDS; RESPONSE TO INSURANCE FRAUD.

A health-related board may revoke, suspend, condition, limit, restrict, or qualify a license to practice when clear and convincing evidence indicates the licensee has committed insurance fraud or subsequent to a conviction relating to fraud.

History: 2005 c 147 art 11 s 5

214.11 ADDITIONAL REMEDY.

In addition to any other remedy provided by law, a licensing board may in its own name bring an action in district court for injunctive relief to restrain any unauthorized practice or violation or threatened violation of any statute or rule which the board is empowered to regulate or enforce. A temporary restraining order may be granted in the proceeding if continued activity by a person would create an imminent risk of harm to others. Injunctive relief granted pursuant to this section shall not relieve a person enjoined from criminal prosecution by any competent authority or from disciplinary action by the board in respect to the person's license or application for license or renewal.

History: 1976 c 222 s 6

214.12 CONTINUING EDUCATION.

Subdivision 1. **Requirements.** The health-related and non-health-related licensing boards may promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees. These requirements of continuing professional education or training shall be designed solely to improve professional skills and shall not exceed an average attendance requirement of 50 clock hours per year. All requirements promulgated by the boards shall be effective commencing January 1, 1977, or at a later date as the board may determine. The 50 clock hour limitation shall not apply to the board of teaching.

Subd. 2. [Repealed, 1999 c 5 s 1]

Subd. 3. **Fetal alcohol syndrome.** The Board of Medical Practice and the Board of Nursing shall require by rule that family practitioners, pediatricians, obstetricians and gynecologists, and other licensees who have primary responsibility for diagnosing and treating fetal alcohol syndrome in pregnant women or children receive education on the subject of fetal alcohol syndrome and fetal alcohol effects, including how to: (1) screen pregnant women for alcohol abuse; (2) identify affected children; and (3) provide referral information on needed services.

History: 1976 c 222 s 7; 1992 c 559 art 1 s 8; 1997 c 203 art 2 s 24

214.15 TRADE REGULATION.

Notwithstanding any other law to the contrary, members of occupations regulated by the licensing boards may advertise, but advertisements must not be inconsistent with rules relating to advertising format and substance which each board is herewith empowered to adopt if that board had statutory advertising limitations on the effective date of the rules. A board may adopt rules relating to minimum fees, splitting of fees, referral fees, compensation, hours of practice, or other practice limitations, but only if (a) the governor or the board had specific statutory limitations or specific statutory authority to adopt the rules on the effective date of the rules, (b) the rules are not inconsistent with other law and (c) the rules are immediately and directly related to the protection of the safety and well-being of citizens of the state.

History: 1980 c 596 s 6

214.16 DATA COLLECTION; HEALTH CARE PROVIDER TAX.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given them.

(a) "Board" means the Boards of Medical Practice, Chiropractic Examiners, Nursing, Optometry, Dentistry, Pharmacy, Psychology, Social Work, Marriage and Family Therapy, and Podiatry.

(b) "Regulated person" means a licensed physician, chiropractor, nurse, optometrist, dentist, pharmacist, psychologist, social worker, marriage and family therapist, or podiatrist.

Subd. 2. **Board cooperation required.** The board shall assist the commissioner of health in data collection activities required under Laws 1992, chapter 549, article 7, and shall assist the commissioner of revenue in activities related to collection of the health care provider tax required under Laws 1992, chapter 549, article 9. Upon the request of the commissioner or the commissioner of revenue, the board shall make available names and addresses of current licensees and provide other information or assistance as needed.

Subd. 3. **Grounds for disciplinary action.** The board shall take disciplinary action, which may include license revocation, against a regulated person for:

(1) intentional failure to provide the commissioner of health with the data required under chapter 62J;

(2) intentional failure to provide the commissioner of revenue with data on gross revenue and other information required for the commissioner to implement sections 295.50 to 295.58;

(3) intentional failure to pay the health care provider tax required under section 295.52; and

(4) entering into a contract or arrangement that is prohibited under sections 62J.70 to 62J.73.

History: 1992 c 549 art 7 s 8; 1993 c 345 art 3 s 18; art 12 s 8; 1995 c 234 art 5 s 20,21; 1997 c 237 s 17,18

DIVERSION PROGRAMS

214.28 DIVERSION PROGRAM.

A health-related licensing board may establish performance criteria and contract for a diversion program for regulated professionals who are unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition.

History: 2000 c 284 s 8

214.29 PROGRAM REQUIRED.

Each health-related licensing board, including the Emergency Medical Services Regulatory Board under chapter 144E, shall either conduct a health professionals service program under sections 214.31 to 214.37 or contract for a diversion program under section 214.28.

History: 2000 c 284 s 9

HEALTH PROFESSIONALS SERVICES PROGRAM

214.31 AUTHORITY.

Two or more of the health-related licensing boards listed in section 214.01, subdivision 2, may jointly conduct a health professionals services program to protect the public from persons regulated by the boards who are unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition. The program does not affect a board's authority to discipline violations of a board's practice act. For purposes of sections 214.31 to 214.37, the emergency medical services regulatory board shall be included in the definition of a health-related licensing board under chapter 144E.

History: 1994 c 556 s 2; 2000 c 284 s 10

214.32 PROGRAM OPERATIONS AND RESPONSIBILITIES.

Subdivision 1. Management.

(a) A Health Professionals Services Program Committee is established, consisting of one person appointed by each participating board, with each participating board having one vote. The committee shall designate one board to provide administrative management of the program, set the program budget and the pro rata share of program expenses to be borne by each participating board, provide guidance on the general operation of the program, including hiring of program personnel, and ensure that the program's direction is in accord with its authority. If the participating boards change which board is designated to provide administrative management of the program, any appropriation remaining for the program 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 management and budget of any change in the administrative management of the program, and the amount of any appropriation transferred under this provision.

(b) The designated board, upon recommendation of the Health Professional Services Program Committee, shall hire the program manager and employees and pay expenses of the program from funds appropriated for that purpose. The designated board may apply for grants to pay program expenses and may enter into contracts on behalf of the program to carry out the purposes of the program. The participating boards shall enter into written agreements with the designated board.

(c) An advisory committee is established to advise the program committee consisting of:

- (1) one member appointed by each of the following: the Minnesota Academy of Physician Assistants, the Minnesota Dental Association, the Minnesota Chiropractic Association, the Minnesota Licensed Practical Nurse Association, the Minnesota Medical Association, the Minnesota Nurses Association, and the Minnesota Podiatric Medicine Association;
- (2) one member appointed by each of the professional associations of the other professions regulated by a participating board not specified in clause (1); and
- (3) two public members, as defined by section 214.02. Members of the advisory committee shall be appointed for two years and members may be reappointed.

Subd. 2. **Services.**

- (a) The program shall provide the following services to program participants:
- (1) referral of eligible regulated persons to qualified professionals for evaluation, treatment, and a written plan for continuing care consistent with the regulated person's illness. The referral shall take into consideration the regulated person's financial resources as well as specific needs;
 - (2) development of individualized program participation agreements between participants and the program to meet the needs of participants and protect the public. An agreement may include, but need not be limited to, recommendations from the continuing care plan, practice monitoring, health monitoring, practice restrictions, random drug screening, support group participation, filing of reports necessary to document compliance, and terms for successful completion of the regulated person's program; and
 - (3) monitoring of compliance by participants with individualized program participation agreements or board orders.
- (b) The program may develop services related to sections 214.31 to 214.37 for employers and colleagues of regulated persons from participating boards.

Subd. 3. **Participant costs.** Each program participant shall be responsible for paying for the costs of physical, psychosocial, or other related evaluation, treatment, laboratory monitoring, and random drug screens.

Subd. 4. **Eligibility.** Admission to the health professional services program is available to a person regulated by a participating board who is unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition. Admission in the health professional services program shall be denied to persons:

- (1) who have diverted controlled substances for other than self-administration;
- (2) who have been terminated from this or any other state professional services program for noncompliance in the program;
- (3) currently under a board disciplinary order or corrective action agreement, unless referred by a board;
- (4) regulated under sections 214.17 to 214.25, unless referred by a board or by the commissioner of health;
- (5) accused of sexual misconduct; or
- (6) whose continued practice would create a serious risk of harm to the public.

Subd. 5. **Completion; voluntary termination; discharge.** A regulated person completes the program when the terms of the program participation agreement are fulfilled. A regulated person may voluntarily terminate participation in the health professionals service program at any time by reporting to the person's board. The program manager may choose to discharge a regulated person from the program and make a referral to the person's board at any time for reasons including but not limited to: the degree of cooperation and compliance by the regulated person, the inability to secure information or the medical records of the regulated person, or indication of other possible violations of the regulated person's practice act. The regulated person shall be notified in writing by the program manager of any change in the person's

program status. A regulated person who has been terminated or discharged from the program may be referred back to the program for monitoring.

History: 1994 c 556 s 3; 1997 c 192 s 31; 1998 c 407 art 2 s 94; 2000 c 284 s 11; 2001 c 161 s 41; 2003 c 87 s 51; 2007 c 123 s 131; 2009 c 101 art 2 s 109

214.33 REPORTING.

Subdivision 1. **Permission to report.** A person who has personal knowledge that a regulated person has the inability to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals or any other materials, or as a result of any mental, physical, or psychological condition may report that knowledge to the program or to the board. A report to the program under this subdivision fulfills the reporting requirement contained in a regulated person's practice act.

Subd. 2. **Self-reporting.** A person regulated by a participating board who is unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental, physical, or psychological condition shall report to the person's board or the program.

Subd. 3. **Program manager.** The program manager shall report to the appropriate participating board a regulated person who does not meet program admission criteria, violates the terms of the program participation agreement, or leaves the program except upon fulfilling the terms for successful completion of the program as set forth in the participation agreement. The program manager shall report to the appropriate participating board a regulated person who is alleged to have committed violations of the person's practice act that are outside the authority of the health professionals services program as described in sections 214.31 to 214.37. The program manager shall inform any reporting person of the disposition of the person's report to the program.

Subd. 4. **Board.** A board may refer any regulated person to the program consistent with section 214.32, subdivision 4, if the board believes the regulated person will benefit and the public will be protected.

History: 1994 c 556 s 4

214.34 IMMUNITY.

Subdivision 1. **Reporting immunity.** Any individual, agency, institution, facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report in good faith to the program under this section or for cooperating with an investigation of a report or with staff of the program. Reports are confidential and are privileged communication.

Subd. 2. **Program immunity.** Members of the participating boards and persons employed by the boards and program, program consultants, and members of advisory bodies for the program are immune from civil liability and criminal prosecution for any actions, transactions, or reports in the execution of, or relating to, their duties under sections 214.31 to 214.36.

History: 1994 c 556 s 5

214.35 CLASSIFICATION OF DATA.

All data collected and maintained and any agreements with regulated persons entered into as part of the program is classified as active investigative data under section 13.41 while the individual is in the program, except for monitoring data which is classified as private. When a regulated person successfully completes the program, the data and participation agreement become inactive investigative data which shall be classified as private data under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9, in the case of data not on individuals. Data and agreements shall not be forwarded to the board unless the program reports a participant to a board as described in section 214.33, subdivision 3.

History: 1994 c 556 s 6

214.36 BOARD PARTICIPATION.

Participating boards may, by mutual agreement, implement the program upon enactment. Thereafter, health-related licensing boards desiring to enter into or discontinue an agreement to participate in the health professionals services program shall provide a written resolution indicating the board's intent to the designated board by January 1 preceding the start of a biennium.

History: 1994 c 556 s 7

214.37 RULEMAKING.

By July 1, 1996, the participating boards shall adopt joint rules relating to the provisions of sections 214.31 to 214.36 in consultation with the advisory committee and other appropriate individuals. The required rule writing does not prevent the implementation of sections 214.31 to 214.37 and Laws 1994, chapter 556, section 9, upon enactment.

History: 1994 c 556 s 8

MINNESOTA STATUTES – Chapter 270C

270C.72 TAX CLEARANCE; ISSUANCE OF LICENSES.

Subdivision 1. **Tax clearance required.** The state or a political subdivision of the state may not issue, transfer, or renew, and must revoke, a license for the conduct of a profession, occupation, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes payable to the commissioner, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes, penalties, or interest, or has not filed returns. If the applicant taxpayer does not owe delinquent taxes, penalties, or interest, but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed. A licensing authority that has received a notice from the commissioner may issue, transfer, renew, or not revoke the applicant's license only if (a) the commissioner issues a tax clearance certificate and (b) the commissioner or the applicant forwards a copy of the clearance to the authority. The commissioner may issue a clearance certificate only if the applicant does not owe the state any uncontested delinquent taxes, penalties, or interest and has filed all required returns.

Subd. 2. **Definitions.** For purposes of this section, the following terms have the meanings given.

(a) "Delinquent taxes" do not include a tax liability if (i) an administrative or court action which 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 applicant has entered into a payment agreement and is current with the payments.

(b) "Applicant" means an individual, if the license is issued to or in the name of an individual, or the corporation or partnership, if the license is issued to or in the name of a corporation or partnership. "Applicant" also means an officer of a corporation, a member of a partnership, or an individual who is liable for delinquent taxes, either for the entity for which the license is at issue or for another entity for which the liability was incurred, or personally as a licensee. In the case of a license transfer, "applicant" also means both the transferor and the transferee of the license. "Applicant" also means any holder of a license.

(c) "License" means any permit, registration, certification, or other form of approval authorized by statute or rule to be issued by the state or a political subdivision of the state as a condition of doing business or conducting a trade, profession, or occupation in Minnesota, specifically including, but not limited to, a contract for space rental at the Minnesota State Fair and authorization to operate concessions or rides at county and local fairs, festivals, or events.

(d) "Licensing authority" includes the Minnesota State Fair Board and county and local boards or governing bodies.

Subd. 3. **Notice and hearing.**

(a) The commissioner, on notifying a licensing authority pursuant to subdivision 1 not to issue, transfer, or renew a license, must send a copy of the notice to the applicant. If the applicant requests, in writing, within 30 days of the date of the notice a hearing, a contested case hearing must be held. The hearing must be held within 45 days of the

date the commissioner refers the case to the Office of Administrative Hearings. Notwithstanding any law to the contrary, the applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the applicant. The notice may be served personally or by mail.

(b) Prior to notifying a licensing authority pursuant to subdivision 1 to revoke a license, the commissioner must send a notice to the applicant of the commissioner's intent to require revocation of the license and of the applicant's right to a hearing under paragraph (a). A license is subject to revocation when 30 days have passed following the date of the notice in this paragraph without the applicant requesting a hearing, or, if a hearing is timely requested, upon final determination of the hearing under section 14.62, subdivision 1. A license shall be revoked by the licensing authority within 30 days after receiving notice from the commissioner to revoke.

(c) A hearing under this subdivision is in lieu of any other hearing or proceeding provided by law arising from any action taken under subdivision 1.

Subd. 4. **Licensing authority; duties.** All licensing authorities must require the applicant to provide the applicant's Social Security number and Minnesota business identification number on all license applications. Upon request of the commissioner, the licensing authority must provide the commissioner with a list of all applicants, including the name, address, business name and address, Social Security number, and business identification number of each applicant. The commissioner may request from a licensing authority a list of the applicants no more than once each calendar year.

History: 2005 c 151 art 1 s 87

MINNESOTA STATUTES – Chapter 319B

319B.01 PROFESSIONAL FIRMS ACT; CITATION.

Sections 319B.01 to 319B.12 may be cited as the "Minnesota Professional Firms Act."

History: 1997 c 22 art 1 s 1

319B.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 319B.01 to 319B.12, the terms defined in this section have the meanings given them.

Subd. 2. **Board.** "Board" means an agency of the state of Minnesota which has jurisdiction to grant a license to furnish professional services of a category within subdivision 19, except that in the case of a professional firm that provides legal services, "board" means the Board of Professional Responsibility.

Subd. 3. **Certificate of authority.** "Certificate of authority" means:

- (1) with respect to a foreign firm that is a corporation, the certificate of authority required under sections 303.01 to 303.24 and any notice filed under section 303.115 in connection with that certificate; and
- (2) with respect to a foreign firm that is a limited liability company, the certificate of authority required under sections 322B.905 to 322B.955 and any notice filed under section 322B.92, clause (3), in connection with that certificate.

Subd. 4. **Disqualified.** "Disqualified" means to have a license to provide pertinent professional services:

- (1) suspended, unless by its terms the suspension will automatically end less than 90 days after it takes effect; or
- (2) revoked.

The disqualification occurs when the suspension or revocation first takes effect.

Subd. 5. **Firm.** "Firm" includes a corporation, limited liability company, and limited liability partnership, wherever incorporated, organized, or registered.

Subd. 6. **Foreign firm.** "Foreign firm" means a corporation incorporated, limited liability company organized, or limited liability partnership registered under the laws of a state other than Minnesota.

Subd. 7. **Foreign professional firm.** "Foreign professional firm" means a foreign firm that has in effect an election under section 319B.04, subdivision 2.

Subd. 8. **Generally applicable governing law.** "Generally applicable governing law" of a firm means:

- (1) with respect to a firm that is a corporation, the state statute under which the corporation is incorporated;

- (2) with respect to a firm that is a limited liability company, the state statute under which the limited liability company is organized; and
- (3) with respect to a firm that is a limited liability partnership, the state statute under which the limited liability partnership obtains its status as a limited liability partnership; plus any other law that is generally relevant to the structure, governance, operations, or other internal affairs of the firm.

Subd. 9. **Governance authority.** "Governance authority" means the authority and responsibility to:

- (1) determine important policies for a professional firm;
- (2) superintend the professional firm's overall operations; and
- (3) maintain general, active management of and ultimate control over all matters involving professional judgment.

Subd. 9a. **License.** "License" includes any license, certificate, registration, or other authority referred to in subdivision 17 or 19.

Subd. 10. **Minnesota firm.** "Minnesota firm" includes a corporation organized under chapter 302A or 317A, limited liability company organized under chapter 322B, and limited liability partnership that has an effective statement of qualification under section 323A.1001.

Subd. 11. **Minnesota professional firm.** "Minnesota professional firm" means a Minnesota firm that has in effect an election under section 319B.03, subdivision 2.

Subd. 12. **Organizational document.** "Organizational document" means:

- (1) with respect to a corporation organized under chapter 302A or 317A, that corporation's articles of incorporation;
- (2) with respect to a limited liability company organized under chapter 322B, that limited liability company's articles of organization; and
- (3) with respect to a limited liability partnership that has an effective statement of qualification under section 323A.1001, that statement of qualification.

Subd. 13. **Owner.** "Owner" means:

- (1) with respect to a professional firm that is a corporation, except a nonprofit corporation, an owner of shares in the corporation;
- (2) with respect to a professional firm that is a limited liability company, a member in the limited liability company; and
- (3) with respect to a professional firm that is a limited liability partnership, a partner in the limited liability partnership.

Subd. 14. **Ownership interest.** "Ownership interest" means:

- (1) with respect to a professional firm that is a corporation, except a nonprofit corporation, shares in the corporation;
- (2) with respect to a professional firm that is a limited liability company, a membership interest in the limited liability company; and
- (3) with respect to a professional firm that is a limited liability partnership, a partnership interest.

Subd. 15. **Partial right.** "Partial right" means a right in or with respect to an ownership interest where the right is by itself insufficient to make the right's holder an owner.

Subd. 16. **Pertinent professional services.** "Pertinent professional services" means, with respect to a professional firm, the category or categories of professional services specified by the firm in its election under section 319B.03, subdivision 2, or 319B.04, subdivision 2.

Subd. 17. **Professional.** "Professional" means a natural person who is licensed by the laws of the state of Minnesota or similar laws of another state to furnish one or more of the categories of professional services listed in subdivision 19. Professional includes a natural person who is licensed or otherwise authorized to practice law under the laws of a foreign nation.

Subd. 18. **Professional firm.** "Professional firm" means both Minnesota professional firms and foreign professional firms.

Subd. 19. **Professional services.** "Professional services" means services of the type required or permitted to be furnished by a professional under a license, registration, or certificate issued by the state of Minnesota to practice medicine and surgery under sections 147.01 to 147.22, as a physician assistant pursuant to sections 147A.01 to 147A.27, chiropractic under sections 148.01 to 148.105, registered nursing under sections 148.171 to 148.285, optometry under sections 148.52 to 148.62, psychology under sections 148.88 to 148.98, social work under chapter 148D, marriage and family therapy under sections 148B.29 to 148B.39, professional counseling under sections 148B.50 to 148B.593, dentistry and dental hygiene under sections 150A.01 to 150A.12, pharmacy under sections 151.01 to 151.40, podiatric medicine under sections 153.01 to 153.25, veterinary medicine under sections 156.001 to 156.14, architecture, engineering, surveying, landscape architecture, geoscience, and certified interior design under sections 326.02 to 326.15, accountancy under chapter 326A, or law under sections 481.01 to 481.17, or under a license or certificate issued by another state under similar laws. Professional services includes services of the type required to be furnished by a professional pursuant to a license or other authority to practice law under the laws of a foreign nation.

Subd. 20. **State.** "State" means a state of the United States and the District of Columbia.

Subd. 21. **Statement of foreign qualification.** "Statement of foreign qualification" means with respect to a limited liability partnership that has an effective statement of foreign qualification under section 323A.1102, that statement of foreign qualification.

Subd. 21a. **Surviving spouse.** "Surviving spouse" means a surviving spouse of a deceased professional as an individual, as the personal representative of the estate of the decedent, as the trustee of an inter vivos or testamentary trust created by the decedent, or as the sole heir or beneficiary of an estate or trust of which the personal representative or trustee is a bank or other institution that has trust powers.

Subd. 22. **Update.** "Update" means:

- (1) with respect to a Minnesota professional firm that is either a Minnesota corporation or a Minnesota limited liability company, amend the organizational document;

- (2) with respect to a foreign professional firm that is a foreign corporation, file a notice under section 303.115 in connection with the foreign corporation's certificate of authority;
- (3) with respect to a foreign firm that is a limited liability company, file a notice under section 322B.92, clause (3), in connection with the foreign limited liability company's certificate of authority;
- (4) with respect to a Minnesota professional firm that is a limited liability partnership and has an effective statement of qualification under section 323A.1001, amend that statement of qualification; and
- (5) with respect to a foreign professional firm that is a limited liability partnership and has an effective statement of foreign qualification under section 323A.1102, amend that statement of foreign qualification.

History: 1997 c 22 art 1 s 2; 1998 c 309 s 5-7; 1999 c 85 art 3 s 1-4,17; 2000 c 260 s 53; 2001 c 42 s 2; 2001 c 109 art 2 s 4; 2005 c 147 art 1 s 69; 2005 c 153 s 1; 2007 c 123 s 132; 2009 c 148 s 2; 2009 c 178 art 1 s 56

319B.03 AUTHORITY OF MINNESOTA FIRMS TO FURNISH PROFESSIONAL SERVICES; ELECTION BY MINNESOTA FIRMS TO INVOKE THE ACT.

Subdivision 1. Authority under this act and under other law.

- (a) A Minnesota firm that has in effect an election under subdivision 2 may furnish professional services within Minnesota as provided in sections 319B.01 to 319B.12. A Minnesota firm may furnish professional services within Minnesota without making an election under subdivision 2 only if:
 - (1) no Minnesota statute, Minnesota rule, or tenet of Minnesota common law requires the Minnesota firm to make that election in order to furnish professional services within Minnesota; and
 - (2) no Minnesota statute, Minnesota rule, or tenet of Minnesota common law precludes the Minnesota firm from furnishing professional services within Minnesota in the absence of that election.
- (b) A Minnesota professional firm may provide professional services and exercise the ancillary powers permitted under section 319B.06, subdivision 1, paragraph (c), in another state if:
 - (1) the Minnesota professional firm is authorized to provide the services and exercise the powers within Minnesota;
 - (2) the Minnesota firm's organizational document does not prohibit the Minnesota professional firm from providing the services or exercising the powers in the other state;
 - (3) in the case of a Minnesota professional firm that is a limited liability partnership, the partnership agreement does not prohibit the Minnesota professional firm from providing the services or exercising the powers in the other state; and
 - (4) the Minnesota professional firm complies with all applicable laws of that other state regulating the furnishing of professional services and exercising of ancillary powers in that state.

Subd. 2. **Election to invoke this act.** To elect to become a Minnesota professional firm and be authorized to furnish professional services according to sections 319B.01 to 319B.12, a Minnesota firm must in its organizational document:

- (1) state that the Minnesota firm elects to operate under those sections;
- (2) acknowledge that the Minnesota firm is subject to those sections; and
- (3) specify from the list stated in section 319B.02, subdivision 19, the category or categories of professional services the Minnesota firm is authorized to provide.

The statement, acknowledgment, and specification may be made when a Minnesota firm initially files the organizational document or may be added at a later time by updating that document.

Subd. 3. **Rescission and amendment of election.**

- (a) A Minnesota professional firm may rescind its election by updating its organizational document to delete the statement, acknowledgment, and specification required by subdivision 2.
- (b) A Minnesota professional firm may update its organizational document to change the specification required by subdivision 2, clause (3).

Subd. 4. **Relationship of this act and generally applicable governing law.** If a Minnesota firm has an election under subdivision 2 in effect and the Minnesota firm's generally applicable governing law conflicts with sections 319B.01 to 319B.12, sections 319B.01 to 319B.12 govern.

History: 1997 c 22 art 1 s 3

319B.04 AUTHORITY OF FOREIGN FIRMS TO FURNISH PROFESSIONAL SERVICES; ELECTION BY FOREIGN FIRMS TO INVOKE THE ACT.

Subdivision 1. **Authority under this act and under other law.** A foreign firm that has in effect an election under subdivision 2 may furnish professional services within Minnesota as provided in sections 319B.01 to 319B.12. A foreign firm may furnish professional services within Minnesota without making an election under subdivision 2 only if:

- (1) no Minnesota statute, Minnesota rule, or tenet of Minnesota common law requires the foreign firm to make that election in order to furnish professional services within Minnesota; and
- (2) no Minnesota statute, Minnesota rule, or tenet of Minnesota common law precludes the foreign firm from furnishing professional services within Minnesota in the absence of that election.

Subd. 2. **Election to invoke authority under this act.** To elect to become a foreign professional firm and be authorized to furnish professional services according to sections 319B.01 to 319B.12, a foreign firm must in its certificate of authority or statement of foreign qualification:

- (1) state that the firm elects to operate under sections 319B.01 to 319B.12;
- (2) acknowledge that the firm is subject to those sections;
- (3) state that, to the extent its generally applicable governing law conflicts or differs with those sections, the foreign firm has made the necessary changes to the agreements

and other documents controlling its structure, governance, operations, and internal affairs so as to comply with those sections; and

(4) specify from the list stated in section 319B.02, subdivision 19, the category or categories of professional services the foreign firm is authorized to provide within Minnesota.

The statements, acknowledgment, and specification may be made when the foreign firm initially files for a certificate of authority or statement of foreign qualification or may be added at a later time by updating that document.

Subd. 3. Rescission and amendment of election.

(a) A foreign firm may rescind its election by updating its certificate of authority or statement of foreign qualification to delete the statements, acknowledgment, and specification required by subdivision 2.

(b) A foreign firm may update its certificate of authority or statement of foreign qualification to change the specification required by subdivision 2, clause (4).

History: 1997 c 22 art 1 s 4; 1999 c 85 art 3 s 5,6

319B.05 FIRM NAME.

Subdivision 1. **No implication of superiority.** The name of a professional firm must not imply or be used to imply superiority.

Subd. 2. **Required name endings.** The name of a professional firm must end:

(1) in the case of a corporation, with any one of the following phrases, words, or abbreviations: "Professional Corporation"; "Professional Service Corporation"; "Service Corporation"; "Professional Association"; "Chartered"; "Limited"; "P.C."; "P.S.C."; "S.C."; "P.A."; or "Ltd.";

(2) in the case of a limited liability company, with any one of the following phrases or abbreviations: "Professional Limited Liability Company"; "Limited Liability Company"; "P.L.L.C."; "P.L.C."; or "L.L.C."; or

(3) in the case of a limited liability partnership, with any one of the following phrases or abbreviations: "Professional Limited Liability Partnership"; "Limited Liability Partnership"; "P.L.L.P."; or "L.L.P."

A permitted abbreviation may include or omit periods.

History: 1997 c 22 art 1 s 5

319B.06 FURNISHING SERVICES.

Subdivision 1. **Categories of service.**

(a) A professional firm may provide professional services within Minnesota in one of the categories listed in section 319B.02, subdivision 19, if:

(1) the professional firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, specifies that category; and

(2) each of the professional firm's owners meet the requirements of section 319B.07 with regard to that category.

(b) A professional firm may provide professional services within Minnesota in more than one of the categories listed in section 319B.02, subdivision 19, if:

(1) the professional firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, specifies those categories;

(2) each of the professional firm's owners meet the requirements of section 319B.07 with regard to at least one of those categories; and

(3) the relevant licensing statutes, as listed in section 319B.02, subdivision 19, or rules in effect under those statutes, specifically authorize those categories of services to be practiced in combination.

(c) A professional firm may exercise any powers accorded it by its generally applicable governing law, so long as the professional firm exercises those powers solely to provide the pertinent professional services or to accomplish tasks ancillary to providing those services.

(d) A professional firm may not conduct any other business or provide any other services beyond those authorized in this subdivision, either within or outside of Minnesota.

(e) A professional firm may not adopt, implement, or follow a policy, procedure, or practice that would give a board grounds for disciplinary action against a professional who follows, agrees to, or acquiesces in the policy, procedure, or practice.

Subd. 2. Manner of furnishing services.

(a) A professional firm may furnish professional services within Minnesota only through professionals licensed or otherwise authorized by the state of Minnesota to furnish the pertinent professional services. Firm owners who are properly licensed professionals may provide professional services on a professional firm's behalf, and a professional firm may also hire or retain properly licensed professionals as employees, nonemployee agents, or independent contractors to furnish professional services on the professional firm's behalf.

(b) If a professional firm is authorized under subdivision 1, paragraph (b), to furnish more than one category of professional services, a professional furnishing professional services on behalf of the professional firm is required to be licensed or authorized only with respect to the category or categories of services which the professional actually furnishes.

Subd. 3. Relationship to person served.

(a) Sections 319B.01 to 319B.12 do not alter any law applicable to the relationship between a person furnishing professional services and a person receiving the professional services, including liability arising out of the professional services and the confidential relationship and privilege of communications between the person furnishing professional services and the person receiving the professional services.

(b) Sections 319B.01 to 319B.12 do not alter any law applicable to the relationship between a professional firm furnishing professional services and a person receiving the professional services, including liability arising out of the professional services and the confidential relationship and privilege of communications between the professional firm furnishing professional services and the person receiving the professional services.

(c) Whether a professional firm's owners and persons who control, manage, or act for the firm are personally liable for the firm's debts and obligations is determined according to the firm's generally applicable governing law.

History: 1997 c 22 art 1 s 6; 1997 c 174 art 12 s 65

319B.07 OWNERSHIP INTERESTS.

Subdivision 1. **Ownership of interests restricted.** Ownership interests in a professional firm may not be owned or held, either directly or indirectly, except by any of the following:

- (1) professionals who, with respect to at least one category of the pertinent professional services, are licensed and not disqualified;
- (2) general partnerships, other than limited liability partnerships, authorized to furnish at least one category of the professional firm's pertinent professional services;
- (3) other professional firms authorized to furnish at least one category of the professional firm's pertinent professional services;
- (4) a voting trust established with respect to some or all of the ownership interests in the professional firm, if (i) the professional firm's generally applicable governing law permits the establishment of voting trusts, and (ii) all the voting trustees and all the holders of beneficial interests in the trust are professionals licensed to furnish at least one category of the pertinent professional services;
- (5) an employee stock ownership plan as defined in section 4975(e)(7) of the Internal Revenue Code of 1986, as amended, if (i) all the voting trustees of the plan are professionals licensed to furnish at least one category of the pertinent professional services, and (ii) the ownership interests are not directly issued to anyone other than professionals licensed to furnish at least one category of the pertinent professional services; and
- (6) sole ownership by a surviving spouse of a deceased professional who was the sole owner of the professional firm at the time of the professional's death, but only during the period of time ending one year after the death of the professional.

Subd. 2. **Issuance and transfer of ownership interests restricted.** A professional firm may not sell, grant, give, allocate, issue, or otherwise transfer an ownership interest except to persons who meet the requirements of subdivision 1. No owner may transfer an ownership interest except to persons who meet the requirements of subdivision 1. These restrictions apply regardless of whether a purported sale, grant, gift, allocation, issuance, or other transfer:

- (1) is voluntary or involuntary;
- (2) constitutes a present transfer or an undertaking to make future transfer or to allow the transferee to cause a future transfer to occur; or
- (3) is permanent or subject to defeasement.

Subd. 3. **Issuance and transfer of partial rights restricted.**

- (a) Except as permitted by this paragraph, no professional firm may sell, grant, give, allocate, issue, or otherwise transfer a partial right. Unless prohibited by its generally applicable governing law or some provision of a document or agreement permitted by its generally applicable governing law, a professional firm may:

(1) subject to section 319B.08, subdivision 3, sell, grant, give, allocate, issue, or otherwise transfer an option to acquire an entire ownership interest to a person who meets the requirements of subdivision 1; and

(2) subject to its licensing law, undertake to make payments, in the nature of separation, retirement, or death benefits, on account of a former owner who has died, become disqualified, or for any other reason has ceased to be an owner.

(b) Except as permitted by this paragraph, no owner may transfer any partial right. Unless prohibited by the professional firm's generally applicable governing law or some provision of a document or agreement authorized by the professional firm's generally applicable governing law, an owner may, subject to section 319B.09:

(1) enter into an agreement with other owners of the professional firm regarding voting rights and other aspects of management; and

(2) grant a proxy to a person who meets the requirements of subdivision 1.

(c) Except as permitted by paragraphs (a) and (b), no person may hold or transfer a partial right. These restrictions apply regardless of whether a purported transfer:

(1) is voluntary or involuntary;

(2) constitutes a present transfer or an undertaking to make a future transfer or to allow the transferee to cause a future transfer to occur; or

(3) is permanent or subject to defeasement.

Subd. 4. **Improper issuance and transfers void.** A sale, grant, gift, allocation, issuance, undertaking, creation, pledge, or other transfer in violation of this section is void.

Subd. 5. **Further transfer restrictions permitted.** If permitted by its generally applicable governing law, a professional firm may further restrict the transfer of ownership interests and partial rights.

Subd. 6. **Nonapplication of securities regulation provisions.** Chapter 80A does not apply to or govern a transaction relating to an ownership interest of a professional firm.

History: 1997 c 22 art 1 s 7; 2009 c 148 s 3; 2009 c 178 art 1 s 57

319B.08 EFFECT OF DEATH OR DISQUALIFICATION OF OWNER.

Subdivision 1. **Acquisition of interests or automatic loss of professional firm status.**

(a) If an owner dies or becomes disqualified to practice all the pertinent professional services, then either:

(1) within 90 days after the death or the beginning of the disqualification, all of that owner's ownership interest must be acquired by the professional firm, by persons permitted by section 319B.07 to own the ownership interest, or by some combination; or

(2) at the end of the 90-day period, the firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, is automatically rescinded, the firm loses its status as a professional firm, and the authority created by that election and status terminates. An acquisition satisfies clause (1) if all right and title to the deceased or disqualified owner's interest are acquired before the end of the 90-day period, even if

some or all of the consideration is paid after the end of the 90-day period. However, payment cannot be secured in any way that violates sections 319B.01 to 319B.12.

(b) If automatic rescission does occur under paragraph (a), the firm must immediately and accordingly update its organizational document, certificate of authority, or statement of foreign qualification. Even without that updating, however, the rescission, loss of status, and termination of authority provided by paragraph (a) occur automatically at the end of the 90-day period.

Subd. 2. Terms of acquisition.

(a) If:

- (1) an owner dies or becomes disqualified to practice all the pertinent professional services;
- (2) the professional firm has in effect a mechanism, valid according to the professional firm's generally applicable governing law, to effect a purchase of the deceased or disqualified owner's ownership interest so as to satisfy subdivision 1, paragraph (a), clause (1); and
- (3) the professional firm does not agree with the disqualified owner or the representative of the deceased owner to set aside the mechanism, then that mechanism applies.

(b) If:

- (1) an owner dies or becomes disqualified to practice all the pertinent professional services;
- (2) the professional firm has in effect no mechanism as described in paragraph (a), or has agreed as mentioned in paragraph (a), clause (3), to set aside that mechanism; and
- (3) consistent with its generally applicable governing law, the professional firm agrees with the disqualified owner or the representative of the deceased owner, before the end of the 90-day period, to an arrangement to effect a purchase of the deceased or disqualified owner's ownership interest so as to satisfy subdivision 1, paragraph (a), clause (1), then that arrangement applies.

(c) If:

- (1) an owner of a Minnesota professional firm dies or becomes disqualified to practice all the pertinent professional services;
- (2) the Minnesota professional firm does not have in effect a mechanism as described in paragraph (a);
- (3) the Minnesota professional firm does not make an arrangement as described in paragraph (b); and
- (4) no provision or tenet of the Minnesota professional firm's generally applicable governing law and no provision of any document or agreement authorized by the Minnesota professional firm's generally applicable governing law expressly precludes an acquisition under this paragraph, then the firm may acquire the deceased or disqualified owner's ownership interest as stated in this paragraph. To act under this paragraph, the Minnesota professional firm must within 90 days after the death or beginning of the disqualification tender to the representative of the deceased owner's estate or to the disqualified owner the fair value of the owner's ownership interest, as determined by the Minnesota professional firm's governance authority. That price must be at least the book

value, as determined in accordance with the Minnesota professional firm's regular method of accounting, as of the end of the month immediately preceding the death or loss of license. The tender must be unconditional and may not attempt to have the recipient waive any rights provided in this section. If the Minnesota professional firm tenders a price under this paragraph within the 90-day period, the deceased or disqualified owner's ownership interest immediately transfers to the Minnesota professional firm regardless of any dispute as to the fairness of the price. A disqualified owner or representative of the deceased owner's estate who disputes the fairness of the tendered price may take the tendered price and bring suit in district court seeking additional payment. The suit must be commenced within one year after the payment is tendered. A Minnesota professional firm may agree with a disqualified owner or the representative of a deceased owner's estate to delay all or part of the payment due under this paragraph, but all right and title to the owner's ownership interests must be acquired before the end of the 90-day period and payment may not be secured in any way that violates sections 319B.01 to 319B.12.

Subd. 3. Expiration of firm-issued option on death or disqualification of holder. If the holder of an option issued under section 319B.07, subdivision 3, paragraph (a), clause (1), dies or becomes disqualified, the option automatically expires.

Subd. 4. One-year period for surviving spouse of sole owner. For purposes of this section, each mention of "90 days," "90-day period," or similar term shall be interpreted as one year after the death of a professional who was the sole owner of the professional firm if the surviving spouse of the deceased professional owns and controls the firm after the death.

History: 1997 c 22 art 1 s 8; 1999 c 85 art 3 s 7; 2009 c 148 s 4; 2009 c 178 art 1 s 58

319B.09 GOVERNANCE.

Subdivision 1. Governance authority.

(a) Except as stated in paragraph (b), a professional firm's governance authority must rest with:

- (1) one or more professionals, each of whom is licensed to furnish at least one category of the pertinent professional services; or
- (2) a surviving spouse of a deceased professional who was the sole owner of the professional firm, while the surviving spouse owns and controls the firm, but only during the period of time ending one year after the death of the professional.

(b) In a Minnesota professional firm organized under chapter 317A and in a foreign professional firm organized under the nonprofit corporation statute of another state, at least one individual possessing governance authority must be a professional licensed to furnish at least one category of the pertinent professional services.

(c) Individuals who possess governance authority within a professional firm may delegate administrative and operational matters to others. No decision entailing the

exercise of professional judgment may be delegated or assigned to anyone who is not a professional licensed to practice the professional services involved in the decision.

(d) An individual whose license to practice any pertinent professional services is revoked or suspended may not, during the time the revocation or suspension is in effect, possess or exercise governance authority, hold a position with governance authority, or take part in any decision or other action constituting an exercise of governance authority. Nothing in this chapter prevents a board from further terminating, restricting, limiting, qualifying, or imposing conditions on an individual's governance role as board disciplinary action.

(e) A professional firm owned and controlled by a surviving spouse must comply with all requirements of this chapter, except those clearly inapplicable to a firm owned and governed by a surviving spouse who is not a professional of the same type as the surviving spouse's decedent.

Subd. 2. Voting and management rights restricted.

(a) The restrictions stated in section 319B.07 apply to the holding and exercise of:

(1) any proxy relating to the voting right of any ownership interest in a professional firm; and

(2) any other right to vote or participate in the management of a professional firm where the right derives from or is on account of an ownership interest in the professional firm.

Except as stated in paragraphs (b) and (c), this paragraph applies to rights a representative of a deceased or incompetent owner might otherwise have.

(b) If a Minnesota professional firm is deciding whether to rescind its election under section 319B.03, subdivision 3, the representative of a deceased or incompetent owner has authority to vote the deceased or incompetent owner's ownership interest on that issue to the same extent the owner would have had the right to vote but for the death or incompetency.

(c) If a foreign professional firm is deciding whether to rescind its election under section 319B.04, subdivision 3, and the foreign professional firm's generally applicable governing law provides the representative of a deceased or incompetent owner authority to vote the deceased or incompetent owner's ownership interest on that issue, nothing in sections 319B.01 to 319B.12 limits the representative's authority.

History: 1997 c 22 art 1 s 9; 2009 c 148 s 5; 2009 c 178 art 1 s 59

319B.10 MERGERS AND OTHER REORGANIZATIONS.

Subdivision 1. **Reorganization permitted.** A professional firm may enter into a merger, consolidation, exchange of ownership interests, conversion, or any other reorganization permitted by its generally applicable governing law.

Subd. 2. Effect on participating professional firm.

(a) If a professional firm participates in and survives a reorganization but the reorganization causes the surviving firm to be out of compliance with section 319B.07 or 319B.09, or both:

- (1) the surviving firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, is automatically rescinded;
- (2) the surviving firm immediately loses its status as a professional firm and the authority created by that election and status terminates; and
- (3) the surviving firm must immediately and accordingly update its organizational document, certificate of authority, or statement of foreign qualification. Even without that amendment, however, the rescission, loss of status, and termination of authority occur automatically when the reorganization takes effect.

(b) If, before a reorganization takes effect, the 90-day deadline established in section 319B.07, subdivision 1, has been triggered but has not yet elapsed with regard to an ownership interest in a professional firm participating in the reorganization, the surviving firm is not out of compliance with sections 319B.07 and 319B.09 merely because the reorganization accords a comparable ownership interest in the surviving firm to the disqualified owner or the representative of the deceased owner's estate. The original 90-day deadline applies to the comparable ownership interest and the surviving firm.

Subd. 3. Filings with secretary of state.

(a) For a Minnesota professional firm involved in a merger, the document filed with the secretary of state to effectuate the merger must state whether that Minnesota professional firm will survive the merger, and if so, whether that Minnesota professional firm will remain a Minnesota professional firm once the merger takes effect.

(b) For a foreign professional firm involved in a merger, the certificate filed with the secretary of state under section 303.11 or 322B.92 must be accompanied by a statement as to whether that foreign firm will survive the merger, and if so, whether that foreign professional firm will remain a foreign professional firm once the merger takes effect.

Subd. 4. Status of newly created firm. If a reorganization involves the creation of a new firm, that firm may make an election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, and become a professional firm if the firm meets the requirements of sections 319B.01 to 319B.12.

History: 1997 c 22 art 1 s 10; 1999 c 85 art 3 s 8

319B.11 PROFESSIONAL REGULATION.

Subdivision 1. **Boards' powers.** Each board may make whatever rules are necessary to carry out sections 319B.01 to 319B.12. Except as stated in this section, nothing in sections 319B.01 to 319B.12 restricts or limits in any manner the authority or duty of a board with respect to persons furnishing professional services within the jurisdiction of the board, even if the person is an owner, director, governor, officer, manager, employee, agent, or independent contractor of a professional firm and furnishes professional services through that firm.

Subd. 2. Liability shield.

(a) Except as stated in paragraph (b), no board may directly or indirectly require a person providing professional services through a professional firm to assume greater liability for the firm's debts and obligations than is contemplated by section 319B.06, subdivision 3.

(b) Paragraph (a) does not prevent the board from requiring a professional to assume personal liability for specified obligations or categories of obligations as a term or requirement of board disciplinary or corrective action concerning the professional.

Subd. 3. Filing of organizational document and report information.

(a) No professional firm may furnish professional services within Minnesota until the firm files with each board having jurisdiction over the pertinent professional services:

- (1) a copy of the firm's organizational document, certificate of authority, or statement of foreign qualification;
- (2) a report containing the same information as required by subdivision 4; and
- (3) except as stated in paragraph (b), a fee of \$100.

(b) If a firm has previously been organized under sections 319A.01 to 319A.22, that firm is not required to pay the filing fee under paragraph (a).

Subd. 4. Annual report.

(a) Every professional firm must file annually on or before January 1 with the board or boards having jurisdiction over the pertinent professional services a report containing the following:

- (1) the name and address of the professional firm;
- (2) the contents of any amendment made to the firm's organizational document, certificate of authority, or statement of foreign qualification since the filing of the most recent report under subdivision 3 or this subdivision;
- (3) a designation of the position or positions within the firm that have governance authority;
- (4) the name and address of each owner of an ownership interest and each person occupying a position with governance authority;
- (5) a statement as to whether all employees, agents, and independent contractors furnishing professional services within Minnesota on behalf of the professional firm are professionals authorized to furnish at least one category of the pertinent professional services;
- (6) except in the case of a professional firm that is organized under chapter 317A or the nonprofit corporation statute of another state, a statement as to whether all owners and persons occupying a position with governance authority are professionals authorized to furnish at least one category of the pertinent professional services;
- (7) in the case of a professional firm that is organized under chapter 317A or the nonprofit corporation statute of another state, a statement as to whether at least one person occupying a position with governance authority is a professional authorized to furnish at least one category of the pertinent professional services; and
- (8) any additional information as the board may by rule prescribe as appropriate to assist in determining whether a professional firm is complying with sections 319B.01 to 319B.12.

The statement required by clauses (5), (6), and (7) must be made and signed under oath by a professional who is an owner or employee of the professional firm, licensed in at least one category of the pertinent professional services and duly authorized to make the statement on behalf of the professional firm.

(b) For filing each annual report under paragraph (a), each firm must pay a fee of \$25 to each board with which the report is filed.

Subd. 5. Report of owner's death or disqualification.

(a) Except as stated in paragraph (b), within 30 days after the death or disqualification of an owner, the professional firm must report the death or disqualification to each board having jurisdiction over any of the pertinent professional services.

(b) A professional firm need not report a disqualification to a board which took the action that caused the disqualification.

Subd. 6. Examination by board.

(a) A board, or an employee or agent designated by a board, may inspect at all reasonable times all books and records of a professional firm and may summon and examine under oath the owners, directors, governors, officers, managers, persons occupying a position with governance authority, and employees of the firm in all matters concerning the operations of the professional firm that are governed by sections 319B.01 to 319B.12, the rules of the board, or the professional firm's generally applicable governing law. This subdivision does not authorize anyone to have access to or to compel anyone to testify with respect to books, records, or information of any type subject to a privilege recognized by law.

(b) Any information obtained by a board as a result of an examination authorized by paragraph (a) is confidential, immune from subpoena, and inadmissible as evidence at a trial, hearing, or proceeding before a court, board, or commissioner except a proceeding under subdivision 8.

(c) A professional firm subject to an examination under paragraph (a) may request in writing that the board under whose authority the examination is being or has been conducted provide the professional firm with a copy of all or any specified parts of the sworn testimony taken or received during the examination as well as all or any specified exhibits provided as part of that testimony. The board must comply promptly with the request and may charge the requesting firm the reasonable cost of making and providing the copies.

Subd. 7. Status of information. Except as stated in subdivision 6, information filed by a professional firm under this section is public data under chapter 13.

Subd. 8. Involuntary dissolution and rescission of professional firm status. A board, through the attorney general, may institute proceedings in a district court of this state or a contested case proceeding under chapter 14 to involuntarily rescind a professional firm's election under section 319B.03, subdivision 2, or 319B.04, subdivision 2, to impose restrictions or conditions on that election or to reprimand the professional firm due to a violation of sections 319B.01 to 319B.12, the relevant licensing statute as listed in section 319B.02, subdivision 19, or the rules of the board. A board, through the attorney general, may institute proceedings in a district court of this state to have a Minnesota professional firm involuntarily dissolved, or a foreign

professional firm's certificate of authority or statement of foreign qualification revoked on those grounds, as well as on any other grounds provided by Minnesota law. A board may seek reprimands, restrictions, conditions, involuntary rescission, and, as appropriate, dissolution or revocation within a single proceeding in a district court of this state. After a court enters a decree imposing rescission, dissolution, or revocation upon a professional firm, a board shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state shall not charge a fee for filing the decree. A board's claim against a professional firm for involuntary dissolution or revocation does not abate simply because the professional firm has rescinded its election under section 319B.03, subdivision 2, or 319B.04, subdivision 2. A voluntary rescission does abate a board's claim to obtain reprimands, restrictions, conditions, or involuntary rescission.

Subd. 9. **Fees.** All fees paid under this section are for the board to which they are due.

History: 1997 c 22 art 1 s 11; 1999 c 85 art 3 s 9-11

319B.12 TRANSITION PROVISIONS.

Subdivision 1. **Special definitions.** As used in this section:

- (1) "professional corporation" has the meaning given in section 319A.02, subdivision 4;
- (2) "foreign professional corporation" has the meaning given in 319A.02, subdivision 5;
- and
- (3) "corporation" has the meaning given in section 319A.02, subdivision 7.

Subd. 2. **New use of chapter 319A precluded.** Beginning July 1, 1997, no Minnesota firm may organize under chapter 319A and no foreign firm may begin to operate under chapter 319A.

Subd. 3. **Early election into this chapter by chapter 319A organizations.**

(a) At any time before January 1, 1999, a professional corporation organized under chapter 319A and a foreign professional corporation governed by chapter 319A may elect to be governed by sections 319B.01 to 319B.12. To make that election, the professional corporation or foreign professional corporation must:

- (1) comply with section 319B.03, subdivision 2, or 319B.04, subdivision 2, whichever is applicable; and
- (2) amend, to the extent necessary to comply with sections 319B.01 to 319B.12, its organizational document, certificate of authority, or statement of qualification, as well as any agreements and other documents controlling the corporation's structure, governance, operations, and internal affairs.

(b) Regardless of the date an electing professional corporation or foreign professional corporation actually makes its election under this subdivision, the electing professional corporation or foreign professional corporation may make the election effective as of January 1, 1997. Except as allowed by this paragraph, an election under this subdivision is effective on the date the electing professional corporation or foreign professional corporation complies with paragraph (a).

(c) The law and documents that govern the structure, governance, operations, and other internal affairs of a professional corporation or foreign professional corporation when

the corporation is deciding whether, when, and as of when to make an election under this subdivision control the manner of making those decisions.

Subd. 4. All use of chapter 319A ended; deemed election for Minnesota professional firms.

(a) Beginning January 1, 1999:

(1) no professional corporation may operate under chapter 319A and no foreign professional corporation may operate under chapter 319A; and

(2) chapter 319A ceases to apply to professional corporations and foreign professional corporations.

(b) On January 1, 1999, a Minnesota professional corporation that has not elected to be governed by sections 319B.01 to 319B.12 will be considered to have made that election, and the professional corporation's purposes, as stated under section 319A.03, clause (2), will be considered to be the specification required by section 319B.03, subdivision 2, clause (3).

Subd. 5. Acts during transition. The continuation or completion of an act by a professional firm that had been a professional corporation or foreign professional corporation but elected to become a professional firm governed by this chapter and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the professional firm shall, if otherwise lawful before the professional firm became governed by this chapter, remain valid, and may be continued, completed, consummated, enforced, or terminated as required or as permitted by a statute applicable to the contract, conveyance, or transfer before January 1, 1997.

History: 1997 c 22 art 1 s 12

319B.40 PROFESSIONAL HEALTH SERVICES.

(a) Individuals who furnish professional services pursuant to a license, registration, or certificate issued by the state of Minnesota to practice medicine pursuant to sections 147.01 to 147.22, as a physician assistant pursuant to sections 147A.01 to 147A.27, chiropractic pursuant to sections 148.01 to 148.106, registered nursing pursuant to sections 148.171 to 148.285, optometry pursuant to sections 148.52 to 148.62, psychology pursuant to sections 148.88 to 148.98, social work pursuant to chapter 148D, marriage and family therapy pursuant to sections 148B.29 to 148B.39, dentistry pursuant to sections 150A.01 to 150A.12, pharmacy pursuant to sections 151.01 to 151.40, or podiatric medicine pursuant to sections 153.01 to 153.26 are specifically authorized to practice any of these categories of services in combination if the individuals are organized under this chapter.

(b) This authorization does not authorize an individual to practice any profession, or furnish a professional service, for which the individual is not licensed, registered, or certified, but otherwise applies regardless of any contrary provision of a licensing statute or rules adopted pursuant to that statute, related to practicing and organizing in combination with other health services professionals.

History: 1997 c 76 s 2; 1998 c 309 s 8; 2001 c 42 s 3; 2005 c 147 art 1 s 70; 2005 c 153 s 2

MINNESOTA STATUTES – Chapter 609

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

- (a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;
- (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;
- (c) the actor uses force or coercion to accomplish the penetration;
- (d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:
 - (i) the actor or an accomplice used force or coercion to accomplish the penetration;
 - (ii) the complainant suffered personal injury; or
 - (iii) the sexual abuse involved multiple acts committed over an extended period of time.Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:
 - (i) during the psychotherapy session; or
 - (ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;
- (i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

- (j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense;
- (k) the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense;
- (l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:
 - (i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or
 - (ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;
- (m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;
- (n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or
- (o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

Subd. 2. **Penalty.** Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. **Stay.** Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

- (a) a stay is in the best interest of the complainant or the family unit; and
- (b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

- (1) incarceration in a local jail or workhouse;
- (2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

History: 1975 c 374 s 5; 1979 c 258 s 13; 1983 c 204 s 3; 1984 c 588 s 7; 1984 c 628 art 3 s 11; 1985 c 24 s 7; 1985 c 286 s 17; 1985 c 297 s 6; 1986 c 351 s 8; 1986 c 444; 1Sp1986 c 3 art 1 s 80; 1987 c 94 s 1; 1989 c 290 art 4 s 14; 1992 c 571 art 1 s 16,17; 1993 c 326 art 4 s 20; 1994 c 636 art 2 s 35; 1998 c 367 art 3 s 9; art 6 s 15; 2000 c 437 s 12; 2001 c 210 s 22; 2002 c 381 s 3; 2005 c 136 art 2 s 16,17; 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 4; 2010 c 270 s 2

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

Subdivision 1. **Crime defined.** A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

- (a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;
- (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense;
- (c) the actor uses force or coercion to accomplish the sexual contact;
- (d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:
 - (i) the actor or an accomplice used force or coercion to accomplish the contact;
 - (ii) the complainant suffered personal injury; or
 - (iii) the sexual abuse involved multiple acts committed over an extended period of time.Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred:

- (i) during the psychotherapy session; or
- (ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;
- (i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;
- (j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense;
- (k) the actor accomplishes the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose. Consent by the complainant is not a defense;
- (l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:
 - (i) the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or
 - (ii) the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;
- (m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;
- (n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, the complainant is not married to the actor, and the sexual contact occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or
- (o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

Subd. 2. **Penalty.** Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. **Stay.** Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

- (a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

- (1) incarceration in a local jail or workhouse;
- (2) a requirement that the offender complete a treatment program; and
- (3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

History: 1975 c 374 s 6; 1976 c 124 s 9; 1979 c 258 s 14; 1981 c 51 s 4; 1983 c 204 s 4; 1984 c 588 s 8; 1984 c 628 art 3 s 11; 1985 c 24 s 8; 1985 c 286 s 18; 1985 c 297 s 7; 1986 c 351 s 9; 1986 c 444; 1Sp1986 c 3 art 1 s 81; 1987 c 94 s 2; 1989 c 290 art 4 s 15; 1992 c 571 art 1 s 18,19; 1993 c 326 art 4 s 21; 1994 c 636 art 2 s 36; 1998 c 367 art 3 s 10; art 6 s 15; 2000 c 437 s 13; 2001 c 210 s 23; 2002 c 381 s 4; 2005 c 136 art 2 s 18,19; 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 5; 2010 c 270 s 3

609.3451 CRIMINAL SEXUAL CONDUCT IN THE FIFTH DEGREE.

Subdivision 1. **Crime defined.** A person is guilty of criminal sexual conduct in the fifth degree:

- (1) if the person engages in nonconsensual sexual contact; or
- (2) the person engages in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know the minor is present.

For purposes of this section, "sexual contact" has the meaning given in section 609.341, subdivision 11, paragraph (a), clauses (i) and (iv), but does not include the intentional touching of the clothing covering the immediate area of the buttocks. Sexual contact also includes the intentional removal or attempted removal of clothing covering the complainant's intimate parts or undergarments, and the nonconsensual touching by the complainant of the actor's intimate parts, effected by the actor, if the action is performed with sexual or aggressive intent.

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

Subd. 3. **Felony.** A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates subdivision 1, clause (2), after having been previously convicted of or adjudicated delinquent for violating subdivision 1, clause (2); section 617.23, subdivision 2, clause (1); or a statute from another state in conformity with subdivision 1, clause (2), or section 617.23, subdivision 2, clause (1).

History: 1988 c 529 s 2; 1990 c 492 s 1; 1995 c 226 art 2 s 19; 1996 c 408 art 3 s 26,27; 1998 c 367 art 3 s 11

MINNESOTA STATUTES – Chapter 626

626.556 REPORTING OF MALTREATMENT OF MINORS.

Subdivision 1. **Public policy.** The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children. In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(c) "Substantial child endangerment" means a person responsible for a child's care, and in the case of sexual abuse includes a person who has a significant relationship to the child as defined in section 609.341, or a person in a position of authority as defined in section 609.341, who by act or omission commits or attempts to commit an act against a child under their care that constitutes any of the following:

- (1) egregious harm as defined in section 260C.007, subdivision 14;
- (2) sexual abuse as defined in paragraph (d);
- (3) abandonment under section 260C.301, subdivision 2;
- (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the child's physical or mental health, including a growth delay, which may be

referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(5) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(6) manslaughter in the first or second degree under section 609.20 or 609.205;

(7) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(8) solicitation, inducement, and promotion of prostitution under section 609.322;

(9) criminal sexual conduct under sections 609.342 to 609.3451;

(10) solicitation of children to engage in sexual conduct under section 609.352;

(11) malicious punishment or neglect or endangerment of a child under section 609.377 or 609.378;

(12) use of a minor in sexual performance under section 617.246; or

(13) parental behavior, status, or condition which mandates that the county attorney file a termination of parental rights petition under section 260C.301, subdivision 3, paragraph (a).

(d) "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

(e) "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.

(f) "Neglect" means the commission or omission of any of the acts specified under clauses (1) to (9), other than by accidental means:

(1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;

(2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

(3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care;

(4) failure to ensure that the child is educated as defined in sections 120A.22 and 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

(5) nothing in this section shall be construed to mean that a child is neglected solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care; except that a parent, guardian, or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report if a lack of medical care may cause serious danger to the child's health. This section does not impose upon persons, not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

(6) prenatal exposure to a controlled substance, as defined in section 253B.02, subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder;

(7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

(8) chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety; or

(9) emotional harm from a pattern of behavior which contributes to impaired emotional functioning of the child which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

(g) "Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

(1) throwing, kicking, burning, biting, or cutting a child;

- (2) striking a child with a closed fist;
- (3) shaking a child under age three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child's breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;
- (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances;
- (9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or
- (10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

(h) "Report" means any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section.

(i) "Facility" means:

- (1) a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245B;
- (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or
- (3) a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

(j) "Operator" means an operator or agency as defined in section 245A.02.

(k) "Commissioner" means the commissioner of human services.

(l) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(m) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(n) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care, as defined in paragraph (e), clause (1), who has:

- (1) subjected a child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a similar law of another jurisdiction;
- (2) been found to be palpably unfit under section 260C.301, paragraph (b), clause (4), or a similar law of another jurisdiction;

- (3) committed an act that has resulted in an involuntary termination of parental rights under section 260C.301, or a similar law of another jurisdiction; or
- (4) committed an act that has resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction.

A child is the subject of a report of threatened injury when the responsible social services agency receives birth match data under paragraph (o) from the Department of Human Services.

(o) Upon receiving data under section 144.225, subdivision 2b, contained in a birth record or recognition of parentage identifying a child who is subject to threatened injury under paragraph

(n), the Department of Human Services shall send the data to the responsible social services agency. The data is known as "birth match" data. Unless the responsible social services agency has already begun an investigation or assessment of the report due to the birth of the child or execution of the recognition of parentage and the parent's previous history with child protection, the agency shall accept the birth match data as a report under this section. The agency may use either a family assessment or investigation to determine whether the child is safe. All of the provisions of this section apply. If the child is determined to be safe, the agency shall consult with the county attorney to determine the appropriateness of filing a petition alleging the child is in need of protection or services under section 260C.007, subdivision 6, clause (16), in order to deliver needed services. If the child is determined not to be safe, the agency and the county attorney shall take appropriate action as required under section 260C.301, subdivision 3.

(p) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates and accepted teacher discipline practices, which are not injurious to the child's health, welfare, and safety.

(q) "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event which:

(1) is not likely to occur and could not have been prevented by exercise of due care; and

(2) if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

(r) "Nonmaltreatment mistake" means:

(1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules, part 9503.0045;

(2) the individual has not been determined responsible for a similar incident that resulted in a finding of maltreatment for at least seven years;

(3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years;

(4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and

(5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident.

This definition only applies to child care centers licensed under Minnesota Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of substantiated maltreatment by the individual, the commissioner of human services shall determine that a nonmaltreatment mistake was made by the individual.

Subd. 3. Persons mandated to report.

(a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:

(1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, correctional supervision, probation and correctional services, or law enforcement; or

(2) employed as a member of the clergy and received the information while engaged in ministerial duties, provided that a member of the clergy is not required by this subdivision to report information that is otherwise privileged under section 595.02, subdivision 1, paragraph (c).

The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local welfare agency, or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing. The county sheriff and the head of every local welfare agency, agency responsible for assessing or investigating reports, and police department shall each designate a person within their agency, department, or office who is responsible for ensuring that the notification duties of this paragraph and paragraph (b) are carried out. Nothing in this subdivision shall be construed to require more than one report from any institution, facility, school, or agency.

(b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse. The police department or the county sheriff, upon receiving a report, shall immediately notify the local welfare agency or agency responsible for assessing or investigating the report, orally and in writing. The local

welfare agency or agency responsible for assessing or investigating the report, upon receiving a report, shall immediately notify the local police department or the county sheriff orally and in writing.

(c) A person mandated to report physical or sexual child abuse or neglect occurring within a licensed facility shall report the information to the agency responsible for licensing the facility under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or chapter 245B; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19. A health or corrections agency receiving a report may request the local welfare agency to provide assistance pursuant to subdivisions 10, 10a, and 10b. A board or other entity whose licensees perform work within a school facility, upon receiving a complaint of alleged maltreatment, shall provide information about the circumstances of the alleged maltreatment to the commissioner of education. Section 13.03, subdivision 4, applies to data received by the commissioner of education from a licensing entity.

(d) Any person mandated to report shall receive a summary of the disposition of any report made by that reporter, including whether the case has been opened for child protection or other services, or if a referral has been made to a community organization, unless release would be detrimental to the best interests of the child. Any person who is not mandated to report shall, upon request to the local welfare agency, receive a concise summary of the disposition of any report made by that reporter, unless release would be detrimental to the best interests of the child.

(e) For purposes of this section, "immediately" means as soon as possible but in no event longer than 24 hours.

Subd. 3a. Report of deprivation of parental rights or kidnapping. A person mandated to report under subdivision 3, who knows or has reason to know of a violation of section 609.25 or 609.26, shall report the information to the local police department or the county sheriff. Receipt by a local welfare agency of a report or notification of a report of a violation of section 609.25 or 609.26 shall not be construed to invoke the duties of subdivision 10, 10a, or 10b.

Subd. 3b. Agency responsible for assessing or investigating reports of maltreatment. The Department of Education is the agency responsible for assessing or investigating allegations of child maltreatment in schools as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10.

Subd. 3c. Local welfare agency, Department of Human Services or Department of Health responsible for assessing or investigating reports of maltreatment.

(a) The county local welfare agency is the agency responsible for assessing or investigating allegations of maltreatment in child foster care, family child care, legally unlicensed child care, juvenile correctional facilities licensed under section 241.021 located in the local welfare agency's county, and reports involving children served by an unlicensed personal care provider organization under section 256B.0659. Copies of findings related to personal care provider organizations under section 256B.0659 must be forwarded to the Department of Human Services provider enrollment.

(b) The Department of Human Services is the agency responsible for assessing or investigating allegations of maltreatment in facilities licensed under chapters 245A and 245B, except for child foster care and family child care.

(c) The Department of Health is the agency responsible for assessing or investigating allegations of child maltreatment in facilities licensed under sections 144.50 to 144.58 and 144A.46.

(d) The commissioners of human services, public safety, and education must jointly submit a written report by January 15, 2007, to the education policy and finance committees of the legislature recommending the most efficient and effective allocation of agency responsibility for assessing or investigating reports of maltreatment and must specifically address allegations of maltreatment that currently are not the responsibility of a designated agency.

Subd. 3d. **Authority to interview.** The agency responsible for assessing or investigating reports of child maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged perpetrator, and any other person with knowledge of the abuse or neglect for the purpose of gathering the facts, assessing safety and risk to the child, and formulating a plan.

Subd. 3e. **Agency responsible for assessing or investigating reports of sexual abuse.** The local welfare agency is the agency responsible for investigating allegations of sexual abuse if the alleged offender is the parent, guardian, sibling, or an individual functioning within the family unit as a person responsible for the child's care, or a person with a significant relationship to the child if that person resides in the child's household.

Subd. 3f. **Law enforcement agency responsible for investigating maltreatment.** The local law enforcement agency has responsibility for investigating any report of child maltreatment if a violation of a criminal statute is alleged. Law enforcement and the responsible agency must coordinate their investigations or assessments as required under subdivision 10.

Subd. 4. **Immunity from liability.**

(a) The following persons are immune from any civil or criminal liability that otherwise might result from their actions, if they are acting in good faith:

(1) any person making a voluntary or mandated report under subdivision 3 or under section 626.5561 or assisting in an assessment under this section or under section 626.5561;

(2) any person with responsibility for performing duties under this section or supervisor employed by a local welfare agency, the commissioner of an agency responsible for operating or supervising a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed under sections 144.50 to 144.58; 241.021; 245A.01 to 245A.16; or 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in sections 256B.04, subdivision 16; and 256B.0625, subdivision 19a, complying with subdivision 10d; and

(3) any public or private school, facility as defined in subdivision 2, or the employee of any public or private school or facility who permits access by a local welfare agency, the Department of Education, or a local law enforcement agency and assists in an investigation or assessment pursuant to subdivision 10 or under section 626.5561.

(b) A person who is a supervisor or person with responsibility for performing duties under this section employed by a local welfare agency, the commissioner of human services, or the commissioner of education complying with subdivisions 10 and 11 or section 626.5561 or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is (1) acting in good faith and exercising due care, or (2) acting in good faith and following the information collection procedures established under subdivision 10, paragraphs (h), (i), and (j).

(c) This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

(d) If a person who makes a voluntary or mandatory report under subdivision 3 prevails in a civil action from which the person has been granted immunity under this subdivision, the court may award the person attorney fees and costs.

Subd. 4a. Retaliation prohibited.

(a) An employer of any person required to make reports under subdivision 3 shall not retaliate against the person for reporting in good faith abuse or neglect pursuant to this section, or against a child with respect to whom a report is made, because of the report.

(b) The employer of any person required to report under subdivision 3 who retaliates against the person because of a report of abuse or neglect is liable to that person for actual damages and, in addition, a penalty up to \$10,000.

(c) There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory. For purposes of this paragraph, the term "adverse action" refers to action taken by an employer of a person required to report under subdivision 3 which is involved in a report against the person making the report or the child with respect to whom the report was made because of the report, and includes, but is not limited to:

- (1) discharge, suspension, termination, or transfer from the facility, institution, school, or agency;
- (2) discharge from or termination of employment;
- (3) demotion or reduction in remuneration for services; or
- (4) restriction or prohibition of access to the facility, institution, school, agency, or persons affiliated with it.

Subd. 5. Malicious and reckless reports. Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees.

Subd. 6. Failure to report.

(a) A person mandated by this section to report who knows or has reason to believe that a child is neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, and fails to report is guilty of a misdemeanor.

(b) A person mandated by this section to report who knows or has reason to believe that two or more children not related to the perpetrator have been physically or sexually abused, as defined in subdivision 2, by the same perpetrator within the preceding ten years, and fails to report is guilty of a gross misdemeanor.

(c) A parent, guardian, or caretaker who knows or reasonably should know that the child's health is in serious danger and who fails to report as required by subdivision 2, paragraph (c), is guilty of a gross misdemeanor if the child suffers substantial or great bodily harm because of the lack of medical care. If the child dies because of the lack of medical care, the person is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both. The provision in section 609.378, subdivision 1, paragraph (a), clause (1), providing that a parent, guardian, or caretaker may, in good faith, select and depend on spiritual means or prayer for treatment or care of a child, does not exempt a parent, guardian, or caretaker from the duty to report under this subdivision.

Subd. 6a. **Failure to notify.** If a local welfare agency receives a report under subdivision 3, paragraph (a) or (b) and fails to notify the local police department or county sheriff as required by subdivision 3, paragraph (a) or (b), the person within the agency who is responsible for ensuring that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees. If a local police department or a county sheriff receives a report under subdivision 3, paragraph (a) or (b) and fails to notify the local welfare agency as required by subdivision 3, paragraph (a) or (b), the person within the police department or county sheriff's office who is responsible for ensuring that notification is made shall be subject to disciplinary action in keeping with the agency's existing policy or collective bargaining agreement on discipline of employees.

Subd. 7. **Report.**

(a) An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required under subdivision 3 to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the appropriate police department, the county sheriff, the agency responsible for assessing or investigating the report, or the local welfare agency, unless the appropriate agency has informed the reporter that the oral information does not constitute a report under subdivision 10. The local welfare agency shall determine if the report is accepted for an assessment or investigation as soon as possible but in no event longer than 24 hours after the report is received. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the abuse or neglect of the child if the person is known, the nature and extent of the abuse or neglect and the name and address of the reporter. If requested, the local welfare agency or the agency responsible for assessing or investigating the report shall inform the reporter within ten days after the report is made, either orally or in writing, whether the report was accepted for assessment or investigation. Written reports received by a police department or the county sheriff shall be forwarded immediately to the local welfare agency or the agency responsible for assessing or investigating the report. The police department or the county sheriff may keep copies of reports received by them. Copies of written reports received by a local welfare department or the agency responsible for assessing or investigating the report shall be forwarded immediately to the local police department or the county sheriff.

(b) Notwithstanding paragraph (a), the commissioner of education must inform the parent, guardian, or legal custodian of the child who is the subject of a report of alleged maltreatment in a school facility within ten days of receiving the report, either orally or

in writing, whether the commissioner is assessing or investigating the report of alleged maltreatment.

(c) A written copy of a report maintained by personnel of agencies, other than welfare or law enforcement agencies, which are subject to chapter 13 shall be confidential. An individual subject of the report may obtain access to the original report as provided by subdivision 11.

Subd. 8. **Evidence not privileged.** No evidence relating to the neglect or abuse of a child or to any prior incidents of neglect or abuse involving any of the same persons accused of neglect or abuse shall be excluded in any proceeding arising out of the alleged neglect or physical or sexual abuse on the grounds of privilege set forth in section 595.02, subdivision 1, paragraph (a), (d), or (g).

Subd. 9. **Mandatory reporting to medical examiner or coroner.** When a person required to report under the provisions of subdivision 3 knows or has reason to believe a child has died as a result of neglect or physical or sexual abuse, the person shall report that information to the appropriate medical examiner or coroner instead of the local welfare agency, police department, or county sheriff. Medical examiners or coroners shall notify the local welfare agency or police department or county sheriff in instances in which they believe that the child has died as a result of neglect or physical or sexual abuse. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff and the local welfare agency. If the child was receiving services or treatment for mental illness, developmentally disabled, chemical dependency, or emotional disturbance from an agency, facility, or program as defined in section 245.91, the medical examiner or coroner shall also notify and report findings to the ombudsman established under sections 245.91 to 245.97.

Subd. 10. **Duties of local welfare agency and local law enforcement agency upon receipt of report.**

(a) Upon receipt of a report, the local welfare agency shall determine whether to conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for child maltreatment. The local welfare agency:

(1) shall conduct an investigation on reports involving substantial child endangerment;

(2) shall begin an immediate investigation if, at any time when it is using a family assessment response, it determines that there is reason to believe that substantial child endangerment or a serious threat to the child's safety exists;

(3) may conduct a family assessment for reports that do not allege substantial child endangerment. In determining that a family assessment is appropriate, the local welfare agency may consider issues of child safety, parental cooperation, and the need for an immediate response; and

(4) may conduct a family assessment on a report that was initially screened and assigned for an investigation. In determining that a complete investigation is not required, the local welfare agency must document the reason for terminating the investigation and notify the local law enforcement agency if the local law enforcement agency is conducting a joint investigation. If the report alleges neglect, physical abuse, or sexual abuse by a parent, guardian, or individual

functioning within the family unit as a person responsible for the child's care, or sexual abuse by a person with a significant relationship to the child when that person resides in the child's household or by a sibling, the local welfare agency shall immediately conduct a family assessment or investigation as identified in clauses (1) to (4). In conducting a family assessment or investigation, the local welfare agency shall gather information on the existence of substance abuse and domestic violence and offer services for purposes of preventing future child maltreatment, safeguarding and enhancing the welfare of the abused or neglected minor, and supporting and preserving family life whenever possible. If the report alleges a violation of a criminal statute involving sexual abuse, physical abuse, or neglect or endangerment, under section 609.378, the local law enforcement agency and local welfare agency shall coordinate the planning and execution of their respective investigation and assessment efforts to avoid a duplication of fact-finding efforts and multiple interviews. Each agency shall prepare a separate report of the results of its investigation. In cases of alleged child maltreatment resulting in death, the local agency may rely on the fact-finding efforts of a law enforcement investigation to make a determination of whether or not maltreatment occurred. When necessary the local welfare agency shall seek authority to remove the child from the custody of a parent, guardian, or adult with whom the child is living. In performing any of these duties, the local welfare agency shall maintain appropriate records.

If the family assessment or investigation indicates there is a potential for abuse of alcohol or other drugs by the parent, guardian, or person responsible for the child's care, the local welfare agency shall conduct a chemical use assessment pursuant to Minnesota Rules, part 9530.6615.

(b) When a local agency receives a report or otherwise has information indicating that a child who is a client, as defined in section 245.91, has been the subject of physical abuse, sexual abuse, or neglect at an agency, facility, or program as defined in section 245.91, it shall, in addition to its other duties under this section, immediately inform the ombudsman established under sections 245.91 to 245.97. The commissioner of education shall inform the ombudsman established under sections 245.91 to 245.97 of reports regarding a child defined as a client in section 245.91 that maltreatment occurred at a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10.

(c) Authority of the local welfare agency responsible for assessing or investigating the child abuse or neglect report, the agency responsible for assessing or investigating the report, and of the local law enforcement agency for investigating the alleged abuse or neglect includes, but is not limited to, authority to interview, without parental consent, the alleged victim and any other minors who currently reside with or who have resided with the alleged offender. The interview may take place at school or at any facility or other place where the alleged victim or other minors might be found or the child may be transported to, and the interview conducted at, a place appropriate for the interview of a child designated by the local welfare agency or law enforcement agency. The interview may take place outside the presence of the alleged offender or parent, legal custodian, guardian, or school official. For family assessments, it is the preferred practice to request a parent or guardian's permission to interview the child prior to conducting the child interview, unless doing so would compromise the safety assessment. Except as

provided in this paragraph, the parent, legal custodian, or guardian shall be notified by the responsible local welfare or law enforcement agency no later than the conclusion of the investigation or assessment that this interview has occurred. Notwithstanding rule 32 of the Minnesota Rules of Procedure for Juvenile Courts, the juvenile court may, after hearing on an ex parte motion by the local welfare agency, order that, where reasonable cause exists, the agency withhold notification of this interview from the parent, legal custodian, or guardian. If the interview took place or is to take place on school property, the order shall specify that school officials may not disclose to the parent, legal custodian, or guardian the contents of the notification of intent to interview the child on school property, as provided under this paragraph, and any other related information regarding the interview that may be a part of the child's school record. A copy of the order shall be sent by the local welfare or law enforcement agency to the appropriate school official.

(d) When the local welfare, local law enforcement agency, or the agency responsible for assessing or investigating a report of maltreatment determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property. For interviews conducted by the local welfare agency, the notification shall be signed by the chair of the local social services agency or the chair's designee. The notification shall be private data on individuals subject to the provisions of this paragraph. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded, unless a school employee or agent is alleged to have maltreated the child. Until that time, the local welfare or law enforcement agency or the agency responsible for assessing or investigating a report of maltreatment shall be solely responsible for any disclosures regarding the nature of the assessment or investigation.

Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Where the school fails to comply with the provisions of this paragraph, the juvenile court may order the school to comply. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school premises.

(e) Where the alleged offender or a person responsible for the care of the alleged victim or other minor prevents access to the victim or other minor by the local welfare agency, the juvenile court may order the parents, legal custodian, or guardian to produce the alleged victim or other minor for questioning by the local welfare agency or the local law enforcement agency outside the presence of the alleged offender or any person

responsible for the child's care at reasonable places and times as specified by court order.

(f) Before making an order under paragraph (e), the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the basis for the requested interviews and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court. The court shall consider the need for appointment of a guardian ad litem to protect the best interests of the child. If appointed, the guardian ad litem shall be present at the hearing on the order to show cause.

(g) The commissioner of human services, the ombudsman for mental health and developmental disabilities, the local welfare agencies responsible for investigating reports, the commissioner of education, and the local law enforcement agencies have the right to enter facilities as defined in subdivision 2 and to inspect and copy the facility's records, including medical records, as part of the investigation. Notwithstanding the provisions of chapter 13, they also have the right to inform the facility under investigation that they are conducting an investigation, to disclose to the facility the names of the individuals under investigation for abusing or neglecting a child, and to provide the facility with a copy of the report and the investigative findings.

(h) The local welfare agency responsible for conducting a family assessment or investigation shall collect available and relevant information to determine child safety, risk of subsequent child maltreatment, and family strengths and needs and share not public information with an Indian's tribal social services agency without violating any law of the state that may otherwise impose duties of confidentiality on the local welfare agency in order to implement the tribal state agreement. The local welfare agency or the agency responsible for investigating the report shall collect available and relevant information to ascertain whether maltreatment occurred and whether protective services are needed. Information collected includes, when relevant, information with regard to the person reporting the alleged maltreatment, including the nature of the reporter's relationship to the child and to the alleged offender, and the basis of the reporter's knowledge for the report; the child allegedly being maltreated; the alleged offender; the child's caretaker; and other collateral sources having relevant information related to the alleged maltreatment. The local welfare agency or the agency responsible for investigating the report may make a determination of no maltreatment early in an investigation, and close the case and retain immunity, if the collected information shows no basis for a full investigation. Information relevant to the assessment or investigation must be asked for, and may include:

- (1) the child's sex and age, prior reports of maltreatment, information relating to developmental functioning, credibility of the child's statement, and whether the information provided under this clause is consistent with other information collected during the course of the assessment or investigation;
- (2) the alleged offender's age, a record check for prior reports of maltreatment, and criminal charges and convictions. The local welfare agency or the agency responsible for assessing or investigating the report must provide the alleged offender with an opportunity to make a statement. The alleged offender may submit supporting documentation relevant to the assessment or investigation;

(3) collateral source information regarding the alleged maltreatment and care of the child. Collateral information includes, when relevant: (i) a medical examination of the child; (ii) prior medical records relating to the alleged maltreatment or the care of the child maintained by any facility, clinic, or health care professional and an interview with the treating professionals; and (iii) interviews with the child's caretakers, including the child's parent, guardian, foster parent, child care provider, teachers, counselors, family members, relatives, and other persons who may have knowledge regarding the alleged maltreatment and the care of the child; and

(4) information on the existence of domestic abuse and violence in the home of the child, and substance abuse.

Nothing in this paragraph precludes the local welfare agency, the local law enforcement agency, or the agency responsible for assessing or investigating the report from collecting other relevant information necessary to conduct the assessment or investigation. Notwithstanding sections 13.384 or 144.291 to 144.298, the local welfare agency has access to medical data and records for purposes of clause (3). Notwithstanding the data's classification in the possession of any other agency, data acquired by the local welfare agency or the agency responsible for assessing or investigating the report during the course of the assessment or investigation are private data on individuals and must be maintained in accordance with subdivision 11. Data of the commissioner of education collected or maintained during and for the purpose of an investigation of alleged maltreatment in a school are governed by this section, notwithstanding the data's classification as educational, licensing, or personnel data under chapter 13.

In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect investigative reports and data that are relevant to a report of maltreatment and are from local law enforcement and the school facility.

(i) Upon receipt of a report, the local welfare agency shall conduct a face-to-face contact with the child reported to be maltreated and with the child's primary caregiver sufficient to complete a safety assessment and ensure the immediate safety of the child. The face-to-face contact with the child and primary caregiver shall occur immediately if substantial child endangerment is alleged and within five calendar days for all other reports. If the alleged offender was not already interviewed as the primary caregiver, the local welfare agency shall also conduct a face-to-face interview with the alleged offender in the early stages of the assessment or investigation. At the initial contact, the local child welfare agency or the agency responsible for assessing or investigating the report must inform the alleged offender of the complaints or allegations made against the individual in a manner consistent with laws protecting the rights of the person who made the report. The interview with the alleged offender may be postponed if it would jeopardize an active law enforcement investigation.

(j) When conducting an investigation, the local welfare agency shall use a question and answer interviewing format with questioning as nondirective as possible to elicit

spontaneous responses. For investigations only, the following interviewing methods and procedures must be used whenever possible when collecting information:

- (1) audio recordings of all interviews with witnesses and collateral sources; and
- (2) in cases of alleged sexual abuse, audio-video recordings of each interview with the alleged victim and child witnesses.

(k) In conducting an assessment or investigation involving a school facility as defined in subdivision 2, paragraph (i), the commissioner of education shall collect available and relevant information and use the procedures in paragraphs (i), (k), and subdivision 3d, except that the requirement for face-to-face observation of the child and face-to-face interview of the alleged offender is to occur in the initial stages of the assessment or investigation provided that the commissioner may also base the assessment or investigation on investigative reports and data received from the school facility and local law enforcement, to the extent those investigations satisfy the requirements of paragraphs (i) and (k), and subdivision 3d.

Subd. 10a. Law enforcement agency responsibility for investigation; welfare agency reliance on law enforcement fact-finding; welfare agency offer of services.

(a) If the report alleges neglect, physical abuse, or sexual abuse by a person who is not a parent, guardian, sibling, person responsible for the child's care functioning within the family unit, or a person who lives in the child's household and who has a significant relationship to the child, in a setting other than a facility as defined in subdivision 2, the local welfare agency shall immediately notify the appropriate law enforcement agency, which shall conduct an investigation of the alleged abuse or neglect if a violation of a criminal statute is alleged.

(b) The local agency may rely on the fact-finding efforts of the law enforcement investigation conducted under this subdivision to make a determination whether or not threatened injury or other maltreatment has occurred under subdivision 2 if an alleged offender has minor children or lives with minors.

(c) If a child is the victim of an alleged crime under paragraph (a), the law enforcement agency shall immediately notify the local welfare agency, which shall offer appropriate social services for the purpose of safeguarding and enhancing the welfare of the abused or neglected minor.

Subd. 10b. Duties of commissioner; neglect or abuse in facility.

(a) This section applies to the commissioners of human services, health, and education. The commissioner of the agency responsible for assessing or investigating the report shall immediately assess or investigate if the report alleges that:

- (1) a child who is in the care of a facility as defined in subdivision 2 is neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in that facility, or has been so neglected or abused, or been the victim of maltreatment in a facility by an individual in that facility within the three years preceding the report; or
- (2) a child was neglected, physically abused, sexually abused, or is the victim of maltreatment in a facility by an individual in a facility defined in subdivision 2, while in the care of that facility within the three years preceding the report.

The commissioner of the agency responsible for assessing or investigating the report shall arrange for the transmittal to the commissioner of reports received by local agencies and may delegate to a local welfare agency the duty to investigate reports. In conducting an investigation under this section, the commissioner has the powers and duties specified for local welfare agencies under this section. The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may interview any children who are or have been in the care of a facility under investigation and their parents, guardians, or legal custodians.

(b) Prior to any interview, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall notify the parent, guardian, or legal custodian of a child who will be interviewed in the manner provided for in subdivision 10d, paragraph (a). If reasonable efforts to reach the parent, guardian, or legal custodian of a child in an out-of-home placement have failed, the child may be interviewed if there is reason to believe the interview is necessary to protect the child or other children in the facility. The commissioner of the agency responsible for assessing or investigating the report or local agency must provide the information required in this subdivision to the parent, guardian, or legal custodian of a child interviewed without parental notification as soon as possible after the interview. When the investigation is completed, any parent, guardian, or legal custodian notified under this subdivision shall receive the written memorandum provided for in subdivision 10d, paragraph (c).

(c) In conducting investigations under this subdivision the commissioner or local welfare agency shall obtain access to information consistent with subdivision 10, paragraphs (h), (i), and (j). In conducting assessments or investigations under this subdivision, the commissioner of education shall obtain access to reports and investigative data that are relevant to a report of maltreatment and are in the possession of a school facility as defined in subdivision 2, paragraph (i), notwithstanding the classification of the data as educational or personnel data under chapter 13. This includes, but is not limited to, school investigative reports, information concerning the conduct of school personnel alleged to have committed maltreatment of students, information about witnesses, and any protective or corrective action taken by the school facility regarding the school personnel alleged to have committed maltreatment.

(d) The commissioner may request assistance from the local social services agency.

Subd. 10c. Duties of local social service agency upon receipt of report of medical neglect. If the report alleges medical neglect as defined in section 260C.007, subdivision 6, clause (5), the local welfare agency shall, in addition to its other duties under this section, immediately consult with designated hospital staff and with the parents of the infant to verify that appropriate nutrition, hydration, and medication are being provided; and shall immediately secure an independent medical review of the infant's medical charts and records and, if necessary, seek a court order for an independent medical examination of the infant. If the review or examination leads to a conclusion of medical neglect, the agency shall intervene on behalf of the infant by initiating legal proceedings under section 260C.141 and by filing an expedited motion to prevent the withholding of medically indicated treatment.

Subd. 10d. Notification of neglect or abuse in facility.

(a) When a report is received that alleges neglect, physical abuse, sexual abuse, or maltreatment of a child while in the care of a licensed or unlicensed day care facility, residential facility, agency, hospital, sanitarium, or other facility or institution required to be licensed according to sections 144.50 to 144.58; 241.021; or 245A.01 to 245A.16; or chapter 245B, or a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed personal care provider organization as defined in section 256B.04, subdivision 16, and 256B.0625, subdivision 19a, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency investigating the report shall provide the following information to the parent, guardian, or legal custodian of a child alleged to have been neglected, physically abused, sexually abused, or the victim of maltreatment of a child in the facility: the name of the facility; the fact that a report alleging neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has been received; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; that the agency is conducting an assessment or investigation; any protective or corrective measures being taken pending the outcome of the investigation; and that a written memorandum will be provided when the investigation is completed.

(b) The commissioner of the agency responsible for assessing or investigating the report or local welfare agency may also provide the information in paragraph (a) to the parent, guardian, or legal custodian of any other child in the facility if the investigative agency knows or has reason to believe the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility has occurred. In determining whether to exercise this authority, the commissioner of the agency responsible for assessing or investigating the report or local welfare agency shall consider the seriousness of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the number of children allegedly neglected, physically abused, sexually abused, or victims of maltreatment of a child in the facility; the number of alleged perpetrators; and the length of the investigation. The facility shall be notified whenever this discretion is exercised.

(c) When the commissioner of the agency responsible for assessing or investigating the report or local welfare agency has completed its investigation, every parent, guardian, or legal custodian previously notified of the investigation by the commissioner or local welfare agency shall be provided with the following information in a written memorandum: the name of the facility investigated; the nature of the alleged neglect, physical abuse, sexual abuse, or maltreatment of a child in the facility; the investigator's name; a summary of the investigation findings; a statement whether maltreatment was found; and the protective or corrective measures that are being or will be taken. The memorandum shall be written in a manner that protects the identity of the reporter and the child and shall not contain the name, or to the extent possible, reveal the identity of the alleged perpetrator or of those interviewed during the investigation. If maltreatment is determined to exist, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child in the facility who had contact with the individual responsible for the maltreatment. When the facility is the responsible party for maltreatment, the commissioner or local welfare agency shall also provide the written memorandum to the parent, guardian, or legal custodian of each child who received services in the population of the facility where the maltreatment occurred. This notification must be

provided to the parent, guardian, or legal custodian of each child receiving services from the time the maltreatment occurred until either the individual responsible for maltreatment is no longer in contact with a child or children in the facility or the conclusion of the investigation. In the case of maltreatment within a school facility, as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10, the commissioner of education need not provide notification to parents, guardians, or legal custodians of each child in the facility, but shall, within ten days after the investigation is completed, provide written notification to the parent, guardian, or legal custodian of any student alleged to have been maltreated. The commissioner of education may notify the parent, guardian, or legal custodian of any student involved as a witness to alleged maltreatment.

Subd. 10e. **Determinations.**

(a) The local welfare agency shall conclude the family assessment or the investigation within 45 days of the receipt of a report. The conclusion of the assessment or investigation may be extended to permit the completion of a criminal investigation or the receipt of expert information requested within 45 days of the receipt of the report.

(b) After conducting a family assessment, the local welfare agency shall determine whether services are needed to address the safety of the child and other family members and the risk of subsequent maltreatment.

(c) After conducting an investigation, the local welfare agency shall make two determinations: first, whether maltreatment has occurred; and second, whether child protective services are needed. No determination of maltreatment shall be made when the alleged perpetrator is a child under the age of ten.

(d) If the commissioner of education conducts an assessment or investigation, the commissioner shall determine whether maltreatment occurred and what corrective or protective action was taken by the school facility. If a determination is made that maltreatment has occurred, the commissioner shall report to the employer, the school board, and any appropriate licensing entity the determination that maltreatment occurred and what corrective or protective action was taken by the school facility. In all other cases, the commissioner shall inform the school board or employer that a report was received, the subject of the report, the date of the initial report, the category of maltreatment alleged as defined in paragraph (f), the fact that maltreatment was not determined, and a summary of the specific reasons for the determination.

(e) When maltreatment is determined in an investigation involving a facility, the investigating agency shall also determine whether the facility or individual was responsible, or whether both the facility and the individual were responsible for the maltreatment using the mitigating factors in paragraph (i). Determinations under this subdivision must be made based on a preponderance of the evidence and are private data on individuals or nonpublic data as maintained by the commissioner of education.

(f) For the purposes of this subdivision, "maltreatment" means any of the following acts or omissions:

- (1) physical abuse as defined in subdivision 2, paragraph (g);
- (2) neglect as defined in subdivision 2, paragraph (f);
- (3) sexual abuse as defined in subdivision 2, paragraph (d);
- (4) mental injury as defined in subdivision 2, paragraph (m); or
- (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (i).

(g) For the purposes of this subdivision, a determination that child protective services are needed means that the local welfare agency has documented conditions during the assessment or investigation sufficient to cause a child protection worker, as defined in section 626.559, subdivision 1, to conclude that a child is at significant risk of maltreatment if protective intervention is not provided and that the individuals responsible for the child's care have not taken or are not likely to take actions to protect the child from maltreatment or risk of maltreatment.

(h) This subdivision does not mean that maltreatment has occurred solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, in lieu of medical care. However, if lack of medical care may result in serious danger to the child's health, the local welfare agency may ensure that necessary medical services are provided to the child.

(i) When determining whether the facility or individual is the responsible party, or whether both the facility and the individual are responsible for determined maltreatment in a facility, the investigating agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were according to, and followed the terms of, an erroneous physician order, prescription, individual care plan, or directive; however, this is not a mitigating factor when the facility or caregiver was responsible for the issuance of the erroneous order, prescription, individual care plan, or directive or knew or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) comparative responsibility between the facility, other caregivers, and requirements placed upon an employee, including the facility's compliance with related regulatory standards and the adequacy of facility policies and procedures, facility training, an individual's participation in the training, the caregiver's supervision, and facility staffing levels and the scope of the individual employee's authority and discretion; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

The evaluation of the facility's responsibility under clause (2) must not be based on the completeness of the risk assessment or risk reduction plan required under section 245A.66, but must be based on the facility's compliance with the regulatory standards for policies and procedures, training, and supervision as cited in Minnesota Statutes and Minnesota Rules.

(j) Notwithstanding paragraph (i), when maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under sections 245A.06 or 245A.07 apply.

(k) Individual counties may implement more detailed definitions or criteria that indicate which allegations to investigate, as long as a county's policies are consistent with the definitions in the statutes and rules and are approved by the county board. Each local welfare agency shall periodically inform mandated reporters under subdivision 3 who

work in the county of the definitions of maltreatment in the statutes and rules and any additional definitions or criteria that have been approved by the county board.

Subd. 10f. **Notice of determinations.** Within ten working days of the conclusion of a family assessment, the local welfare agency shall notify the parent or guardian of the child of the need for services to address child safety concerns or significant risk of subsequent child maltreatment. The local welfare agency and the family may also jointly agree that family support and family preservation services are needed. Within ten working days of the conclusion of an investigation, the local welfare agency or agency responsible for investigating the report shall notify the parent or guardian of the child, the person determined to be maltreating the child, and, if applicable, the director of the facility, of the determination and a summary of the specific reasons for the determination. When the investigation involves a child foster care setting that is monitored by a private licensing agency under section 245A.16, the local welfare agency responsible for investigating the report shall notify the private licensing agency of the determination and shall provide a summary of the specific reasons for the determination. The notice to the private licensing agency must include identifying private data, but not the identity of the reporter of maltreatment. The notice must also include a certification that the information collection procedures under subdivision 10, paragraphs (h), (i), and (j), were followed and a notice of the right of a data subject to obtain access to other private data on the subject collected, created, or maintained under this section. In addition, the notice shall include the length of time that the records will be kept under subdivision 11c. The investigating agency shall notify the parent or guardian of the child who is the subject of the report, and any person or facility determined to have maltreated a child, of their appeal or review rights under this section. The notice must also state that a finding of maltreatment may result in denial of a license application or background study disqualification under chapter 245C related to employment or services that are licensed by the Department of Human Services under chapter 245A, the Department of Health under chapter 144 or 144A, the Department of Corrections under section 241.021, and from providing services related to an unlicensed personal care provider organization under chapter 256B.

Subd. 10g. **Interstate data exchange.** All reports and records created, collected, or maintained under this section by a local social service agency or law enforcement agency may be disclosed to a local social service or other child welfare agency of another state when the agency certifies that:

- (1) the reports and records are necessary in order to conduct an investigation of actions that would qualify as sexual abuse, physical abuse, or neglect under this section; and
- (2) the reports and records will be used only for purposes of a child protection assessment or investigation and will not be further disclosed to any other person or agency.

The local social service agency or law enforcement agency in this state shall keep a record of all records or reports disclosed pursuant to this subdivision and of any agency to which the records or reports are disclosed. If in any case records or reports are disclosed before a determination is made under subdivision 10e, or a disposition of any criminal proceedings is reached, the local social service agency or law enforcement agency in this state shall forward the determination or disposition to any agency that has received any report or record under this subdivision.

Subd. 10h. **Child abuse data; release to family court services.** The responsible authority or its designee of a local welfare agency may release private or confidential data on an active case involving assessment or investigation of actions that are defined as sexual abuse, physical abuse, or neglect under this section to a court services agency if:

- (1) the court services agency has an active case involving a common client or clients who are the subject of the data; and
- (2) the data are necessary for the court services agency to effectively process the court services' case, including investigating or performing other duties relating to the case required by law.

The data disclosed under this subdivision may be used only for purposes of the active court services case described in clause (1) and may not be further disclosed to any other person or agency, except as authorized by law.

Subd. 10i. **Administrative reconsideration; review panel.**

(a) Administrative reconsideration is not applicable in family assessments since no determination concerning maltreatment is made. For investigations, except as provided under paragraph (e), an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child, an interested person acting on behalf of the child, regardless of the determination, who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the parent or guardian of the child. If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 15 calendar days after the individual's or facility's receipt of the final determination. Effective January 1, 2002, an individual who was determined to have maltreated a child under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the investigating agency within 30 calendar days of the individual's receipt of the maltreatment determination and notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the investigating agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the investigating agency denies the request or fails to act upon the request within 15 working days after receiving the

request for reconsideration, the person or facility entitled to a fair hearing under section 256.045 may submit to the commissioner of human services or the commissioner of education a written request for a hearing under that section. Section 256.045 also governs hearings requested to contest a final determination of the commissioner of education. The investigating agency shall notify persons who request reconsideration of their rights under this paragraph. The hearings specified under this section are the only administrative appeal of a decision issued under paragraph (a). Determinations under this section are not subject to accuracy and completeness challenges under section 13.04.

(c) If, as a result of a reconsideration or review, the investigating agency changes the final determination of maltreatment, that agency shall notify the parties specified in subdivisions 10b, 10d, and 10f.

(d) Except as provided under paragraph (f), if an individual or facility contests the investigating agency's final determination regarding maltreatment by requesting a fair hearing under section 256.045, the commissioner of human services shall assure that the hearing is conducted and a decision is reached within 90 days of receipt of the request for a hearing. The time for action on the decision may be extended for as many days as the hearing is postponed or the record is held open for the benefit of either party.

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and requested reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and reconsideration of the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, subdivision 2a, the scope of the contested case hearing shall include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing regarding the maltreatment determination and disqualification shall not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination as provided under this subdivision, and reconsideration of a disqualification as provided under section 245C.22, shall also not be conducted when:

- (1) a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;
- (2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and

(3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) For purposes of this subdivision, "interested person acting on behalf of the child" means a parent or legal guardian; stepparent; grandparent; guardian ad litem; adult stepbrother, stepsister, or sibling; or adult aunt or uncle; unless the person has been determined to be the perpetrator of the maltreatment.

Subd. 10j. **Release of data to mandated reporters.** A local social services or child protection agency, or the agency responsible for assessing or investigating the report of maltreatment, may provide relevant private data on individuals obtained under this section to mandated reporters who have an ongoing responsibility for the health, education, or welfare of a child affected by the data, in the best interests of the child. Mandated reporters with ongoing responsibility for the health, education, or welfare of a child affected by the data include the child's teachers or other appropriate school personnel, foster parents, health care providers, respite care workers, therapists, social workers, child care providers, residential care staff, crisis nursery staff, probation officers, and court services personnel. Under this section, a mandated reporter need not have made the report to be considered a person with ongoing responsibility for the health, education, or welfare of a child affected by the data. Data provided under this section must be limited to data pertinent to the individual's responsibility for caring for the child.

Subd. 10k. **Release of certain assessment or investigative records to other counties.** Records maintained under subdivision 11c, paragraph (a), may be shared with another local welfare agency that requests the information because it is conducting an assessment or investigation under this section of the subject of the records.

Subd. 10l. **Documentation.** When a case is closed that has been open for services, the local welfare agency shall document the outcome of the family assessment or investigation, including a description of services provided and the removal or reduction of risk to the child, if it existed.

Subd. 10m. **Provision of child protective services.** The local welfare agency shall create a written plan, in collaboration with the family whenever possible, within 30 days of the determination that child protective services are needed or upon joint agreement of the local welfare agency and the family that family support and preservation services are needed. Child protective services for a family are voluntary unless ordered by the court.

Subd. 10n. **Required referral to early intervention services.** A child under age three who is involved in a substantiated case of maltreatment shall be referred for screening under the Individuals with Disabilities Education Act, part C. Parents must be informed that the evaluation and acceptance of services are voluntary. The commissioner of human services shall monitor referral rates by county and annually report the information to the legislature beginning March 15, 2014. Refusal to have a child screened is not a basis for a child in need of protection or services petition under chapter 260C.

Subd. 11. **Records.**

(a) Except as provided in paragraph (b) and subdivisions 10b, 10d, 10g, and 11b, all records concerning individuals maintained by a local welfare agency or agency responsible for assessing or investigating the report under this section, including any written reports filed under subdivision 7, shall be private data on individuals, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. All records concerning determinations of maltreatment by a facility are nonpublic data as maintained by the Department of Education, except insofar as copies of reports are required by subdivision 7 to be sent to the local police department or the county sheriff. Reports maintained by any police department or the county sheriff shall be private data on individuals except the reports shall be made available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners. Section 13.82, subdivisions 8, 9, and 14, apply to law enforcement data other than the reports. The local social services agency or agency responsible for assessing or investigating the report shall make available to the investigating, petitioning, or prosecuting authority, including county medical examiners or county coroners or their professional delegates, any records which contain information relating to a specific incident of neglect or abuse which is under investigation, petition, or prosecution and information relating to any prior incidents of neglect or abuse involving any of the same persons. The records shall be collected and maintained in accordance with the provisions of chapter 13. In conducting investigations and assessments pursuant to this section, the notice required by section 13.04, subdivision 2, need not be provided to a minor under the age of ten who is the alleged victim of abuse or neglect. An individual subject of a record shall have access to the record in accordance with those sections, except that the name of the reporter shall be confidential while the report is under assessment or investigation except as otherwise permitted by this subdivision. Any person conducting an investigation or assessment under this section who intentionally discloses the identity of a reporter prior to the completion of the investigation or assessment is guilty of a misdemeanor. After the assessment or investigation is completed, the name of the reporter shall be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by the court that the report was false and that there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure.

(b) Upon request of the legislative auditor, data on individuals maintained under this section must be released to the legislative auditor in order for the auditor to fulfill the

auditor's duties under section 3.971. The auditor shall maintain the data in accordance with chapter 13.

(c) The commissioner of education must be provided with all requested data that are relevant to a report of maltreatment and are in possession of a school facility as defined in subdivision 2, paragraph (i), when the data is requested pursuant to an assessment or investigation of a maltreatment report of a student in a school. If the commissioner of education makes a determination of maltreatment involving an individual performing work within a school facility who is licensed by a board or other agency, the commissioner shall provide necessary and relevant information to the licensing entity to enable the entity to fulfill its statutory duties.

Notwithstanding section 13.03, subdivision 4, data received by a licensing entity under this paragraph are governed by section 13.41 or other applicable law governing data of the receiving entity, except that this section applies to the classification of and access to data on the reporter of the maltreatment.

Subd. 11a. **Disclosure of information not required in certain cases.** When interviewing a minor under subdivision 10, an individual does not include the parent or guardian of the minor for purposes of section 13.04, subdivision 2, when the parent or guardian is the alleged perpetrator of the abuse or neglect.

Subd. 11b. **Data received from law enforcement.** Active law enforcement investigative data received by a local welfare agency or agency responsible for assessing or investigating the report under this section are confidential data on individuals. When this data become inactive in the law enforcement agency, the data are private data on individuals.

Subd. 11c. **Welfare, court services agency, and school records maintained.** Notwithstanding sections 138.163 and 138.17, records maintained or records derived from reports of abuse by local welfare agencies, agencies responsible for assessing or investigating the report, court services agencies, or schools under this section shall be destroyed as provided in paragraphs (a) to (d) by the responsible authority.

(a) For family assessment cases and cases where an investigation results in no determination of maltreatment or the need for child protective services, the assessment or investigation records must be maintained for a period of four years. Records under this paragraph may not be used for employment, background checks, or purposes other than to assist in future risk and safety assessments.

(b) All records relating to reports which, upon investigation, indicate either maltreatment or a need for child protective services shall be maintained for at least ten years after the date of the final entry in the case record.

(c) All records regarding a report of maltreatment, including any notification of intent to interview which was received by a school under subdivision 10, paragraph (d), shall be destroyed by the school when ordered to do so by the agency conducting the assessment or investigation. The agency shall order the destruction of the notification when other records relating to the report under investigation or assessment are destroyed under this subdivision.

(d) Private or confidential data released to a court services agency under subdivision 10h must be destroyed by the court services agency when ordered to do so by the local welfare agency that released the data. The local welfare agency or agency responsible

for assessing or investigating the report shall order destruction of the data when other records relating to the assessment or investigation are destroyed under this subdivision.

Subd. 11d. Disclosure in child fatality or near-fatality cases.

(a) The definitions in this paragraph apply to this section.

(1) "Child fatality" means the death of a child from suspected abuse, neglect, or maltreatment.

(2) "Near fatality" means a case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(3) "Findings and information" means a written summary described in paragraph (c) of actions taken or services rendered by a local social services agency following receipt of a report.

(b) Notwithstanding any other provision of law and subject to this subdivision, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) a person is criminally charged with having caused the child fatality or near fatality; or

(2) a county attorney certifies that a person would have been charged with having caused the child fatality or near fatality but for that person's death.

(c) Findings and information disclosed under this subdivision consist of a written summary that includes any of the following information the agency is able to provide:

(1) the dates, outcomes, and results of any actions taken or services rendered;

(2) the results of any review of the state child mortality review panel, a local child mortality review panel, a local community child protection team, or any public agency; and

(3) confirmation of the receipt of all reports, accepted or not accepted, by the local welfare agency for assessment of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of the basis for the agency's determination.

(d) Nothing in this subdivision authorizes access to the private data in the custody of a local social services agency, or the disclosure to the public of the records or content of any psychiatric, psychological, or therapeutic evaluations, or the disclosure of information that would reveal the identities of persons who provided information related to suspected abuse, neglect, or maltreatment of the child.

(e) A person whose request is denied may apply to the appropriate court for an order compelling disclosure of all or part of the findings and information of the public agency. The application must set forth, with reasonable particularity, factors supporting the application. The court has jurisdiction to issue these orders. Actions under this section must be set down for immediate hearing, and subsequent proceedings in those actions must be given priority by the appellate courts.

(f) A public agency or its employees acting in good faith in disclosing or declining to disclose information under this section are immune from criminal or civil liability that might otherwise be incurred or imposed for that action.

Subd. 12. **Duties of facility operators.** Any operator, employee, or volunteer worker at any facility who intentionally neglects, physically abuses, or sexually abuses any child in the care of that facility may be charged with a violation of section 609.255, 609.377, or 609.378. Any operator of a facility who knowingly permits conditions to exist which result in neglect, physical abuse, sexual abuse, or maltreatment of a child in a facility while in the care of that facility may be charged with a violation of section 609.378. The facility operator shall inform all mandated reporters employed by or otherwise associated with the facility of the duties required of mandated reporters and shall inform all mandatory reporters of the prohibition against retaliation for reports made in good faith under this section.

Subd. 13. [Repealed, 1988 c 625 s 9]

Subd. 14. **Conflict of interest.**

(a) A potential conflict of interest related to assisting in an assessment under this section resulting in a direct or shared financial interest with a child abuse and neglect treatment provider or resulting from a personal or family relationship with a party in the investigation must be considered by the local welfare agency in an effort to prevent unethical relationships.

(b) A person who conducts an assessment under this section or section 626.5561 may not have:

- (1) any direct or shared financial interest or referral relationship resulting in a direct shared financial gain with a child abuse and neglect treatment provider; or
- (2) a personal or family relationship with a party in the investigation.

If an independent assessor is not available, the person responsible for making the determination under this section may use the services of an assessor with a financial interest, referral, or personal or family relationship.

Subd. 15. **Auditing.** The commissioner of human services shall regularly audit for accuracy the data reported by counties on maltreatment of minors.

History: 1975 c 221 s 1; 1977 c 130 s 9; 1977 c 212 s 2,3; 1978 c 755 s 1-9; 1979 c 143 s 1; 1979 c 255 s 7; 1980 c 509 s 50,181; 1981 c 240 s 2; 1981 c 273 s 12; 1981 c 311 s 39; 1Sp1981 c 4 art 1 s 15; 1982 c 393 s 1,2; 1982 c 545 s 24; 1982 c 636 s 1-4; 1983 c 217 s 8; 1983 c 229 s 1,2; 1983 c 345 s 13-19; 1984 c 484 s 3; 1984 c 573 s 10; 1984 c 577 s 1-6; 1984 c 588 s 12; 1984 c 654 art 5 s 58; 1984 c 655 art 2 s 14 subd 1; 1985 c 266 s 5-15; 1985 c 283 s 2-4; 1985 c 286 s 19,20; 1985 c 293 s 3-5; 1986 c 351 s 19,20; 1986 c 380 s 3; 1986 c 444; 1986 c 469 s 2; 1Sp1986 c 3 art 1 s 77; 1987 c 91 s 1-3; 1987 c 110 s 2; 1987 c 135 s 1-3; 1987 c 211 s 1; 1987 c 333 s 22; 1987 c 352 s 9,10; 1988 c 543 s 11,12; 1988 c 625 s 2-8; 1988 c 662 s 4; 1989 c 177 s 2,3; 1989 c 209 art 2 s 1; 1989 c 282 art 2 s 200,201; 1989 c 290 art 5 s 4; 1990 c 426 art 1 s 55; 1990 c 542 s 20-26; 1991 c 181 s 1; 1991 c 319 s 24,25; 1993 c 13 art 1 s 50; 1993 c 296 s 3; 1993 c 306 s 18,19; 1993 c 326 art 6 s 23; 1993 c 351 s 37,38; 1994 c 434 s 8-10; 1994 c 631 s 31; 1994 c 636 art 2 s 57-59; art 4 s 30; 1995 c 187 s 1-7; 1995 c 229 art 4 s 20; 1997 c 203 art 5 s 25-30; 1997 c 245 art 2 s 8; 1Sp1997 c 3 s 44; 3Sp1997 c 3 s 10; 1998 c 406 art 1 s 36,37; art 4 s 2-7; 1998 c 407 art 9 s 35; 1Sp1998 c 3 s 25; 1999 c 139 art 4 s 2; 1999 c 227 s 22; 1999 c 241 art 2 s 54; art 10 s 3; 1999 c 245 art 4 s 102; art 8 s 66-79; 2000 c 401 s 1; 2000 c 444 art 2 s 47; 2001 c 7 s 88; 2001 c 136 s 1;

2001 c 178 art 1 s 40,44; art 2 s 7-17; 1Sp2001 c 6 art 3 s 16; 1Sp2001 c 9 art 11 s 6-12; art 14 s 29; 2002 c 375 art 1 s 21; 2002 c 379 art 1 s 107,113; 2002 c 385 s 9; 2003 c 15 art 1 s 33; 2003 c 130 s 12; 2004 c 288 art 1 s 78,79; 2004 c 294 art 5 s 18; 2005 c 56 s 1; 2005 c 136 art 3 s 25; 2005 c 159 art 1 s 1-13; 1Sp2005 c 4 art 1 s 54; 2006 c 263 art 7 s 6; 2006 c 264 s 14; 2006 c 283 s 1; 2007 c 112 s 52-54; 2007 c 147 art 1 s 24-31; art 10 s 15; 2008 c 361 art 6 s 55,56; 2009 c 79 art 8 s 74; 2009 c 86 art 1 s 86; 2009 c 142 art 2 s 43-45; 2009 c 173 art 1 s 39; 2010 c 276 s 1,2; 2010 c 301 art 3 s 10; 2010 c 329 art 1 s 19,20; art 2 s 5; 2010 c 385 s 13; 2012 c 153 s 2; 2012 c 216 art 1 s 47-50; art 6 s 7-13; 2012 c 247 art 3 s 24

626.5561 REPORTING OF PRENATAL EXPOSURE TO CONTROLLED SUBSTANCES.

Subdivision 1. Reports required.

(a) Except as provided in paragraph (b), a person mandated to report under section 626.556, subdivision 3, shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.

(b) A health care professional or a social service professional who is mandated to report under section 626.556, subdivision 3, is exempt from reporting under paragraph (a) a woman's use or consumption of tetrahydrocannabinol or alcoholic beverages during pregnancy if the professional is providing the woman with prenatal care or other healthcare services.

(c) Any person may make a voluntary report if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive. An oral report shall be made immediately by telephone or otherwise. An oral report made by a person required to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the local welfare agency. Any report shall be of sufficient content to identify the pregnant woman, the nature and extent of the use, if known, and the name and address of the reporter.

(d) For purposes of this section, "prenatal care" means the comprehensive package of medical and psychological support provided throughout the pregnancy.

Subd. 2. Local welfare agency. Upon receipt of a report required under subdivision 1, the local welfare agency shall immediately conduct an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. The local welfare agency may also take any appropriate action under chapter 253B, including seeking an emergency admission under section 253B.05. The local welfare agency shall seek an emergency admission under section 253B.05 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

Subd. 3. Related provisions. Reports under this section are governed by section 626.556, subdivisions 4, 4a, 5, 6, 8, and 11.

Subd. 4. **Controlled substances.** For purposes of this section and section 626.5562, "controlled substance" means a controlled substance listed in section 253B.02, subdivision 2.

Subd. 5. **Immunity.**

(a) A person making a voluntary or mandated report under subdivision 1 or assisting in an assessment under subdivision 2 is immune from any civil or criminal liability that otherwise might result from the person's actions, if the person is acting in good faith.

(b) This subdivision does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

History: 1989 c 290 art 5 s 5; 1990 c 542 s 27-30; 2007 c 69 s 3,4; 2010 c 348 s 1

626.557 REPORTING OF MALTREATMENT OF VULNERABLE ADULTS.

Subdivision 1. **Public policy.** The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.

In addition, it is the policy of this state to require the reporting of suspected maltreatment of vulnerable adults, to provide for the voluntary reporting of maltreatment of vulnerable adults, to require the investigation of the reports, and to provide protective and counseling services in appropriate cases.

Subd. 2. [Repealed, 1995 c 229 art 1 s 24]

Subd. 3. Timing of report.

(a) A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately report the information to the common entry point. If an individual is a vulnerable adult solely because the individual is admitted to a facility, a mandated reporter is not required to report suspected maltreatment of the individual that occurred prior to admission, unless:

(1) the individual was admitted to the facility from another facility and the reporter has reason to believe the vulnerable adult was maltreated in the previous facility; or

(2) the reporter knows or has reason to believe that the individual is a vulnerable adult as defined in section 626.5572, subdivision 21, paragraph (a), clause (4).

(b) A person not required to report under the provisions of this section may voluntarily report as described above.

(c) Nothing in this section requires a report of known or suspected maltreatment, if the reporter knows or has reason to know that a report has been made to the common entry point.

(d) Nothing in this section shall preclude a reporter from also reporting to a law enforcement agency.

(e) A mandated reporter who knows or has reason to believe that an error under section 626.5572, subdivision 17, paragraph (c), clause (5), occurred must make a report under this subdivision. If the reporter or a facility, at any time believes that an investigation by a lead investigative agency will determine or should determine that the reported error was not neglect according to the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5), the reporter or facility may provide to the common entry point or directly to the lead investigative agency information explaining how the event meets the criteria under section 626.5572, subdivision 17, paragraph (c), clause (5). The lead investigative agency shall consider this information when making an initial disposition of the report under subdivision 9c.

Subd. 3a. **Report not required.** The following events are not required to be reported under this section:

(1) A circumstance where federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected maltreatment, unless the vulnerable adult, or the vulnerable adult's guardian, conservator, or legal representative, has consented to disclosure in a manner which conforms to federal requirements. Facilities whose patients or residents are covered by such a federal law shall seek consent to the disclosure of suspected maltreatment from each patient or resident, or a guardian, conservator, or legal representative, upon the patient's or resident's admission to the facility. Persons who are prohibited by federal law from reporting an incident of suspected maltreatment shall immediately seek consent to make a report.

(2) Verbal or physical aggression occurring between patients, residents, or clients of a facility, or self-abusive behavior by these persons does not constitute abuse unless the behavior causes serious harm. The operator of the facility or a designee shall record incidents of aggression and self-abusive behavior to facilitate review by licensing agencies and county and local welfare agencies.

(3) Accidents as defined in section 626.5572, subdivision 3.

(4) Events occurring in a facility that result from an individual's error in the provision of therapeutic conduct to a vulnerable adult, as provided in section 626.5572, subdivision 17, paragraph (c), clause (4).

(5) Nothing in this section shall be construed to require a report of financial exploitation, as defined in section 626.5572, subdivision 9, solely on the basis of the transfer of money or property by gift or as compensation for services rendered.

Subd. 4. **Reporting.**

(a) Except as provided in paragraph (b), a mandated reporter shall immediately make an oral report to the common entry point. Use of a telecommunications device for the deaf or other similar device shall be considered an oral report. The common entry point may not require written reports. To the extent possible, the report must be of sufficient content to identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected maltreatment. A mandated reporter may disclose not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, to the extent necessary to comply with this subdivision.

(b) A boarding care home that is licensed under sections 144.50 to 144.58 and certified under Title 19 of the Social Security Act, a nursing home that is licensed under section 144A.02 and certified under Title 18 or Title 19 of the Social Security Act, or a hospital that is licensed under sections 144.50 to 144.58 and has swing beds certified under Code of Federal Regulations, title 42, section 482.66, may submit a report electronically to the common entry point instead of submitting an oral report. The report may be a duplicate of the initial report the facility submits electronically to the commissioner of health to comply with the reporting requirements under Code of Federal Regulations, title 42, section 483.13. The commissioner of health may modify these reporting

requirements to include items required under paragraph (a) that are not currently included in the electronic reporting form.

Subd. 4a. Internal reporting of maltreatment.

(a) Each facility shall establish and enforce an ongoing written procedure in compliance with applicable licensing rules to ensure that all cases of suspected maltreatment are reported. If a facility has an internal reporting procedure, a mandated reporter may meet the reporting requirements of this section by reporting internally. However, the facility remains responsible for complying with the immediate reporting requirements of this section.

(b) A facility with an internal reporting procedure that receives an internal report by a mandated reporter shall give the mandated reporter a written notice stating whether the facility has reported the incident to the common entry point. The written notice must be provided within two working days and in a manner that protects the confidentiality of the reporter.

(c) The written response to the mandated reporter shall note that if the mandated reporter is not satisfied with the action taken by the facility on whether to report the incident to the common entry point, then the mandated reporter may report externally.

(d) A facility may not prohibit a mandated reporter from reporting externally, and a facility is prohibited from retaliating against a mandated reporter who reports an incident to the common entry point in good faith. The written notice by the facility must inform the mandated reporter of this protection from retaliatory measures by the facility against the mandated reporter for reporting externally.

Subd. 5. Immunity; protection for reporters.

(a) A person who makes a good faith report is immune from any civil or criminal liability that might otherwise result from making the report, or from participating in the investigation, or for failure to comply fully with the reporting obligation under section 609.234 or 626.557, subdivision 7.

(b) A person employed by a lead investigative agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with this section or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

(c) A person who knows or has reason to know a report has been made to a common entry point and who in good faith participates in an investigation of alleged maltreatment is immune from civil or criminal liability that otherwise might result from making the report, or from failure to comply with the reporting obligation or from participating in the investigation.

(d) The identity of any reporter may not be disclosed, except as provided in subdivision 12b.

(e) For purposes of this subdivision, "person" includes a natural person or any form of a business or legal entity.

Subd. 5a. Financial institution cooperation. Financial institutions shall cooperate with a lead investigative agency, law enforcement, or prosecuting authority that is investigating maltreatment of a vulnerable adult and comply with reasonable requests for the production of

financial records as authorized under section 13A.02, subdivision 1. Financial institutions are immune from any civil or criminal liability that might otherwise result from complying with this subdivision.

Subd. 6. **Falsified reports.** A person or facility who intentionally makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the reported facility, person or persons and for punitive damages up to \$10,000 and attorney fees.

Subd. 7. **Failure to report.** A mandated reporter who negligently or intentionally fails to report is liable for damages caused by the failure. Nothing in this subdivision imposes vicarious liability for the acts or omissions of others.

Subd. 8. **Evidence not privileged.** No evidence regarding the maltreatment of the vulnerable adult shall be excluded in any proceeding arising out of the alleged maltreatment on the grounds of lack of competency under section 595.02.

Subd. 9. **Common entry point designation.**

(a) Each county board shall designate a common entry point for reports of suspected maltreatment. Two or more county boards may jointly designate a single common entry point. The common entry point is the unit responsible for receiving the report of suspected maltreatment under this section.

(b) The common entry point must be available 24 hours per day to take calls from reporters of suspected maltreatment. The common entry point shall use a standard intake form that includes:

- (1) the time and date of the report;
- (2) the name, address, and telephone number of the person reporting;
- (3) the time, date, and location of the incident;
- (4) the names of the persons involved, including but not limited to, perpetrators, alleged victims, and witnesses;
- (5) whether there was a risk of imminent danger to the alleged victim;
- (6) a description of the suspected maltreatment;
- (7) the disability, if any, of the alleged victim;
- (8) the relationship of the alleged perpetrator to the alleged victim;
- (9) whether a facility was involved and, if so, which agency licenses the facility;
- (10) any action taken by the common entry point;
- (11) whether law enforcement has been notified;
- (12) whether the reporter wishes to receive notification of the initial and final reports; and
- (13) if the report is from a facility with an internal reporting procedure, the name, mailing address, and telephone number of the person who initiated the report internally.

(c) The common entry point is not required to complete each item on the form prior to dispatching the report to the appropriate lead investigative agency.

(d) The common entry point shall immediately report to a law enforcement agency any incident in which there is reason to believe a crime has been committed.

(e) If a report is initially made to a law enforcement agency or a lead investigative agency, those agencies shall take the report on the appropriate common entry point intake forms and immediately forward a copy to the common entry point.

(f) The common entry point staff must receive training on how to screen and dispatch reports efficiently and in accordance with this section.

(g) The commissioner of human services shall maintain a centralized database for the collection of common entry point data, lead investigative agency data including maltreatment report disposition, and appeals data.

Subd. 9a. Evaluation and referral of reports made to common entry point unit. The common entry point must screen the reports of alleged or suspected maltreatment for immediate risk and make all necessary referrals as follows:

(1) if the common entry point determines that there is an immediate need for adult protective services, the common entry point agency shall immediately notify the appropriate county agency;

(2) if the report contains suspected criminal activity against a vulnerable adult, the common entry point shall immediately notify the appropriate law enforcement agency;

(3) the common entry point shall refer all reports of alleged or suspected maltreatment to the appropriate lead investigative agency as soon as possible, but in any event no longer than two working days;

(4) if the report involves services licensed by the Department of Human Services and subject to chapter 245D, the common entry point shall refer the report to the county as the lead agency according to clause (3), but shall also notify the Department of Human Services of the report; and

(5) if the report contains information about a suspicious death, the common entry point shall immediately notify the appropriate law enforcement agencies, the local medical examiner, and the ombudsman for mental health and developmental disabilities established under section 245.92. Law enforcement agencies shall coordinate with the local medical examiner and the ombudsman as provided by law.

Subd. 9b. Response to reports. Law enforcement is the primary agency to conduct investigations of any incident in which there is reason to believe a crime has been committed. Law enforcement shall initiate a response immediately. If the common entry point notified a county agency for adult protective services, law enforcement shall cooperate with that county agency when both agencies are involved and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). County adult protection shall initiate a response immediately. Each lead investigative agency shall complete the investigative process for reports within its jurisdiction. A lead investigative agency, county, adult protective agency, licensed facility, or law enforcement agency shall cooperate in coordinating its investigation with other agencies and may assist another agency upon request within the limits of its resources and expertise and shall exchange data to the extent authorized in subdivision 12b, paragraph (g). The lead investigative agency shall obtain the results of any investigation conducted by law enforcement officials. The lead investigative agency has the right to enter facilities and inspect and copy records as part of investigations. The lead investigative agency has access to not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to conduct its investigation. Each lead investigative agency shall develop guidelines for prioritizing reports for investigation.

Subd. 9c. Lead investigative agency; notifications, dispositions, determinations.

(a) Upon request of the reporter, the lead investigative agency shall notify the reporter that it has received the report, and provide information on the initial disposition of the report within five business days of receipt of the report, provided that the notification will not endanger the vulnerable adult or hamper the investigation.

(b) Upon conclusion of every investigation it conducts, the lead investigative agency shall make a final disposition as defined in section 626.5572, subdivision 8.

(c) When determining whether the facility or individual is the responsible party for substantiated maltreatment or whether both the facility and the individual are responsible for substantiated maltreatment, the lead investigative agency shall consider at least the following mitigating factors:

(1) whether the actions of the facility or the individual caregivers were in accordance with, and followed the terms of, an erroneous physician order, prescription, resident care plan, or directive. This is not a mitigating factor when the facility or caregiver is responsible for the issuance of the erroneous order, prescription, plan, or directive or knows or should have known of the errors and took no reasonable measures to correct the defect before administering care;

(2) the comparative responsibility between the facility, other caregivers, and requirements placed upon the employee, including but not limited to, the facility's compliance with related regulatory standards and factors such as the adequacy of facility policies and procedures, the adequacy of facility training, the adequacy of an individual's participation in the training, the adequacy of caregiver supervision, the adequacy of facility staffing levels, and a consideration of the scope of the individual employee's authority; and

(3) whether the facility or individual followed professional standards in exercising professional judgment.

(d) When substantiated maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under section 245A.06 or 245A.07 apply.

(e) The lead investigative agency shall complete its final disposition within 60 calendar days. If the lead investigative agency is unable to complete its final disposition within 60 calendar days, the lead investigative agency shall notify the following persons provided that the notification will not endanger the vulnerable adult or hamper the investigation:

(1) the vulnerable adult or the vulnerable adult's guardian or health care agent, when known, if the lead investigative agency knows them to be aware of the investigation; and (2) the facility, where applicable. The notice shall contain the reason for the delay and the projected completion date. If the lead investigative agency is unable to complete its final disposition by a subsequent projected completion date, the lead investigative agency shall again notify the vulnerable adult or the vulnerable adult's guardian or health care agent, when known if the lead investigative agency knows them to be aware of the investigation, and the facility, where applicable, of the reason for the delay and the revised projected completion date provided that the notification will not endanger the vulnerable adult or hamper the investigation. The lead investigative agency must notify the health care agent of the vulnerable adult only if the health care

agent's authority to make health care decisions for the vulnerable adult is currently effective under section 145C.06 and not suspended under section 524.5-310 and the investigation relates to a duty assigned to the health care agent by the principal. A lead investigative agency's inability to complete the final disposition within 60 calendar days or by any projected completion date does not invalidate the final disposition.

(f) Within ten calendar days of completing the final disposition, the lead investigative agency shall provide a copy of the public investigation memorandum under subdivision 12b, paragraph (b), clause (1), when required to be completed under this section, to the following persons: (1) the vulnerable adult, or the vulnerable adult's guardian or health care agent, if known, unless the lead investigative agency knows that the notification would endanger the well-being of the vulnerable adult; (2) the reporter, if the reporter requested notification when making the report, provided this notification would not endanger the well-being of the vulnerable adult; (3) the alleged perpetrator, if known; (4) the facility; and (5) the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities, as appropriate.

(g) If, as a result of a reconsideration, review, or hearing, the lead investigative agency changes the final disposition, or if a final disposition is changed on appeal, the lead investigative agency shall notify the parties specified in paragraph (f).

(h) The lead investigative agency shall notify the vulnerable adult who is the subject of the report or the vulnerable adult's guardian or health care agent, if known, and any person or facility determined to have maltreated a vulnerable adult, of their appeal or review rights under this section or section 256.021.

(i) The lead investigative agency shall routinely provide investigation memoranda for substantiated reports to the appropriate licensing boards. These reports must include the names of substantiated perpetrators. The lead investigative agency may not provide investigative memoranda for inconclusive or false reports to the appropriate licensing boards unless the lead investigative agency's investigation gives reason to believe that there may have been a violation of the applicable professional practice laws. If the investigation memorandum is provided to a licensing board, the subject of the investigation memorandum shall be notified and receive a summary of the investigative findings.

(j) In order to avoid duplication, licensing boards shall consider the findings of the lead investigative agency in their investigations if they choose to investigate. This does not preclude licensing boards from considering other information.

(k) The lead investigative agency must provide to the commissioner of human services its final dispositions, including the names of all substantiated perpetrators. The commissioner of human services shall establish records to retain the names of substantiated perpetrators.

Subd. 9d. Administrative reconsideration; review panel.

(a) Except as provided under paragraph (e), any individual or facility which a lead investigative agency determines has maltreated a vulnerable adult, or the vulnerable adult or an interested person acting on behalf of the vulnerable adult, regardless of the lead investigative agency's determination, who contests the lead investigative agency's final disposition of an allegation of maltreatment, may request the lead investigative agency to reconsider its final disposition. The request for reconsideration must be submitted in writing to the lead investigative agency within 15 calendar days after

receipt of notice of final disposition or, if the request is made by an interested person who is not entitled to notice, within 15 days after receipt of the notice by the vulnerable adult or the vulnerable adult's guardian or health care agent. If mailed, the request for reconsideration must be postmarked and sent to the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 15 calendar days of the individual's or facility's receipt of the final disposition. An individual who was determined to have maltreated a vulnerable adult under this section and who was disqualified on the basis of serious or recurring maltreatment under sections 245C.14 and 245C.15, may request reconsideration of the maltreatment determination and the disqualification. The request for reconsideration of the maltreatment determination and the disqualification must be submitted in writing within 30 calendar days of the individual's receipt of the notice of disqualification under sections 245C.16 and 245C.17. If mailed, the request for reconsideration of the maltreatment determination and the disqualification must be postmarked and sent to the lead investigative agency within 30 calendar days of the individual's receipt of the notice of disqualification. If the request for reconsideration is made by personal service, it must be received by the lead investigative agency within 30 calendar days after the individual's receipt of the notice of disqualification.

(b) Except as provided under paragraphs (e) and (f), if the lead investigative agency denies the request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled to a fair hearing under section 256.045, may submit to the commissioner of human services a written request for a hearing under that statute. The vulnerable adult, or an interested person acting on behalf of the vulnerable adult, may request a review by the Vulnerable Adult Maltreatment Review Panel under section 256.021 if the lead investigative agency denies the request or fails to act upon the request, or if the vulnerable adult or interested person contests a reconsidered disposition. The lead investigative agency shall notify persons who request reconsideration of their rights under this paragraph. The request must be submitted in writing to the review panel and a copy sent to the lead investigative agency within 30 calendar days of receipt of notice of a denial of a request for reconsideration or of a reconsidered disposition. The request must specifically identify the aspects of the lead investigative agency determination with which the person is dissatisfied.

(c) If, as a result of a reconsideration or review, the lead investigative agency changes the final disposition, it shall notify the parties specified in subdivision 9c, paragraph (f).

(d) For purposes of this subdivision, "interested person acting on behalf of the vulnerable adult" means a person designated in writing by the vulnerable adult to act on behalf of the vulnerable adult, or a legal guardian or conservator or other legal representative, a proxy or health care agent appointed under chapter 145B or 145C, or an individual who is related to the vulnerable adult, as defined in section 245A.02, subdivision 13.

(e) If an individual was disqualified under sections 245C.14 and 245C.15, on the basis of a determination of maltreatment, which was serious or recurring, and the individual has requested reconsideration of the maltreatment determination under paragraph (a) and reconsideration of the disqualification under sections 245C.21 to 245C.27, reconsideration of the maltreatment determination and requested reconsideration of

the disqualification shall be consolidated into a single reconsideration. If reconsideration of the maltreatment determination is denied and the individual remains disqualified following a reconsideration decision, the individual may request a fair hearing under section 256.045. If an individual requests a fair hearing on the maltreatment determination and the disqualification, the scope of the fair hearing shall include both the maltreatment determination and the disqualification.

(f) If a maltreatment determination or a disqualification based on serious or recurring maltreatment is the basis for a denial of a license under section 245A.05 or a licensing sanction under section 245A.07, the license holder has the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. As provided for under section 245A.08, the scope of the contested case hearing must include the maltreatment determination, disqualification, and licensing sanction or denial of a license. In such cases, a fair hearing must not be conducted under section 256.045. Except for family child care and child foster care, reconsideration of a maltreatment determination under this subdivision, and reconsideration of a disqualification under section 245C.22, must not be conducted when:

- (1) a denial of a license under section 245A.05, or a licensing sanction under section 245A.07, is based on a determination that the license holder is responsible for maltreatment or the disqualification of a license holder based on serious or recurring maltreatment;
- (2) the denial of a license or licensing sanction is issued at the same time as the maltreatment determination or disqualification; and
- (3) the license holder appeals the maltreatment determination or disqualification, and denial of a license or licensing sanction.

Notwithstanding clauses (1) to (3), if the license holder appeals the maltreatment determination or disqualification, but does not appeal the denial of a license or a licensing sanction, reconsideration of the maltreatment determination shall be conducted under sections 626.556, subdivision 10i, and 626.557, subdivision 9d, and reconsideration of the disqualification shall be conducted under section 245C.22. In such cases, a fair hearing shall also be conducted as provided under sections 245C.27, 626.556, subdivision 10i, and 626.557, subdivision 9d.

If the disqualified subject is an individual other than the license holder and upon whom a background study must be conducted under chapter 245C, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge.

(g) Until August 1, 2002, an individual or facility that was determined by the commissioner of human services or the commissioner of health to be responsible for neglect under section 626.5572, subdivision 17, after October 1, 1995, and before August 1, 2001, that believes that the finding of neglect does not meet an amended definition of neglect may request a reconsideration of the determination of neglect. The commissioner of human services or the commissioner of health shall mail a notice to the last known address of individuals who are eligible to seek this reconsideration. The request for reconsideration must state how the established findings no longer meet the elements of the definition of neglect. The commissioner shall review the request for

reconsideration and make a determination within 15 calendar days. The commissioner's decision on this reconsideration is the final agency action.

(1) For purposes of compliance with the data destruction schedule under subdivision 12b, paragraph (d), when a finding of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, the date of the original finding of a substantiated maltreatment must be used to calculate the destruction date.

(2) For purposes of any background studies under chapter 245C, when a determination of substantiated maltreatment has been changed as a result of a reconsideration under this paragraph, any prior disqualification of the individual under chapter 245C that was based on this determination of maltreatment shall be rescinded, and for future background studies under chapter 245C the commissioner must not use the previous determination of substantiated maltreatment as a basis for disqualification or as a basis for referring the individual's maltreatment history to a health-related licensing board under section 245C.31.

Subd. 9e. Education requirements.

(a) The commissioners of health, human services, and public safety shall cooperate in the development of a joint program for education of lead investigative agency investigators in the appropriate techniques for investigation of complaints of maltreatment. This program must be developed by July 1, 1996. The program must include but need not be limited to the following areas: (1) information collection and preservation; (2) analysis of facts; (3) levels of evidence; (4) conclusions based on evidence; (5) interviewing skills, including specialized training to interview people with unique needs; (6) report writing; (7) coordination and referral to other necessary agencies such as law enforcement and judicial agencies; (8) human relations and cultural diversity; (9) the dynamics of adult abuse and neglect within family systems and the appropriate methods for interviewing relatives in the course of the assessment or investigation; (10) the protective social services that are available to protect alleged victims from further abuse, neglect, or financial exploitation; (11) the methods by which lead investigative agency investigators and law enforcement workers cooperate in conducting assessments and investigations in order to avoid duplication of efforts; and (12) data practices laws and procedures, including provisions for sharing data.

(b) The commissioners of health, human services, and public safety shall offer at least annual education to others on the requirements of this section, on how this section is implemented, and investigation techniques.

(c) The commissioner of human services, in coordination with the commissioner of public safety shall provide training for the common entry point staff as required in this subdivision and the program courses described in this subdivision, at least four times per year. At a minimum, the training shall be held twice annually in the seven-county metropolitan area and twice annually outside the seven-county metropolitan area. The commissioners shall give priority in the program areas cited in paragraph (a) to persons currently performing assessments and investigations pursuant to this section.

(d) The commissioner of public safety shall notify in writing law enforcement personnel of any new requirements under this section. The commissioner of public safety shall

conduct regional training for law enforcement personnel regarding their responsibility under this section.

(e) Each lead investigative agency investigator must complete the education program specified by this subdivision within the first 12 months of work as a lead investigative agency investigator.

A lead investigative agency investigator employed when these requirements take effect must complete the program within the first year after training is available or as soon as training is available.

All lead investigative agency investigators having responsibility for investigation duties under this section must receive a minimum of eight hours of continuing education or in-service training each year specific to their duties under this section.

Subd. 10. Duties of county social service agency.

(a) Upon receipt of a report from the common entry point staff, the county social service agency shall immediately assess and offer emergency and continuing protective social services for purposes of preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable adult. In cases of suspected sexual abuse, the county social service agency shall immediately arrange for and make available to the vulnerable adult appropriate medical examination and treatment. When necessary in order to protect the vulnerable adult from further harm, the county social service agency shall seek authority to remove the vulnerable adult from the situation in which the maltreatment occurred. The county social service agency may also investigate to determine whether the conditions which resulted in the reported maltreatment place other vulnerable adults in jeopardy of being maltreated and offer protective social services that are called for by its determination.

(b) County social service agencies may enter facilities and inspect and copy records as part of an investigation. The county social service agency has access to not public data, as defined in section 13.02, and medical records under sections 144.291 to 144.298, that are maintained by facilities to the extent necessary to conduct its investigation. The inquiry is not limited to the written records of the facility, but may include every other available source of information.

(c) When necessary in order to protect a vulnerable adult from serious harm, the county social service agency shall immediately intervene on behalf of that adult to help the family, vulnerable adult, or other interested person by seeking any of the following:

- (1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to section 518B.01;
- (2) the appointment of a guardian or conservator pursuant to sections 524.5-101 to 524.5-502, or guardianship or conservatorship pursuant to chapter 252A;
- (3) replacement of a guardian or conservator suspected of maltreatment and appointment of a suitable person as guardian or conservator, pursuant to sections 524.5-101 to 524.5-502; or
- (4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under chapter 609.

The expenses of legal intervention must be paid by the county in the case of indigent persons, under section 524.5-502 and chapter 563.

In proceedings under sections 524.5-101 to 524.5-502, if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or organization to provide ongoing guardianship services. If the county presents evidence to the court exercising probate jurisdiction that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on behalf of the ward or protected person even if the action is adverse to the county's interest. Any person retaliated against in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Subd. 10a. [Repealed, 1995 c 229 art 1 s 24]

Subd. 10b. **Investigations; guidelines.** Each lead investigative agency shall develop guidelines for prioritizing reports for investigation. When investigating a report, the lead investigative agency shall conduct the following activities, as appropriate:

- (1) interview of the alleged victim;
- (2) interview of the reporter and others who may have relevant information;
- (3) interview of the alleged perpetrator;
- (4) examination of the environment surrounding the alleged incident;
- (5) review of pertinent documentation of the alleged incident; and
- (6) consultation with professionals.

Subd. 11. [Repealed, 1995 c 229 art 1 s 24]

Subd. 11a. [Repealed, 1995 c 229 art 1 s 24]

Subd. 12. [Repealed, 1995 c 229 art 1 s 24]

Subd. 12a. [Repealed, 1983 c 273 s 8]

Subd. 12b. **Data management.**

(a) In performing any of the duties of this section as a lead investigative agency, the county social service agency shall maintain appropriate records. Data collected by the county social service agency under this section are welfare data under section 13.46. Notwithstanding section 13.46, subdivision 1, paragraph (a), data under this paragraph that are inactive investigative data on an individual who is a vendor of services are private data on individuals, as defined in section 13.02. The identity of the reporter may only be disclosed as provided in paragraph (c).

Data maintained by the common entry point are confidential data on individuals or protected nonpublic data as defined in section 13.02. Notwithstanding section 138.163, the common entry point shall maintain data for three calendar years after date of receipt and then destroy the data unless otherwise directed by federal requirements.

(b) The commissioners of health and human services shall prepare an investigation memorandum for each report alleging maltreatment investigated under this section. County social service agencies must maintain private data on individuals but are not required to prepare an investigation memorandum. During an investigation by the commissioner of health or the commissioner of human services, data collected under this section are confidential data on individuals or protected nonpublic data as defined in section 13.02. Upon completion of the investigation, the data are classified as provided in clauses (1) to (3) and paragraph (c).

(1) The investigation memorandum must contain the following data, which are public:

- (i) the name of the facility investigated;
- (ii) a statement of the nature of the alleged maltreatment;
- (iii) pertinent information obtained from medical or other records reviewed;
- (iv) the identity of the investigator;
- (v) a summary of the investigation's findings;
- (vi) statement of whether the report was found to be substantiated, inconclusive, false, or that no determination will be made;
- (vii) a statement of any action taken by the facility;
- (viii) a statement of any action taken by the lead investigative agency; and
- (ix) when a lead investigative agency's determination has substantiated maltreatment, a statement of whether an individual, individuals, or a facility were responsible for the substantiated maltreatment, if known.

The investigation memorandum must be written in a manner which protects the identity of the reporter and of the vulnerable adult and may not contain the names or, to the extent possible, data on individuals or private data listed in clause (2).

(2) Data on individuals collected and maintained in the investigation memorandum are private data, including:

- (i) the name of the vulnerable adult;
- (ii) the identity of the individual alleged to be the perpetrator;
- (iii) the identity of the individual substantiated as the perpetrator; and
- (iv) the identity of all individuals interviewed as part of the investigation.

(3) Other data on individuals maintained as part of an investigation under this section are private data on individuals upon completion of the investigation.

(c) After the assessment or investigation is completed, the name of the reporter must be confidential. The subject of the report may compel disclosure of the name of the reporter only with the consent of the reporter or upon a written finding by a court that the report was false and there is evidence that the report was made in bad faith. This subdivision does not alter disclosure responsibilities or obligations under the Rules of Criminal Procedure, except that where the identity of the reporter is relevant to a

criminal prosecution, the district court shall do an in-camera review prior to determining whether to order disclosure of the identity of the reporter.

(d) Notwithstanding section 138.163, data maintained under this section by the commissioners of health and human services must be maintained under the following schedule and then destroyed unless otherwise directed by federal requirements:

- (1) data from reports determined to be false, maintained for three years after the finding was made;
- (2) data from reports determined to be inconclusive, maintained for four years after the finding was made;
- (3) data from reports determined to be substantiated, maintained for seven years after the finding was made; and
- (4) data from reports which were not investigated by a lead investigative agency and for which there is no final disposition, maintained for three years from the date of the report.

(e) The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

- (1) whether and where backlogs of cases result in a failure to conform with statutory time frames;
- (2) where adequate coverage requires additional appropriations and staffing; and
- (3) any other trends that affect the safety of vulnerable adults.

(f) Each lead investigative agency must have a record retention policy.

(g) Lead investigative agencies, prosecuting authorities, and law enforcement agencies may exchange not public data, as defined in section 13.02, if the agency or authority requesting the data determines that the data are pertinent and necessary to the requesting agency in initiating, furthering, or completing an investigation under this section. Data collected under this section must be made available to prosecuting authorities and law enforcement officials, local county agencies, and licensing agencies investigating the alleged maltreatment under this section. The lead investigative agency shall exchange not public data with the vulnerable adult maltreatment review panel established in section 256.021 if the data are pertinent and necessary for a review requested under that section. Notwithstanding section 138.17, upon completion of the review, not public data received by the review panel must be destroyed.

(h) Each lead investigative agency shall keep records of the length of time it takes to complete its investigations.

(i) A lead investigative agency may notify other affected parties and their authorized representative if the lead investigative agency has reason to believe maltreatment has occurred and determines the information will safeguard the well-being of the affected parties or dispel widespread rumor or unrest in the affected facility.

(j) Under any notification provision of this section, where federal law specifically prohibits the disclosure of patient identifying information, a lead investigative agency may not provide any notice unless the vulnerable adult has consented to disclosure in a manner which conforms to federal requirements.

Subd. 13. [Repealed, 1995 c 229 art 1 s 24]

Subd. 14. Abuse prevention plans.

(a) Each facility, except home health agencies and personal care attendant services providers, shall establish and enforce an ongoing written abuse prevention plan. The plan shall contain an assessment of the physical plant, its environment, and its population identifying factors which may encourage or permit abuse, and a statement of specific measures to be taken to minimize the risk of abuse. The plan shall comply with any rules governing the plan promulgated by the licensing agency.

(b) Each facility, including a home health care agency and personal care attendant services providers, shall develop an individual abuse prevention plan for each vulnerable adult residing there or receiving services from them. The plan shall contain an individualized assessment of: (1) the person's susceptibility to abuse by other individuals, including other vulnerable adults; (2) the person's risk of abusing other vulnerable adults; and (3) statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For the purposes of this paragraph, the term "abuse" includes self-abuse.

(c) If the facility, except home health agencies and personal care attendant services providers, knows that the vulnerable adult has committed a violent crime or an act of physical aggression toward others, the individual abuse prevention plan must detail the measures to be taken to minimize the risk that the vulnerable adult might reasonably be expected to pose to visitors to the facility and persons outside the facility, if unsupervised. Under this section, a facility knows of a vulnerable adult's history of criminal misconduct or physical aggression if it receives such information from a law enforcement authority or through a medical record prepared by another facility, another health care provider, or the facility's ongoing assessments of the vulnerable adult.

Subd. 15. [Repealed, 1995 c 229 art 1 s 24]

Subd. 16. Implementation authority.

(a) By September 1, 1995, the attorney general and the commissioners of health and human services, in coordination with representatives of other entities that receive or investigate maltreatment reports, shall develop the common report form described in subdivision 9. The form may be used by mandated reporters, county social service agencies, law enforcement entities, licensing agencies, or ombudsman offices.

(b) The commissioners of health and human services shall as soon as possible promulgate rules necessary to implement the requirements of this section.

(c) By December 31, 1995, the commissioners of health, human services, and public safety shall develop criteria for the design of a statewide database utilizing data collected on the common intake form of the common entry point. The statewide database must be accessible to all entities required to conduct investigations under this section, and must be accessible to ombudsman and advocacy programs.

(d) By September 1, 1995, each lead investigative agency shall develop the guidelines required in subdivision 9b.

Subd. 17. Retaliation prohibited.

(a) A facility or person shall not retaliate against any person who reports in good faith suspected maltreatment pursuant to this section, or against a vulnerable adult with respect to whom a report is made, because of the report.

(b) In addition to any remedies allowed under sections 181.931 to 181.935, any facility or person which retaliates against any person because of a report of suspected maltreatment is liable to that person for actual damages, punitive damages up to \$10,000, and attorney fees.

(c) There shall be a rebuttable presumption that any adverse action, as defined below, within 90 days of a report, is retaliatory. For purposes of this clause, the term "adverse action" refers to action taken by a facility or person involved in a report against the person making the report or the person with respect to whom the report was made because of the report, and includes, but is not limited to:

- (1) discharge or transfer from the facility;
- (2) discharge from or termination of employment;
- (3) demotion or reduction in remuneration for services;
- (4) restriction or prohibition of access to the facility or its residents; or
- (5) any restriction of rights set forth in section 144.651.

Subd. 18. **Outreach.** The commissioner of human services shall maintain an aggressive program to educate those required to report, as well as the general public, about the requirements of this section using a variety of media. The commissioner of human services shall print and make available the form developed under subdivision 9.

Subd. 19. [Repealed, 1995 c 229 art 1 s 24]

Subd. 20. **Cause of action for financial exploitation; damages.**

(a) A vulnerable adult who is a victim of financial exploitation as defined in section 626.5572, subdivision 9, has a cause of action against a person who committed the financial exploitation. In an action under this subdivision, the vulnerable adult is entitled to recover damages equal to three times the amount of compensatory damages or \$10,000, whichever is greater.

(b) In addition to damages under paragraph (a), the vulnerable adult is entitled to recover reasonable attorney fees and costs, including reasonable fees for the services of a guardian or conservator or guardian ad litem incurred in connection with a claim under this subdivision.

(c) An action may be brought under this subdivision regardless of whether there has been a report or final disposition under this section or a criminal complaint or conviction related to the financial exploitation.

Subd. 21. **Contested case hearing.** When an appeal of a lead investigative agency determination results in a contested case hearing under chapter 245A or 245C, the administrative law judge shall notify the vulnerable adult who is the subject of the maltreatment determination and, if known, a guardian of the vulnerable adult appointed under section 524.5-310, or a health care agent designated by the vulnerable adult in a health care directive that is currently effective under section 145C.06, and whose authority to make health care decisions is not suspended under section 524.5-310, of the hearing. The notice must be sent by certified mail and inform the vulnerable adult of the right to file a signed written statement in the proceedings. A guardian or health care agent who prepares or files a written statement for the vulnerable adult

must indicate in the statement that the person is the vulnerable adult's guardian or health care agent and sign the statement in that capacity. The vulnerable adult, the guardian, or the health care agent may file a written statement with the administrative law judge hearing the case no later than five business days before commencement of the hearing. The administrative law judge shall include the written statement in the hearing record and consider the statement in deciding the appeal. This subdivision does not limit, prevent, or excuse the vulnerable adult from being called as a witness testifying at the hearing or grant the vulnerable adult, the guardian, or health care agent a right to participate in the proceedings or appeal the administrative law judge's decision in the case. The lead investigative agency must consider including the vulnerable adult victim of maltreatment as a witness in the hearing. If the lead investigative agency determines that participation in the hearing would endanger the well-being of the vulnerable adult or not be in the best interests of the vulnerable adult, the lead investigative agency shall inform the administrative law judge of the basis for this determination, which must be included in the final order. If the administrative law judge is not reasonably able to determine the address of the vulnerable adult, the guardian, or the health care agent, the administrative law judge is not required to send a hearing notice under this subdivision.

History: 1980 c 542 s 1; 1981 c 311 s 39; 1982 c 393 s 3,4; 1982 c 424 s 130; 1982 c 545 s 24; 1982 c 636 s 5,6; 1983 c 273 s 1-7; 1984 c 640 s 32; 1984 c 654 art 5 s 58; 1985 c 150 s 1-6; 1985 c 293 s 6,7; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 110 s 3; 1987 c 211 s 2; 1987 c 352 s 11; 1987 c 378 s 17; 1987 c 384 art 2 s 1; 1988 c 543 s 13; 1989 c 209 art 2 s 1; 1991 c 181 s 2; 1994 c 483 s 1; 1994 c 636 art 2 s 60-62; 1Sp1994 c 1 art 2 s 34; 1995 c 189 s 8; 1995 c 229 art 1 s 1-21; 1996 c 277 s 1; 1996 c 305 art 2 s 66; 2000 c 465 s 3-5; 1Sp2001 c 9 art 5 s 31; art 14 s 30,31; 2002 c 289 s 4; 2002 c 375 art 1 s 22,23; 2002 c 379 art 1 s 113; 2003 c 15 art 1 s 33; 2004 c 146 art 3 s 45; 2004 c 288 art 1 s 80; 2005 c 56 s 1; 2005 c 98 art 2 s 17; 2005 c 136 art 5 s 5; 1Sp2005 c 4 art 1 s 55,56; 2006 c 253 s 21; 2007 c 112 s 55,56; 2007 c 147 art 7 s 75; art 10 s 15; 2009 c 119 s 11-16; 2009 c 142 art 2 s 46,47; 2009 c 159 s 107; 2010 c 329 art 2 s 6; 2010 c 352 art 1 s 23; 2010 c 382 s 81; 2011 c 28 s 9-14,17; 2012 c 216 art 9 s 30,31

626.5572 DEFINITIONS.

Subdivision 1. **Scope.** For the purpose of section 626.557, the following terms have the meanings given them, unless otherwise specified.

Subd. 2. **Abuse.** "Abuse" means:

(a) An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of:

(1) assault in the first through fifth degrees as defined in sections 609.221 to 609.224;

(2) the use of drugs to injure or facilitate crime as defined in section 609.235;

(3) the solicitation, inducement, and promotion of prostitution as defined in section 609.322; and

(4) criminal sexual conduct in the first through fifth degrees as defined in sections 609.342 to 609.3451.

A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.

(b) Conduct which is not an accident or therapeutic conduct as defined in this section, which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following:

(1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult;

(2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening;

(3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and

(4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under section 245.825.

(c) Any sexual contact or penetration as defined in section 609.341, between a facility staff person or a person providing services in the facility and a resident, patient, or client of that facility.

(d) The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

(e) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C or 252A, or section 253B.03 or 524.5-313, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation. This paragraph does not enlarge or diminish rights otherwise held under law by:

(1) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(2) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct.

(f) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult.

(g) For purposes of this section, a vulnerable adult is not abused for the sole reason that the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(1) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(2) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Subd. 3. **Accident.** "Accident" means a sudden, unforeseen, and unexpected occurrence or event which:

(1) is not likely to occur and which could not have been prevented by exercise of due care; and

(2) if occurring while a vulnerable adult is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

Subd. 4. **Caregiver.** "Caregiver" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.

Subd. 5. **Common entry point.** "Common entry point" means the entity designated by each county responsible for receiving reports under section 626.557.

Subd. 6. **Facility.**

(a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; a home care provider licensed or required to be licensed under section 144A.46; a hospice provider licensed under sections 144A.75 to 144A.755; or a person or organization that exclusively offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651 to 256B.0656, and 256B.0659.

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for

personal care services, and does not refer to the client's home or other location at which services are rendered.

Subd. 7. **False.** "False" means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur.

Subd. 8. **Final disposition.** "Final disposition" is the determination of an investigation by a lead investigative agency that a report of maltreatment under Laws 1995, chapter 229, is substantiated, inconclusive, false, or that no determination will be made. When a lead investigative agency determination has substantiated maltreatment, the final disposition also identifies, if known, which individual or individuals were responsible for the substantiated maltreatment, and whether a facility was responsible for the substantiated maltreatment.

Subd. 9. **Financial exploitation.** "Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult;

or

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

(c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

Subd. 10. **Immediately.** "Immediately" means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

Subd. 11. **Inconclusive.** "Inconclusive" means there is less than a preponderance of evidence to show that maltreatment did or did not occur.

Subd. 12. **Initial disposition.** "Initial disposition" is the lead investigative agency's determination of whether the report will be assigned for further investigation.

Subd. 13. **Lead investigative agency.** "Lead investigative agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

(a) The Department of Health is the lead investigative agency for facilities or services licensed or required to be licensed as hospitals, home care providers, nursing homes, boarding care homes, hospice providers, residential facilities that are also federally certified as intermediate care facilities that serve people with developmental disabilities, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Health for the care of vulnerable adults. "Home care provider" has the meaning provided in section 144A.43, subdivision 4, and applies when care or services are delivered in the vulnerable adult's home, whether a private home or a housing with services establishment registered under chapter 144D, including those that offer assisted living services under chapter 144G.

(b) Except as provided under paragraph (c), for services licensed according to chapter 245D, the Department of Human Services is the lead investigative agency for facilities or services licensed or required to be licensed as adult day care, adult foster care, programs for people with developmental disabilities, family adult day services, mental health programs, mental health clinics, chemical dependency programs, the Minnesota sex offender program, or any other facility or service not listed in this subdivision that is licensed or required to be licensed by the Department of Human Services.

(c) The county social service agency or its designee is the lead investigative agency for all other reports, including, but not limited to, reports involving vulnerable adults receiving services from a personal care provider organization under section 256B.0659, or receiving home and community-based services licensed by the Department of Human Services and subject to chapter 245D.

Subd. 14. **Legal authority.** "Legal authority" includes, but is not limited to: (1) a fiduciary obligation recognized elsewhere in law, including pertinent regulations; (2) a contractual obligation; or (3) documented consent by a competent person.

Subd. 15. **Maltreatment.** "Maltreatment" means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.

Subd. 16. **Mandated reporter.** "Mandated reporter" means a professional or professional's delegate while engaged in: (1) social services; (2) law enforcement; (3) education; (4) the care of vulnerable adults; (5) any of the occupations referred to in section 214.01, subdivision 2; (6) an employee of a rehabilitation facility certified by the commissioner of jobs and training for vocational rehabilitation; (7) an employee or person providing services in a facility as defined in subdivision 6; or (8) a person that performs the duties of the medical examiner or coroner.

Subd. 17. **Neglect.** "Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical

and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or sections 253B.03 or 524.5-101 to 524.5-502, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with:

(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or

(4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care; or

(5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:

(i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult;

(ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition;

(iii) the error is not part of a pattern of errors by the individual;

(iv) if in a facility, the error is immediately reported as required under section 626.557, and recorded internally in the facility;

(v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors; and

(vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.

(d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.

(e) If the findings of an investigation by a lead investigative agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead investigative agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).

Subd. 18. **Report.** "Report" means a statement concerning all the circumstances surrounding the alleged or suspected maltreatment, as defined in this section, of a vulnerable adult which are known to the reporter at the time the statement is made.

Subd. 19. **Substantiated.** "Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

Subd. 20. **Therapeutic conduct.** "Therapeutic conduct" means the provision of program services, health care, or other personal care services done in good faith in the interests of the vulnerable adult by: (1) an individual, facility, or employee or person providing services in a facility under the rights, privileges and responsibilities conferred by state license, certification, or registration; or (2) a caregiver.

Subd. 21. **Vulnerable adult.**

(a) "Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident or inpatient of a facility;

(2) receives services at or from a facility required to be licensed to serve adults under sections 245A.01 to 245A.15, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program on a court-ordered commitment, or is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under section 144A.46; or from a person or organization that exclusively offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, 256B.0651, 256B.0653 to 256B.0656, and 256B.0659; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for care or services, the individual has an impaired ability to protect the individual's self from maltreatment.

(b) For purposes of this subdivision, "care or services" means care or services for the health, safety, welfare, or maintenance of an individual.

History: 1995 c 229 art 1 s 22; 2000 c 319 s 3; 1Sp2001 c 9 art 14 s 32; 2002 c 252 s 23,24; 2002 c 379 art 1 s 113; 2004 c 146 art 3 s 46; 2006 c 212 art 3 s 41; 2007 c 112 s 57; 2008 c 326 art 2 s 15; 2009 c 79 art 6 s 20,21; art 8 s 75; 2009 c 119 s 17; 2009 c 142 art 2 s 48; 2011 c 28 s 16,17; 2012 c 216 art 9 s 32

626.5573 NEGLIGENCE ACTIONS.

A violation of sections 626.557 to 626.5572 shall be admissible as evidence of negligence, but shall not be considered negligence per se.

History: 1995 c 229 art 1 s 23

626.561 INTERVIEWS WITH CHILD ABUSE VICTIMS.

Subdivision 1. **Policy.** It is the policy of this state to encourage adequate and accurate documentation of the number and content of interviews conducted with alleged child abuse victims during the course of a child abuse assessment, criminal investigation, or prosecution, and to discourage interviews that are unnecessary, duplicative, or otherwise not in the best interests of the child.

Subd. 2. **Definitions.** As used in this section:

- (1) "child abuse" means physical or sexual abuse as defined in section 626.556, subdivision 2;
- (2) "government employee" means an employee of a state or local agency, and any person acting as an agent of a state or local agency;
- (3) "interview" means a statement of an alleged child abuse victim which is given or made to a government employee during the course of a child abuse assessment, criminal investigation, or prosecution; and
- (4) "record" means an audio or videotape recording of an interview, or a written record of an interview.

Subd. 3. **Record required.** Whenever an interview is conducted, the interviewer must make a record of the interview. The record must contain the following information:

- (1) the date, time, place, and duration of the interview;
- (2) the identity of the persons present at the interview; and
- (3) if the record is in writing, a summary of the information obtained during the interview.

The records shall be maintained by the interviewer in accordance with applicable provisions of section 626.556, subdivision 11 and chapter 13.

Subd. 4. **Guidelines on tape recording of interviews.** Every county attorney's office shall be responsible for developing written guidelines on the tape recording of interviews by government employees who conduct child abuse assessments, criminal investigations, or prosecutions. The guidelines are public data as defined in section 13.02, subdivision 14.

History: 1985 c 286 s 21

MINNESOTA RULES – Chapter 4605

4605.7000 DEFINITIONS.

Subpart 1. **Case.** "Case" means a person or deceased person infected with a particular infectious agent or having a particular disease diagnosed by a physician.

Subp. 2. **Carrier.** "Carrier" means a person or deceased person identified as harboring a specific infectious agent and who serves as a potential source of infection.

Subp. 3. **Clinical materials.** "Clinical materials" means:

A. a clinical isolate containing the infectious agent for which submission of material is required; or

B. if an isolate is not available, material containing the infectious agent for which submission of material is required, in the following order of preference:

(1) a patient specimen;

(2) nucleic acid; or

(3) other laboratory material.

Subp. 4. **Commissioner.** "Commissioner" means the state commissioner of health or authorized officers, employees, or agents of the Minnesota Department of Health.

Subp. 5. **Contact.** "Contact" means a person who may have been exposed to a case, suspected case, or carrier in a manner that could place the person at risk of acquiring the infection based on known or suspected modes of transmission.

Subp. 6. **Critical illness.** "Critical illness" means the condition of a person who is hospitalized in an intensive care unit or who is critically ill in the judgment of a licensed health care provider.

Subp. 7. **Infection control practitioner.** "Infection control practitioner" means any person designated by a hospital, nursing home, medical clinic, or other health care facility as having responsibility for prevention, detection, reporting, and control of infections within the facility.

Subp. 8. **Isolation.** "Isolation" means the separation, for the period of communicability, of an infected person from others in places and under the condition as to prevent or limit the direct or indirect transmission of the infectious agent to those who are susceptible or to those who may spread the agent to others.

Subp. 9. **Board of health.** "Board of health" means authorized administrators, officers, agents, or employees of the county, multicounty, or city board of health organized under Minnesota Statutes, sections 145A.09 to 145A.14.

Subp. 10. **Medical laboratory.** "Medical laboratory" means any facility that receives, forwards, or analyzes specimens of original material from the human body, or referred cultures of specimens obtained from the human body, and reports the results to physicians who use the data for purposes of patient care.

Subp. 11. **Physician.** "Physician" means any person who is licensed by the Minnesota Board of Medical Practice to practice medicine.

Subp. 12. **Sentinel surveillance.** "Sentinel surveillance" means monitoring a disease or syndrome through reporting of cases, suspected cases, and carriers and submission of clinical materials by selected sites under part 4605.7046.

Subp. 13. **Suspected case.** "Suspected case" means a person or deceased person having a condition or illness in which the signs and symptoms resemble those of a recognized disease.

Subp. 14. **Veterinarian.** "Veterinarian" means any person who is licensed by the Minnesota Board of Veterinary Medicine to practice veterinary medicine.

Subp. 15. **Public health hazard.** "Public health hazard" means the presence of an infectious agent or condition in the environment which endangers the health of a specified population.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; L 1987 c 309 s 24,26; L 1991 c 106 s 6; 20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

4605.7010 PURPOSE.

This chapter establishes a process and assigns responsibility for reporting, investigating, and controlling disease.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858*

Posted: *September 15, 2005*

4605.7020 APPLICABILITY.

This chapter applies to cases, suspected cases, carriers, and deaths from communicable diseases and syndromes, reporting of disease, and disease control.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

REPORTING REQUIREMENTS

4605.7030 PERSONS REQUIRED TO REPORT DISEASE.

Subpart 1. **Physicians.** When attending a case, suspected case, carrier, or death from any of the diseases in part 4605.7040 or a pregnancy under part 4605.7044, a physician shall report to the commissioner according to part 4605.7040 or 4605.7044, unless previously reported, the information specified in part 4605.7090.

Subp. 2. **Health care facilities.** Hospitals, nursing homes, medical clinics, or other health care facilities shall designate that all individual physicians report as specified in subpart 1; or the health care facility shall designate an infection control practitioner or other person as responsible to report to the commissioner, according to part 4605.7040 or 4605.7044, knowledge of a case, suspected case, carrier, or death from any of the diseases and syndromes in part 4605.7040 or a pregnancy under part 4605.7044, and the information specified in part 4605.7090.

Subp. 3. **Medical laboratories.**

A. All medical laboratories shall provide to the commissioner, within one working day of completion, the results of microbiologic cultures, examinations, immunologic assays for the presence of antigens and antibodies, and any other laboratory tests, which are indicative of the presence of any of the diseases in part 4605.7040 and the information specified in part 4605.7090 as is known.

B. All medical laboratories shall forward to the Minnesota Department of Health, Public Health Laboratory, all clinical materials specified in this chapter upon a positive laboratory finding for the disease or condition, or upon request of the commissioner in relation to a case or suspected case reported under this chapter.

C. All laboratories must report to the Minnesota Department of Health the results of all CD4+ lymphocyte counts and percents and the results of all HIV viral detection laboratory tests. D. If a medical laboratory forwards clinical materials out of state for testing, the originating medical laboratory retains the duty to comply with this subpart, either by:

- (1) reporting the results and submitting the clinical materials to the commissioner; or
- (2) ensuring that the results are reported and materials submitted to the commissioner.

Subp. 4. **Comprehensive reports.** Any institution, facility, or clinic, staffed by physicians and having medical laboratories which are required to report, as in subparts 1, 2, and 3, except subpart 3, item C, may upon written notification to the commissioner designate a single person or group of persons to report cases, suspected cases, carriers, deaths, or results of medical laboratory cultures, examinations, and assays for any of the diseases listed in part 4605.7040 or a pregnancy under part 4605.7044 to the commissioner.

Subp. 5. **Veterinarians and veterinary medical laboratories.** The commissioner of health shall, under the following circumstances, request certain reports of clinical diagnosis of disease in animals, reports of laboratory tests on animals, and clinical materials from animals:

- A. the disease is common to both animals and humans;
- B. the disease may be transmitted directly or indirectly to and between humans and animals;
- C. the persons who are afflicted with the disease are likely to suffer complications, disability, or death as a result; and
- D. investigation based upon veterinarian and veterinary medical laboratory reports will assist in the prevention and control of disease among humans.

Subp. 6. **Others.** Unless previously reported, it shall be the duty of every other licensed health care provider who provides care to any patient who has or is suspected of having any of the diseases listed in part 4605.7040 or a pregnancy under part 4605.7044 to report to the commissioner, according to part 4605.7040 or 4605.7044, as much of the information specified in part 4605.7090 as is known.

Subp. 7. **Out of state testing.** Persons and entities that are required to report under subpart 1, 2, or 6 and that send clinical materials out of state for testing are responsible for ensuring that results are reported and clinical materials are submitted to the commissioner as required under this chapter.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858; 30 SR 247; 35 SR 1967*

Posted: *June 28, 2011*

4605.7040 DISEASE AND REPORTS; CLINICAL MATERIALS SUBMISSIONS.

Cases, suspected cases, carriers, and deaths due to the following diseases and infectious agents shall be reported. When submission of clinical materials is required under this part, submissions shall be made to the Minnesota Department of Health, Public Health Laboratory.

A. Diseases reportable immediately by telephone to the commissioner:

- (1) anthrax (*Bacillus anthracis*). Submit clinical materials;
- (2) botulism (*Clostridium botulinum*);
- (3) brucellosis (*Brucella* spp.). Submit clinical materials;
- (4) cholera (*Vibrio cholerae*). Submit clinical materials;
- (5) diphtheria (*Corynebacterium diphtheriae*). Submit clinical materials;
- (6) hemolytic uremic syndrome. Submit clinical materials;
- (7) measles (rubeola). Submit clinical materials;
- (8) meningococcal disease (*Neisseria meningitidis*) (all invasive disease). Submit clinical materials;
- (9) orthopox virus. Submit clinical materials;
- (10) plague (*Yersinia pestis*). Submit clinical materials;
- (11) poliomyelitis. Submit clinical materials;
- (12) Q fever (*Coxiella burnetii*). Submit clinical materials;
- (13) rabies (animal and human cases and suspected cases);
- (14) rubella and congenital rubella syndrome. Submit clinical materials;
- (15) severe acute respiratory syndrome (SARS). Submit clinical materials;
- (16) smallpox (variola). Submit clinical materials; and
- (17) tularemia (*Francisella tularensis*). Submit clinical materials.

B. Diseases reportable within one working day:

- (1) amebiasis (*Entamoeba histolytica/dispar*);
- (2) anaplasmosis (*Anaplasma phagocytophilum*);
- (3) arboviral disease, including, but not limited to, LaCrosse encephalitis, eastern equine encephalitis, western equine encephalitis, St. Louis encephalitis, and West Nile virus disease;
- (4) babesiosis (*Babesia* spp.);

- (5) blastomycosis (*Blastomyces dermatitidis*);
- (6) campylobacteriosis (*Campylobacter* spp.). Submit clinical materials;
- (7) cat scratch disease (infection caused by *Bartonella* species);
- (8) chancroid (*Haemophilus ducreyi*);
- (9) *Chlamydia trachomatis* infections;
- (10) coccidioidomycosis;
- (11) cryptosporidiosis (*Cryptosporidium* spp.). Submit clinical materials;
- (12) cyclosporiasis (*Cyclospora* spp.). Submit clinical materials;
- (13) dengue virus infection;
- (14) *Diphyllobothrium latum* infection;
- (15) ehrlichiosis (*Ehrlichia* spp.);
- (16) encephalitis (caused by viral agents);
- (17) enteric *Escherichia coli* infection (*E. coli* O157:H7, other enterohemorrhagic (Shiga toxin-producing) *E. coli*, enteropathogenic *E. coli*, enteroinvasive *E. coli*, and enterotoxigenic *E. coli*). Submit clinical materials;
- (18) *Enterobacter sakazakii* in infants under one year of age. Submit clinical materials;
- (19) giardiasis (*Giardia lamblia*);
- (20) gonorrhea (*Neisseria gonorrhoeae* infections);
- (21) *Haemophilus influenzae* disease (all invasive disease). Submit clinical materials;
- (22) hantavirus infection;
- (23) hepatitis (all primary viral types including A, B, C, D, and E);
- (24) histoplasmosis (*Histoplasma capsulatum*);
- (25) human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS). Submit clinical materials;
- (26) influenza (unusual case incidence, critical illness, or laboratory confirmed cases). Submit clinical materials;
- (27) Kawasaki disease;
- (28) *Kingella* spp. (invasive only). Submit clinical materials;
- (29) legionellosis (*Legionella* spp.). Submit clinical materials;
- (30) leprosy (Hansen's disease) (*Mycobacterium leprae*);
- (31) leptospirosis (*Leptospira interrogans*);
- (32) listeriosis (*Listeria monocytogenes*). Submit clinical materials;
- (33) Lyme disease (*Borrelia burgdorferi*);
- (34) malaria (*Plasmodium* spp.);
- (35) meningitis (caused by viral agents);
- (36) mumps;
- (37) neonatal sepsis (bacteria isolated from a sterile site, excluding coagulase-negative *Staphylococcus*) less than seven days after birth. Submit clinical materials;
- (38) pertussis (*Bordetella pertussis*). Submit clinical materials;
- (39) psittacosis (*Chlamydia psittaci*);
- (40) retrovirus infections;
- (41) Reye syndrome;
- (42) rheumatic fever (cases meeting the Jones criteria only);
- (43) Rocky Mountain spotted fever (*Rickettsia rickettsii*, *R. canada*);

- (44) salmonellosis, including typhoid (*Salmonella* spp.). Submit clinical materials;
- (45) shigellosis (*Shigella* spp.). Submit clinical materials;
- (46) *Staphylococcus aureus* (only vancomycin-intermediate *Staphylococcus aureus* (VISA), vancomycin-resistant *Staphylococcus aureus* (VRSA), and death or critical illness due to community-associated *Staphylococcus aureus* in a previously healthy individual). Submit clinical materials;
- (47) streptococcal disease (all invasive disease caused by Groups A and B streptococci and *S. pneumoniae*). Submit clinical materials;
- (48) syphilis (*Treponema pallidum*);
- (49) tetanus (*Clostridium tetani*);
- (50) toxic shock syndrome. Submit clinical materials;
- (51) toxoplasmosis (*Toxoplasma gondii*);
- (52) transmissible spongiform encephalopathy;
- (53) trichinosis (*Trichinella spiralis*);
- (54) tuberculosis (*Mycobacterium tuberculosis* complex) (pulmonary or extrapulmonary sites of disease, including laboratory confirmed or clinically diagnosed disease). Latent tuberculosis infection is not reportable. Submit clinical materials;
- (55) typhus (*Rickettsia* spp.);
- (56) varicella zoster disease:
 - (a) primary (chickenpox): unusual case incidence, critical illness, or laboratory-confirmed cases. Submit clinical materials; and
 - (b) recurrent (shingles): unusual case incidence or critical illness. Submit clinical materials;
- (57) varicella zoster disease in addition to reportable disease under subitem (56), effective upon the commissioner's determination that the disease is reportable under part 4605.7042;
- (58) *Vibrio* spp. Submit clinical materials;
- (59) yellow fever; and
- (60) yersiniosis, enteric (*Yersinia* spp.). Submit clinical materials.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

4605.7042 VARICELLA ZOSTER DISEASE.

The commissioner shall require reporting of varicella zoster disease under part 4605.7040, item B, subitem (57), if the commissioner determines that sentinel surveillance can no longer provide adequate data for epidemiological purposes.

Statutory Authority: *MS s 144.05; 144.12*

History: *30 SR 247*

Posted: *September 15, 2005*

4605.7044 CHRONIC INFECTIONS; PERINATALLY TRANSMISSIBLE.

Pregnancy in a person chronically infected with hepatitis B, human immunodeficiency virus

(HIV) infection, including acquired immunodeficiency syndrome (AIDS), or other reportable perinatally transmissible diseases shall be reported to the commissioner within one working day of knowledge of the pregnancy.

Statutory Authority: *MS s 144.05; 144.12*

History: *30 SR 247*

Posted: *September 15, 2005*

4605.7046 SENTINEL SURVEILLANCE.

Subpart 1. **Disease selection.** The commissioner may select an infectious disease or syndrome for sentinel surveillance, other than a disease or syndrome for which general reporting is required under this chapter, if the commissioner determines that sentinel surveillance will provide adequate data for epidemiological purposes and the surveillance is necessary for:

- A. characterization of the pathogen;
- B. monitoring vaccine effectiveness; or
- C. achieving other significant public health purposes for a disease or syndrome that can cause serious morbidity or mortality.

Subp. 2. **Site selection.** The commissioner shall select, after consultation with the sites, sentinel surveillance sites that have epidemiological significance to each disease or syndrome selected under subpart 1. In selecting the sites, the commissioner shall consider:

- A. the potential number of cases at the site;
- B. the geographic distribution of cases or potential cases in Minnesota, if indicated by the epidemiology of the disease or syndrome;
- C. the epidemiology of the disease or syndrome; and
- D. the overall impact of sentinel surveillance on a site and the benefit to public health in conducting sentinel surveillance at the site.

Subp. 3. **Removal from sentinel surveillance.** The commissioner shall remove a disease or syndrome from sentinel surveillance under this part if the commissioner determines that the disease or syndrome no longer meets the criteria in subpart 1.

Subp. 4. **Surveillance mechanism.** The commissioner shall provide a description, in writing, to sentinel surveillance sites of a specific, planned mechanism for surveillance of the disease or syndrome, including the rationale for site selection, a time frame for reporting, and protocols for the submission of test results and clinical materials from cases and suspected cases to the Minnesota Department of Health, Public Health Laboratory.

Statutory Authority: *MS s 144.05; 144.12*

History: *30 SR 247*

Posted: *September 15, 2005*

4605.7050 UNUSUAL CASE INCIDENCE.

Subpart 1. **Cases, suspected cases, or increased incidence.** Any pattern of cases, suspected cases, or increased incidence of any illness beyond the expected number of cases in a given

period, which may indicate a newly recognized infectious agent, an outbreak, epidemic, emerging drug resistance, or public health hazard, including suspected or confirmed outbreaks of food or waterborne disease, epidemic viral gastroenteritis, and any disease known or presumed to be transmitted by transfusion of blood or blood products, shall be reported immediately by telephone, by the person having knowledge, to the commissioner.

Subp. 2. **Unexplained death or critical illness.** Any unexplained death or unexplained critical illness in a previously healthy individual which may be caused by an infectious agent shall be reported by the attending physician, medical examiner or coroner, or by the person having knowledge about the death or illness to the commissioner within one day.

Subp. 3. **Submissions.** Upon request of the commissioner, medical laboratories shall submit test results and clinical materials for cases and suspected cases reported under subparts 1 and 2 to the Minnesota Department of Health, Public Health Laboratory.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

4605.7060 CASES, SUSPECTED CASES, CARRIERS, AND DEATHS DUE TO DISEASE ACQUIRED OUTSIDE THE STATE.

A physician shall report to the commissioner cases, suspected cases, carriers, and deaths due to any infectious disease that a physician determines has been acquired outside the state and that is considered:

- A. rare or unusual in Minnesota; or
- B. a public health problem in the geographic area of presumed acquisition.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

4605.7070 OTHER REPORTS.

It shall be the duty of any person in charge of any institution, school, child care facility or camp, or any other person having knowledge of any disease which may threaten the public health, to report immediately the name and address of any person or deceased person suspected of having the disease to the commissioner.

Statutory Authority: *MS s 144.05; 144.0742; 144.12*

History: *9 SR 2584; 30 SR 247*

Posted: *September 15, 2005*

4605.7075 TUBERCULOSIS; SPECIAL REPORTING.

A physician or other person required to report under part 4605.7030 or Minnesota Statutes, section 144.4804, shall within one working day report to the commissioner of health the name, address, and essential facts of the case if the physician or other person required to report under

part 4605.7030 or Minnesota Statutes, section 144.4804, has reason to believe that a person with active pulmonary tuberculosis:

- A. refuses treatment for active tuberculosis; or
- B. has not complied with prescribed therapy for active tuberculosis.

Statutory Authority: *MS s 144.05; 144.072; 144.12; 144.122*

History: *20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

4605.7080 NEW DISEASES AND SYNDROMES; REPORTING AND SUBMISSIONS.

Subpart 1. **Disease selection.** The commissioner shall, by public notice, require reporting of newly recognized or emerging diseases and syndromes suspected to be of infectious origin or previously controlled or eradicated infectious diseases if:

- A. the disease or syndrome can cause serious morbidity or mortality; and
- B. report of the disease or syndrome is necessary to monitor, prevent, or control the disease or syndrome to protect public health.

Subp. 2. **Surveillance mechanism.** The commissioner shall describe a specific, planned mechanism for surveillance of the disease or syndrome including persons and entities required to report, a time frame for reporting, and protocols for the submission of test results and clinical materials from cases and suspected cases to the Minnesota Department of Health, Public Health Laboratory.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

4605.7090 DISEASE REPORT INFORMATION.

Reports that are required under this chapter shall contain as much of the following information as is known:

- A. disease (whether a case, suspected case, carrier, or death);
- B. date of first symptoms;
- C. primary signs and symptoms;
- D. patient:
 - (1) name;
 - (2) birthdate;
 - (3) gender;
 - (4) ethnic and racial origin;
 - (5) residence address, city, county, and zip code;
 - (6) telephone number; and
 - (7) place of work, school, or child care;
- E. date of report;
- F. physician name, address, and telephone number;
- G. name of hospital (if any);
- H. name of person reporting (if not physician);
- I. diagnostic laboratory findings and dates of tests;

- J. name and locating information of contacts (if any);
- K. vaccination history for the disease reported;
- L. pregnancy status and expected date of delivery, if the infection can be transmitted during pregnancy or delivery; and
- M. other information pertinent to the case.

Statutory Authority: *MS s 144.05; 144.072; 144.0742; 144.12; 144.122*

History: *9 SR 2584; 20 SR 858; 30 SR 247*

Posted: *September 15, 2005*

