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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE No. **2295**

March 22, 2007

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The bill was read for the first time and referred to the Committee on Health and Human Services

1.1 A bill for an act  
1.2 relating to professions; requiring the Board of Medical Practice to bring  
1.3 adverse actions to district court; allowing the governor to remove a board  
1.4 member; specifying specific duties of a board member; amending Minnesota  
1.5 Statutes 2006, sections 147.01, subdivision 4, by adding subdivisions; 147.091,  
1.6 subdivisions 1, 2, 4; 147.092; 147.141; 147.151; proposing coding for new law  
1.7 in Minnesota Statutes, chapter 147.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2006, section 147.01, is amended by adding a  
1.10 subdivision to read:

1.11 Subd. 1a. **Removal of board member for cause.** The governor may remove a  
1.12 board member for cause after giving the board member a 30-day notice. The board  
1.13 member may petition the district court for a hearing on the dismissal and present evidence  
1.14 to rebut the dismissal and offer evidence to the contrary. A decision by the district court  
1.15 is final on the matter. A board member must act with consistency in regards to matters  
1.16 before the board or may be subject to removal by the governor.

1.17 Sec. 2. Minnesota Statutes 2006, section 147.01, is amended by adding a subdivision  
1.18 to read:

1.19 Subd. 3a. **Information.** A board member must receive any information regarding  
1.20 an ongoing investigation. Failure to comply shall result in the board member's removal  
1.21 from the board. Notwithstanding this section or any other contrary provision, a violation  
1.22 of this subdivision is actionable in a court of law.

1.23 Sec. 3. Minnesota Statutes 2006, section 147.01, subdivision 4, is amended to read:

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

2.5 (a) Upon application of a party in a proceeding before the board under section  
2.6 147.091, the board shall produce and permit the inspection and copying, by or on behalf of  
2.7 the moving party, of any designated documents or papers relevant to the proceedings, in  
2.8 accordance with the provisions of rule 34, Minnesota Rules of Civil Procedure.

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

2.15 (c) The board shall exchange information with other licensing boards, agencies, or  
2.16 departments within the state, as required under section 214.10, subdivision 8, paragraph  
2.17 (c), and may release information in the reports required under section 147.02, subdivision  
2.18 6.

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

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

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

2.30 (g) All information collected or presented to the board that is not deemed confidential  
2.31 must be made available to the general public upon request.

2.32 Sec. 4. Minnesota Statutes 2006, section 147.01, is amended by adding a subdivision  
2.33 to read:

2.34 Subd. 4a. **Conflict of interest.** (a) A board member must disclose any conflict of  
2.35 interest in matters before the board for board action and abstain from voting, discussing,

3.1 or rendering an opinion on the matter before the board. Additionally, a board member who  
 3.2 has knowledge that a person in the board member's employment has a business, financial,  
 3.3 or personal interest in a matter before the board shall disclose a potential conflict of interest  
 3.4 to the board and abstain from voting, discussing, or rendering an opinion on the matter.

3.5 (b) Notwithstanding this section or any other provision of law, a violation of this  
 3.6 subdivision is actionable in a court of law.

3.7 Sec. 5. Minnesota Statutes 2006, section 147.01, is amended by adding a subdivision  
 3.8 to read:

3.9 Subd. 4b. **Confidentiality.** A board member may not disclose any investigative  
 3.10 information on a physician to any other person including those in the board member's  
 3.11 employment, or those acting as a consultant or advisor to the board member.

3.12 Notwithstanding this section or any other provision of law, a violation of this duty is  
 3.13 actionable in a court of law.

3.14 Sec. 6. **[147.041] CONTRARY PROVISIONS.**

3.15 The provisions in this chapter supersede any contrary provision in chapter 214.

3.16 Sec. 7. Minnesota Statutes 2006, section 147.091, subdivision 1, is amended to read:

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

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

3.24 (b) Obtaining a license by fraud or cheating, or attempting to subvert the licensing  
 3.25 examination process. Conduct which subverts or attempts to subvert the licensing  
 3.26 examination process includes, but is not limited to: (1) conduct which violates the  
 3.27 security of the examination materials, such as removing examination materials from the  
 3.28 examination room or having unauthorized possession of any portion of a future, current, or  
 3.29 previously administered licensing examination; (2) conduct which violates the standard of  
 3.30 test administration, such as communicating with another examinee during administration  
 3.31 of the examination, copying another examinee's answers, permitting another examinee  
 3.32 to copy one's answers, or possessing unauthorized materials; or (3) impersonating an  
 3.33 examinee or permitting an impersonator to take the examination on one's own behalf.

4.1 (c) Conviction, during the previous five years, of a felony reasonably related to the  
4.2 practice of medicine or osteopathy. Conviction as used in this subdivision shall include  
4.3 a conviction of an offense which if committed in this state would be deemed a felony  
4.4 without regard to its designation elsewhere, or a criminal proceeding where a finding or  
4.5 verdict of guilt is made or returned but the adjudication of guilt is either withheld or  
4.6 not entered thereon.

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

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

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

4.18 (g) Engaging in any unethical conduct; conduct likely to deceive, defraud, or harm  
4.19 the public, or demonstrating a willful or careless disregard for the health, welfare or safety  
4.20 of a patient; or medical practice which is professionally incompetent, in that it may create  
4.21 unnecessary danger to any patient's life, health, or safety, in any of which cases, proof  
4.22 of actual injury need not be established.

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

4.25 (i) Aiding or abetting an unlicensed person in the practice of medicine, except that  
4.26 it is not a violation of this paragraph for a physician to employ, supervise, or delegate  
4.27 functions to a qualified person who may or may not be required to obtain a license or  
4.28 registration to provide health services if that person is practicing within the scope of that  
4.29 person's license or registration or delegated authority.

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

4.35 (k) Engaging in unprofessional conduct. Unprofessional conduct shall include  
4.36 any departure from or the failure to conform to the minimal standards of acceptable

5.1 and prevailing medical practice in which proceeding actual injury to a patient need not  
5.2 be established.

5.3 (l) Inability to practice medicine with reasonable skill and safety to patients by  
5.4 reason of illness, drunkenness, use of drugs, narcotics, chemicals or any other type of  
5.5 material or as a result of any mental or physical condition, including deterioration through  
5.6 the aging process or loss of motor skills.

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

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

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

5.15 (p) Fee splitting, including without limitation:

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

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

5.22 (3) referring a patient to any health care provider as defined in section 144.335 in  
5.23 which the referring physician has a "financial or economic interest," as defined in section  
5.24 144.6521, subdivision 3, unless the physician has disclosed the physician's financial or  
5.25 economic interest in accordance with section 144.6521; and

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

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

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

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

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

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

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

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

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

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

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

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

6.24 (4) a finding by the board that the person violated section 609.215, subdivision  
6.25 1 or 2. The board shall investigate any complaint of a violation of section 609.215,  
6.26 subdivision 1 or 2.

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

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

6.30 (z) Providing interstate telemedicine services other than according to section  
6.31 147.032.

6.32 Sec. 8. Minnesota Statutes 2006, section 147.091, subdivision 2, is amended to read:

6.33 Subd. 2. **Automatic suspension.** (a) A license to practice medicine is automatically  
6.34 suspended if (1) a guardian of a licensee is appointed by order of a court pursuant to  
6.35 sections 524.5-101 to 524.5-502, for reasons other than the minority of the licensee; or

7.1 (2) the licensee is committed by order of a court pursuant to chapter 253B. The license  
7.2 remains suspended until the licensee is restored to capacity by a court and, upon petition  
7.3 by the licensee, the suspension is terminated by the ~~board~~ court after a hearing.

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

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

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

7.28 (e) A person regulated ~~by the board~~ under this section shall maintain a current  
7.29 name and address with the board and shall notify the board in writing within 30 days  
7.30 of any change in name or address. If a name change only is requested, the regulated  
7.31 person must request revised credentials and return the current credentials to the board.  
7.32 The board may require the regulated person to substantiate the name change by submitting  
7.33 official documentation from a court of law or agency authorized under law to receive and  
7.34 officially record a name change. If an address change only is requested, no request for  
7.35 revised credentials is required. If the regulated person's current credentials have been lost,  
7.36 stolen, or destroyed, the person shall provide a written explanation to the board.

8.1 Sec. 9. Minnesota Statutes 2006, section 147.091, subdivision 4, is amended to read:

8.2 Subd. 4. **Temporary suspension of license.** In addition to any other remedy  
 8.3 provided by law, the board may, ~~without a hearing, temporarily suspend~~ request from the  
 8.4 court a temporary suspension of the license of a physician if the board finds that the  
 8.5 physician has violated a statute or rule which the board is empowered to enforce and  
 8.6 continued practice by the physician would create a serious risk of harm to the public. The  
 8.7 suspension shall take effect after a hearing and upon written notice to the physician,  
 8.8 specifying the statute or rule violated. The suspension shall remain in effect until the  
 8.9 ~~board~~ court issues a final order in the matter after a hearing. ~~At the time it issues the~~  
 8.10 ~~suspension notice, the board shall schedule a disciplinary hearing to be held pursuant to~~  
 8.11 ~~the Administrative Procedure Act.~~ The physician shall be provided with at least 20 days'  
 8.12 notice of any hearing held pursuant to this subdivision. The hearing shall be scheduled to  
 8.13 begin no later than 30 days after the issuance of the suspension order.

8.14 Sec. 10. Minnesota Statutes 2006, section 147.092, is amended to read:

8.15 **147.092 PROBABLE CAUSE HEARING; SEXUAL MISCONDUCT.**

8.16 (a) In any ~~contested~~ case in which a violation of section 147.091, subdivision 1,  
 8.17 paragraph (t), is charged all parties shall be afforded an opportunity for a probable cause  
 8.18 hearing before ~~an administrative law judge~~ the district court. The motion for a hearing  
 8.19 must be made to the ~~Office of Administrative Hearings~~ district court within 20 days of the  
 8.20 filing date ~~of the contested case~~ and served upon the board upon filing. Any hearing shall  
 8.21 be held within 30 days of the motion. The ~~administrative law judge~~ court shall issue a  
 8.22 decision within 20 days of completion of the probable cause hearing. If there is no request  
 8.23 for a hearing, the portion of the notice of and order for hearing relating to allegations of  
 8.24 sexual misconduct automatically becomes public.

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

8.34 (c) Upon a showing of probable cause, that portion of the notice of and order for  
 8.35 hearing filed by the board that pertains to the allegations of sexual misconduct, including

9.1 the factual allegations that support the charge, become public data. In addition, the  
 9.2 notice of and order for hearing may be amended. A finding of no probable cause by the  
 9.3 ~~administrative law judge~~ court is grounds for dismissal without prejudice. Nothing in this  
 9.4 section shall prevent the board from reopening the investigation or filing charges based  
 9.5 on the same subject matter at a later date.

9.6 Sec. 11. Minnesota Statutes 2006, section 147.141, is amended to read:

9.7 **147.141 FORMS OF DISCIPLINARY ACTION.**

9.8 When the board finds that a licensed physician or a physician registered under  
 9.9 section 147.032 has violated a provision or provisions of sections 147.01 to 147.22, it may  
 9.10 ~~to~~ bring an action in district court and recommend one or more of the following:

9.11 (1) revoke the license;

9.12 (2) suspend the license;

9.13 (3) revoke or suspend registration to perform interstate telemedicine;

9.14 (4) impose limitations or conditions on the physician's practice of medicine,  
 9.15 including the limitation of scope of practice to designated field specialties; the imposition  
 9.16 of retraining or rehabilitation requirements; the requirement of practice under supervision;  
 9.17 or the conditioning of continued practice on demonstration of knowledge or skills by  
 9.18 appropriate examination or other review of skill and competence;

9.19 (5) impose a civil penalty not exceeding \$10,000 for each separate violation, the  
 9.20 amount of the civil penalty to be fixed so as to deprive the physician of any economic  
 9.21 advantage gained by reason of the violation charged or to reimburse the board for the  
 9.22 cost of the investigation and proceeding;

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

9.25 (7) censure or reprimand the licensed physician.

9.26 Sec. 12. Minnesota Statutes 2006, section 147.151, is amended to read:

9.27 **147.151 DISCIPLINARY RECORD ON JUDICIAL REVIEW.**

9.28 Upon ~~judicial review of any board~~ a court order for disciplinary action taken under  
 9.29 sections 147.01 to 147.22, the ~~reviewing~~ court shall seal the administrative record, except  
 9.30 for the ~~board's~~ court's final decision, and shall not make the ~~administrative~~ court record  
 9.31 available to the public.

9.32 Sec. 13. **[147.1611] JUDICIAL OVERSIGHT.**

10.1           (a) After the board has conducted an investigation of a physician licensed under this  
10.2 chapter and prior to imposing any disciplinary action as specified in section 147.141,  
10.3 the board must present its evidence and recommended disciplinary action to the district  
10.4 court and the physician shall have the right to rebut the evidence and offer evidence to  
10.5 the contrary. The physician shall also have the right to call witnesses in the physician's  
10.6 defense.

10.7           (b) If the board determines that emergency circumstances are present, the board  
10.8 shall petition the court for a temporary suspension of the physician's license while an  
10.9 investigation is being conducted. The decision of the judge is final if a temporary license  
10.10 suspension is issued.

10.11       Sec. 14. **[147.1612] INJUNCTIVE RELIEF.**

10.12           Any party who is under investigation by the board and adversely affected by a  
10.13 determination of the board may seek injunctive relief through the district court during an  
10.14 investigative period or during the appeals process.