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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **3856**

May 15, 2010

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

1.1 A bill for an act
1.2 relating to health; authorizing expanded health care practices for health care
1.3 professionals; proposing coding for new law as Minnesota Statutes, chapter
1.4 146B.

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

1.6 Section 1. [146B.01] MINNESOTA EXPANDED HEALTH CARE PRACTICES
1.7 ACT.

1.8 Subdivision 1. Citation. This chapter may be cited as the "Minnesota Expanded
1.9 Health Care Practices Act for Licensed Health Care Professionals."

1.10 Subd. 2. Purpose. The purpose of this chapter is to:

1.11 (1) protect a person's right to seek health care of the person's choice;

1.12 (2) ensure that the people of Minnesota maintain access to all health care options
1.13 including conventional treatment methods and other treatment methods and modalities
1.14 designed to complement or substitute for conventional treatment methods; and

1.15 (3) permit health care professionals licensed or registered by the state to offer
1.16 expanded and complementary or alternative health care treatments according to this
1.17 chapter.

1.18 Subd. 3. Definitions. For the purposes of this chapter, the terms in this section
1.19 have the meanings given them.

1.20 (a) "Expanded health care practices and services" means health care and healing
1.21 methods, modalities, treatments, procedures, or protocols that have not been generally
1.22 adopted by a profession, or that are not generally considered to be within the prevailing
1.23 minimum standards of care of a profession, or that are not standard practices of a
1.24 profession in a particular community.

2.1 (b) "Licensed health care practitioner" means a health care practitioner licensed or
 2.2 registered by the state to practice a health care profession under a licensing board or
 2.3 the Department of Health.

2.4 (c) "Patient" shall include a patient's parent, guardian, or conservator, as appropriate.

2.5 Subd. 4. **Right to provide expanded health care.** Notwithstanding Minnesota
 2.6 statutes, administrative rules, and other laws governing or authorizing health-related
 2.7 professionals to practice their professions, a licensed health care practitioner may provide
 2.8 expanded health care practices and services to patients as long as the treatments or services:

2.9 (1) have a reasonable basis for potential benefit to the patient;

2.10 (2) do not pose a greater risk of direct and significant physical or emotional harm
 2.11 to a patient when used as directed than that of conventional treatment that would have
 2.12 been recommended;

2.13 (3) are provided with reasonable skill and safety according to the practitioner's
 2.14 knowledge, education, experience, and training in the expanded health care practice or
 2.15 service.

2.16 A licensed health care practitioner providing expanded health care practices and services
 2.17 must comply with the disclosure requirement in subdivision 5.

2.18 Subd. 5. **Disclosure guidelines for expanded practice.** Prior to administering or
 2.19 treating a patient with an expanded health care practice or service, a practitioner shall:

2.20 (1) disclose in writing to the patient an explanation in plain terms of the theoretical
 2.21 approach for the treatment or service and the practitioner's education, training, experience,
 2.22 and credentials regarding the expanded health care practice and service being provided or
 2.23 recommended;

2.24 (2) obtain informed consent from the patient according to Minnesota law for
 2.25 providing medical treatments including the nature and purpose of the proposed
 2.26 expanded practices and services, the expected benefits, the significant and material risks
 2.27 associated with the proposed expanded practices and services, and any other truthful
 2.28 and nonmisleading information that a patient or client would reasonably require in
 2.29 order to make an informed determination regarding whether to undertake or refuse the
 2.30 recommended expanded practice and services; and

2.31 (3) obtain written acknowledgment from the patient that the patient or client has
 2.32 received the information required by this section.

2.33 Subd. 6. **Complaints; investigations; disciplines.** A practitioner's license or
 2.34 registration shall not be revoked, suspended, or conditioned, or have any other form of
 2.35 reprimand imposed or be denied a license or registration if the practitioner is practicing
 2.36 in compliance with this chapter and the practitioner has:

3.1 (1) recommended or utilized expanded health care practices;

3.2 (2) referred a patient to, or comanaged a patient or client with, a practitioner of
3.3 expanded health care practices or a practitioner who is practicing in compliance with
3.4 chapter 146A; or

3.5 (3) provided diagnosis or treatments for the treatment of cancer or held themselves
3.6 out as being able to provide benefit to patients who have been diagnosed with cancer as
3.7 long as they have not provided an unreasonable promise of a cure.

3.8 Subd. 7. **Burden of proof.** In any proceeding under this section, the authorized
3.9 licensing board or regulatory authority having jurisdiction over the practitioner bears the
3.10 burden of proof regarding the practitioner's deviation from the requirements established
3.11 in this chapter.

3.12 Subd. 8. **Evidence.** For any investigation or disciplinary proceeding regarding
3.13 a healing or health care practitioner performing expanded health care practices and
3.14 services, the authorized licensing board or regulatory authority shall use experts who have
3.15 specialized knowledge, training, and clinical competence in the health practice method or
3.16 treatment used by the professional being investigated. The majority of the expert's practice
3.17 must be the same as that of the professional being investigated.

3.18 Subd. 9. **Competent evidence.** Competent evidence in proceedings regarding
3.19 expanded health care practices includes: (1) expert testimony, including testimony of
3.20 practitioners and professionals with knowledge of or clinical competence in the expanded
3.21 health care practice or service in question; (2) patient and client testimony including but
3.22 not limited to testimony from patients and clients of the practitioner under investigation;
3.23 (3) anecdotal evidence; (4) reports on scientifically conducted experiments; (5) reports
3.24 from reasonable methods of research on the healing arts; (6) case studies published
3.25 in peer-reviewed journals and health care or healing arts publications; and (7) health
3.26 practitioner's clinical experiences.

3.27 Subd. 10. **Harm.** (a) A complaint against a health care practitioner shall be
3.28 dismissed for lack of cause when there is no probable cause to believe that: (1) there
3.29 was direct physical or emotional harm to a patient or client; or (2) the practitioner was
3.30 practicing outside the guidelines in this chapter.

3.31 (b) A finding of direct physical or emotional harm in and of itself is not grounds for
3.32 disciplinary action when a practitioner has met the requirements in this chapter.

3.33 (c) Evidence regarding delay of treatment or the use of one type of health care
3.34 protocol or treatment in lieu of another health care protocol or treatment, or the decision
3.35 not to utilize a health care protocol or treatment, may not be offered as evidence in a

4.1 disciplinary hearing and cannot be a basis for a finding of probable cause of direct physical
4.2 or emotional harm when a practitioner is practicing according to this chapter.

4.3 Subd. 11. **Administrative-related complaints.** (a) A disciplinary complaint for
4.4 nonfraudulent administrative office procedures used to provide health care services such
4.5 as insurance payment issues, payment of medical bills, handwriting and record keeping,
4.6 where there is no probable cause to believe that the facts of the complaint caused direct
4.7 physical or emotional harm to a patient or client, shall be initially dealt with by mediation,
4.8 counseling, or other proactive corrective action so that loss of the right to practice, or
4.9 conditions on the right to practice are not the first remedies. The goal is to improve
4.10 administrative practice procedures and patient or client satisfaction.

4.11 (b) The provisions in paragraph (a) shall ensure that excessive scrutiny into and
4.12 discrimination against practitioners based solely on defective administrative procedures
4.13 does not occur.

4.14 Subd. 12. **Civil liability.** A claim of negligence for damages shall not be found
4.15 against a health care practitioner providing expanded health practice or services to a
4.16 patient or client when the patient or client has given informed consent to the health
4.17 practice or service, has received all information required by this chapter from the
4.18 practitioner, and the practitioner performed and delivered the expanded health practice or
4.19 service in compliance with this chapter.

4.20 Subd. 13. **Timely access to investigation files.** The regulatory authority having
4.21 jurisdiction over the practitioner must provide the practitioner with timely access to any
4.22 materials and investigation files relevant to the proceeding as required by law in order to
4.23 allow for adequate inspection and discovery.

4.24 Subd. 14. **Immunity from certain statutory requirement.** No action may be taken
4.25 regarding the maltreatment of minors under section 609.378 or 626.556 based solely on a
4.26 parent, guardian, or conservator's decision to refuse chemotherapy, surgery, or radiation
4.27 for the treatment of cancer on behalf of their minor child or to obtain services from a
4.28 licensed health care practitioner using expanded health care practices.