



## 2004 Minnesota Legal Issues Documentation File

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This Adobe Acrobat™ PDF file contains scanned copies of documents regarding the recent political situation in the State of Minnesota following changes in the laws of that state.

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The Contents of this file are:

1. This Cover Page;
2. The July 2004 Letter Sent to National Guild of Hypnotists members in Minnesota;
3. An informal summary of the legal situation prepared by member Jill Matzen;
4. A Copy of HF 692, the Behavioral Health and Therapy License Law;
5. A Letter of Opinion regarding Minnesota Law prepared by the legal advisor of the National Guild of Hypnotists; and
6. A Copy of Chapter 146a, the Complementary and Alternative Health Care Law of the State of Minnesota.

Dear Minnesota Member of the Guild:

This letter is to update you on changes to the law in your state that may affect your practice of hypnotism. Please read this letter carefully and decide how you want to structure your practice so that you stay on the correct side of the law. As you will see, you have some decisions to make.

This letter is a good-faith effort by the National Guild of Hypnotists to its members to impart a working understanding of this legislation, and in no way is intended to preclude you from formulating your own interpretation, seeking independent advice, and making choices relative to your own actions and course of conduct. Remember that the Guild cannot give you legal advice. Only an attorney licensed to practice law in your state can do that. As always, we recommend you consult one.

By the time you receive this letter we will have posted a Minnesota Documentation file on the National Guild of Hypnotists website's download page. Please download this file as it will put in your hands copies of the relevant legislation and other helpful documents. You will be able to find detailed guidance in how to conform to the changed legislation there.

### **Background**

In Minnesota you had two Health Freedom laws that were almost identical in requirements (mandating the use of a Client Bill of Rights, etc.). They were Chapter 146a and Chapter 148b. The former is an exemption to the medical practice law and the latter was an exemption to the psychology license law. Both allowed one to provide services that would have otherwise required a license as a physician (in the case of Chapter 146a) or a psychologist (in the case of Chapter 148b), provided one made specific disclosures to clients that one was unlicensed and met other reporting requirements.

Chapter 146a concerned a specific list of Complementary and Alternative Medical Services, specifically:

"a) "Complementary and alternative health care practices" means the broad domain of complementary and alternative healing methods and treatments, including but not limited to: (1) acupressure; (2) anthroposophy; (3) aroma therapy; (4) ayurveda; (5) cranial sacral therapy; (6) culturally traditional healing practices; (7) detoxification practices and therapies; (8) energetic healing; (9) polarity therapy; (10) folk practices; (11) healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light; (12) Gerson therapy and colostrum therapy; (13) healing touch; (14) herbology or herbalism; (15) homeopathy; (16) ondiagnostic iridology; (17) body work, massage, and massage therapy; (18) meditation; (19) mind-body healing practices; (20) naturopathy; (21) noninvasive instrumentalities; and (22) traditional Oriental practices, such as Qi Gong energy healing. "

Chapter 148b was for unlicensed mental health services, including (quoting a MN government document): "professional counselors, psychotherapists, hypnotherapists, private school counselors, spiritual counselors, therapists."

However, in 2004 the Minnesota Legislature passed a license bill for counselors and other behavioral health practitioners. This new law repeals Chapter 148b. Initially the repeal was to be effective as of July 1, 2004. However, the Legislature has postponed implementation for one year until July 1, 2005 and closed the Office of Unlicensed Mental Health Practice. Specifically, this new law says:

This paragraph is effective July 1, 2005.(b) The revisor of statutes shall strike the terms "unlicensed mental health practitioner" and "the office of unlicensed mental health practitioner" from Minnesota Statutes and Minnesota Rules.

This paragraph is effective July 1, 2004.Minnesota Statutes 2002, sections 148B.60; 148B.61;148B.63; 148B.64; 148B.65; 148B.66; 148B.67; 148B.68; 148B.69;148B.70; and 148B.71, are repealed.

### **What This Means**

As the law stands now it will be unlawful to practice as an unlicensed mental health practitioner after July 1, 2005.

While the postponement of enforcement is welcome, we caution you not to assume that enforcement will be extended beyond that time. While that may happen, it is also likely that it will not.

When a license law is passed by a state government to regulate a formerly unregulated profession a legal vulnerability exists for those people who sought to pass the license law. If the law is implemented too quickly it is possible for persons who did not qualify for a license to go to court to claim that the new law unreasonably threatens their ability to earn a livelihood.

One solution to this problem is to pass a license law, but delay implementation so that anyone who did not qualify for a license under the new law has the opportunity to retrain for a different sort of work or to go back to school to obtain the credentials necessary to qualify for a license.

It is entirely possible that this is the reason for the delay in the implementation of the new behavioral health license law.

While the National Guild of Hypnotists did not find out about the repeal of Chapter 148b and this new license law until after it had passed, our lobbyist tells us that there were many attempts to amend the new license law to include exemptions for specific groups. All of those attempts failed.

### *What Should You Do?*

At this point it appears you have the option to practice hypnotism as an unlicensed mental health provider until July 1, 2005. If you do so you should continue to conform to all requirements of the repealed Chapter 148b. You can hope that some way will be found to extend this freedom beyond July 1, 2005.

However, a second option exists. While Chapter 148b has been repealed the other Health Freedom Law in Minnesota is alive and well. This law forms an exemption to the medical practice license law for those persons who conform to its disclosure requirements, and does protect the right of unlicensed persons to offer "mind-body therapy" to the public.

The National Guild of Hypnotists has consulted with the National Health Freedom Action organization that was responsible for passing Chapter 146a and determined that they welcome the inclusion of hypnotic practitioners under the protection of their law. Therefore, you may, if you wish, revise the way you hold services out to the public so that they are presented as "mind-body therapy" and not as any form of mental health care. If you do so your freedom to practice will be arguably protected by Chapter 146a. There are no plans to amend or to repeal this remaining protective law.

If you choose to avail yourself of this option, remember the following:

- Chapter 146a is a law exempting you from the requirement for medical licensing, not psychological or behavioral health licensing. You cannot hold your services out to the public as any form of mental health care. Therefore, you will need to revise your advertising and practice materials.
- If you have not already done so you can download the National Guild of Hypnotists *Code of Ethics and Recommended Standards* and the *Recommended Terminology for Hypnotic Practice* from the Guild's web site (<http://www.ngh.net>). Following the disclosure requirements of the Recommended Standards of Practice will basically meet your disclosure requirements under Chapter 146a. Carefully using the Recommended Terminology will allow you to continue to do almost all hypnotic practices you presently use, and will show you how to talk about and represent those practice as nontherapeutic services (in this context that means "non-psychological services") that avoids conflict with the psychology or behavioral health license laws.
- The National Health Freedom Action organization is willing to provide you with training in revising your practice to the requirements of Chapter 146a. You can register for this training by calling 763-422-3303. The training in "Practitioner Compliance with Complementary and Alternative Health Care Law" is held at the Anoka-Ramsey Community College, under the auspices of Saint Thomas College.

- You can continue to call yourself a “hypnotherapist” and what you do “hypnotherapy,” provided you make it clear that what you provide is not any form of mental health care. Instead, you need to hold your services out as a form of “mind-body therapy” and self-help coaching.

### *Our Recommendation*

The National Guild of Hypnotists recommends that you take this transitional year to revise your practice to conform to Chapter 146a in an evolutionary way. You do not need to make a sudden change in how you do business (although you can if you wish). However, see to it that by July 2005 you are set to change over completely to practice in accordance with the Guild’s Standards and Terminology and Chapter 146a.

You may also wish to consider joining the political and legislative organization affiliated with the National Guild of Hypnotists. This organization is the National Federation of Hypnotists 104, and a local of the Office and Professional Employees International Union of the AFL-CIO. As it is likely you will benefit from political advocacy in the future, joining our union affiliate will empower your cause.

The political support the AFL-CIO gives to hypnotists in each state is directly related to the number of union hypnotists in that state. In the case of Minnesota there were only 4 union hypnotists in 2004. Had there been more this whole situation could likely have been avoided. You can join the Federation by contacting the National Guild of Hypnotists office at 603-429-9438.

Finally, we would suggest that these developments do not represent a crisis. Throughout the country hypnotists and hypnotherapists have to make this change in response to changes in the national pattern of licensure. Occupational groups that do not have an accredited Masters Degree as their basic requirement for practice are typically not considered qualified to become “Licensed Practitioners of the Healing Arts.” This is happening around the nation.

However, historically speaking, it appears that hypnotists and hypnotherapists who follow National Guild of Hypnotists Standards and Terminology are able to practice lawfully in just about every state. Research has shown that the change in terminology and practice style is not noticed by clients who typically report they prefer the new style as it seems clearer to them.

At the 2004 Convention of the National Guild of Hypnotists in August a special workshop will be presented for members from the States of New York and Minnesota to provide you with further information and suggestions on how to keep your practice healthy and strong.

Sincerely yours,

Dwight Damon, D.C.  
President, National Guild of Hypnotists

*Summary of Minnesota Legislation related to Hypnotism*  
*By Jill Matzen, CH*

In May 2003 the Minnesota legislature created a new bill (HF 692) relating to the health occupations and specifically to unlicensed mental practitioners. This new bill states that all professional counselors must now be licensed, with a master's degree and 2 years of supervised practice. Licensed professional counselors are now regulated by the Board of Behavioral Health and Therapy also created by bill HF 692. This Board is currently scrambling to create the proper forms for the rules and standards controlling professional counselors. Many Minnesota hypnotists and hypnotherapists will not fit into this professional counselor category.

Most importantly, this bill HF 692 repealed (abolished) all of the laws for unlicensed mental health practitioners Minn. Stat. 148B.60-148B.71. The office of unlicensed mental health practitioners and the terms "unlicensed mental health practitioners will be completely deleted from Minnesota law. While this bill was enacted last year, it does not take effect until July 1, 2004. On July 1, 2004, there will be no such thing as an unlicensed mental health practitioner in the State of Minnesota. All mental health practitioners will have to be licensed and regulated by the new Board of Behavioral Health and Therapy. [Editor's Note: the enforcement date is not July 2005.

A little historical background is necessary to gain perspective on what these changes mean for us. In 1991, the legislature created the Office of Mental Health Practice within the Minnesota Health Department. This office regulated unlicensed mental health practitioners under Minn. Stat. 148B.60-148B.71. These laws defined mental health services as:

[P]sychotherapy and the professional assessment, treatment, or counseling of another person for a cognitive, behavioral, emotional, social, or mental condition, symptom, or dysfunction, including intrapersonal or interpersonal dysfunctions. (Minn. Stat. 148.60, subd.4.)

As you can see, there is no mention of hypnosis or hypnotherapy in these laws. The term "hypnotherapy" only appears in the Department of Health's list for unlicensed mental health practitioners which also included professional counselors, psychotherapists, spiritual counselors and therapists. The administrative codes for Minnesota defines "hypnotherapist" within the contest of medical assistance payments. Minn. Rules 9505.0323 refers to it as psychotherapy by mental health practitioners trained in hypnotherapy.

The only place the word "hypnosis" appears with respect to therapy in Minnesota is under the law defining the 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, 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 services:

(4) psychotherapy, including but not limited to, categories such as behavioral, cognitive, emotive, systems, or insight-oriented therapies; hypnosis; and diagnosis and treatment of: (i) mental and emotional disorder, . . . (iii) disorders of habit or conduct; (iv) the psychological aspect of physical illness or condition, accident, injury, or disability; (v) the adjustment issues, including work-related and bereavement issues; (Minn. Stat. 148.89)

Now these laws have been in effect with all of this language since 1991 and so far has not interfered with our practice as hypnotherapists or hypnotists. While hypnosis is not the practice of psychology or psychotherapy under these definitions, we do use insight-oriented therapies, hypnosis, to eliminate undesired habits and behaviors. Like the professional counseling license, the practice of psychology requires a master s degree and 2 years of supervised practice before you can become licensed.

Here is where it gets confusing. When interpreting Minnesota statutes (laws), the more specific language controls the use of the law. Since some of what we do fits into the practices of psychology and mental health, the new law would require us to be licensed in Minnesota. This means the master degree and 2 years of supervised practice. We would have to be licensed as a professional counselor, psychologist, social worker or alcohol and chemical abuse counselor. These are the only recognized mental health practitioners outside the field of medicine.

Now do NOT panic. Minnesota law does recognize the practice of complementary and alternative health care. Complementary and alternative health care is covered under Minn Stat.146A.01 and the Minnesota Health Department. Section 146A.01 defines this as "the broad domain of complementary and alternative healing methods and treatments" including but not limited to: acupressure, aromatherapy, healing touch, meditation and mind-body healing practices and anything which is non-piercing or non-invasive to the client. Hypnotherapy would easily fall within the boundaries of meditation and mind-body healing. Accordingly, It may be wise to check and/or modify your client bill of rights to reflect the complementary and alternative health care bill of rights.

The main difference is exchanging the phrase "unlicensed complementary and alternative health care" for the phrase "unlicensed mental health practitioner." There is an additional paragraph that needs to be added for the complementary and alternative health care bill of rights:

"Under Minnesota law, an unlicensed complementary and alternative health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments. If a client desires a diagnosis from a licensed physician,

chiropractor, or acupuncture practitioner, or services from a physician, chiropractor, nurse, osteopath, physical therapist, dietitian, nutritionist, acupuncture practitioner, athletic trainer, or any other type of health care provider, the client may seek such services at any time." Minn. Stat. 146A.11.

There is also a reporting requirement for complementary and alternative health care practitioners under Minn. Stat. 146A.03.

There is a duty to report conduct that would subject to disciplinary action. Organizations like NGH will need to report when a practitioner's certification is revoked and insurance companies have to report all malpractice claims. There are several things that can be done to permanently correct this problem. First, we can make sure we are specifically named under the complementary and alternative health care laws. Secondly we may be able to appeal to the board of behavioral health and therapy for some kind of standards for hypnosis practitioners. Lastly, we may be able to push for definitive laws for hypnosis and hypnotherapy. This last solution would insure that we are not placed in this same bind in the future. We may try something patterned after the recent changes in Hawaii.

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Note that Minn. Stat. 146A.03 was modified on March 26, 2004. The modification changed "sections 525.24 to 525.61" to "sections 524.5-101 to 524.5-502". This was the only change.

1.1 A bill for an act  
1.2 relating to health occupations; modifying the scope  
of  
1.3 practice for occupational therapists, licensed  
1.4 professional counselors, alcohol and drug counselors,  
1.5 unlicensed mental health practitioners, and  
1.6 pharmacists; appropriating money; amending Minnesota  
1.7 Statutes 2002, sections 116J.70, subdivision 2a;  
1.8 148.6425, subdivision 3; 148A.01, subdivision 5;  
1.9 148B.60, subdivision 3; 148C.01, by adding a  
1.10 subdivision; 151.01, subdivision 27; 214.01,  
1.11 subdivision 2; 214.04, subdivision 3; 214.10,  
1.12 subdivision 9; 609.341, subdivision 17; proposing  
1.13 coding for new law in Minnesota Statutes, chapter  
1.14 148B; repealing Minnesota Statutes 2002, sections  
1.15 148B.60; 148B.61; 148B.63; 148B.64; 148B.65; 148B.66;  
1.16 148B.67; 148B.68; 148B.69; 148B.70; 148B.71; 148C.01,  
1.17 subdivision 6.  
1.18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:  
1.19 Section 1. Minnesota Statutes 2002, section 116J.70,  
1.20 subdivision 2a, is amended to read:  
1.21 Subd. 2a. [LICENSE; EXCEPTIONS.] "Business license" or  
1.22 "license" does not include the following:  
1.23 (1) any occupational license or registration issued by a  
1.24 licensing board listed in section 214.01 or any occupational  
1.25 registration issued by the commissioner of health pursuant to  
1.26 section 214.13;  
1.27 (2) any license issued by a county, home rule charter city,  
1.28 statutory city, township, or other political subdivision;  
1.29 (3) any license required to practice the following  
1.30 occupation regulated by the following sections:  
1.31 (i) abstracters regulated pursuant to chapter 386;  
2.1 (ii) accountants regulated pursuant to chapter 326A;  
2.2 (iii) adjusters regulated pursuant to chapter 72B;  
2.3 (iv) architects regulated pursuant to chapter 326;  
2.4 (v) assessors regulated pursuant to chapter 270;  
2.5 (vi) athletic trainers regulated pursuant to chapter 148;  
2.6 (vii) attorneys regulated pursuant to chapter 481;  
2.7 (viii) auctioneers regulated pursuant to chapter 330;  
2.8 (ix) barbers regulated pursuant to chapter 154;  
2.9 (x) beauticians regulated pursuant to chapter 155A;  
2.10 (xi) boiler operators regulated pursuant to chapter 183;  
2.11 (xii) chiropractors regulated pursuant to chapter 148;  
2.12 (xiii) collection agencies regulated pursuant to chapter  
2.13 332;  
2.14 (xiv) cosmetologists regulated pursuant to chapter 155A;  
2.15 (xv) dentists, registered dental assistants, and dental  
2.16 hygienists regulated pursuant to chapter 150A;  
2.17 (xvi) detectives regulated pursuant to chapter 326;  
2.18 (xvii) electricians regulated pursuant to chapter 326;  
2.19 (xviii) mortuary science practitioners regulated pursuant  
2.20 to chapter 149A;  
2.21 (xix) engineers regulated pursuant to chapter 326;  
2.22 (xx) insurance brokers and salespersons regulated pursuant

- 2.23 to chapter 60A;
- 2.24 (xxi) certified interior designers regulated pursuant to
- 2.25 chapter 326;
- 2.26 (xxii) midwives regulated pursuant to chapter 147D;
- 2.27 (xxiii) nursing home administrators regulated pursuant to
- 2.28 chapter 144A;
- 2.29 (xxiv) optometrists regulated pursuant to chapter 148;
- 2.30 (xxv) osteopathic physicians regulated pursuant to chapter
- 2.31 147;
- 2.32 (xxvi) pharmacists regulated pursuant to chapter 151;
- 2.33 (xxvii) physical therapists regulated pursuant to chapter
- 2.34 148;
- 2.35 (xxviii) physician assistants regulated pursuant to chapter
- 2.36 147A;
- 3.1 (xxix) physicians and surgeons regulated pursuant to
- 3.2 chapter 147;
- 3.3 (xxx) plumbers regulated pursuant to chapter 326;
- 3.4 (xxxi) podiatrists regulated pursuant to chapter 153;
- 3.5 (xxxii) practical nurses regulated pursuant to chapter 148;
- 3.6 (xxxiii) professional fund raisers regulated pursuant to
- 3.7 chapter 309;
- 3.8 (xxxiv) psychologists regulated pursuant to chapter 148;
- 3.9 (xxxv) real estate brokers, salespersons, and others
- 3.10 regulated pursuant to chapters 82 and 83;
- 3.11 (xxxvi) registered nurses regulated pursuant to chapter
- 3.12 148;
- 3.13 (xxxvii) securities brokers, dealers, agents, and
- 3.14 investment advisers regulated pursuant to chapter 80A;
- 3.15 (xxxviii) steamfitters regulated pursuant to chapter 326;
- 3.16 (xxxix) teachers and supervisory and support personnel
- 3.17 regulated pursuant to chapter 125;
- 3.18 (xl) veterinarians regulated pursuant to chapter 156;
- 3.19 (xli) water conditioning contractors and installers
- 3.20 regulated pursuant to chapter 326;
- 3.21 (xlii) water well contractors regulated pursuant to chapter
- 3.22 103I;
- 3.23 (xliii) water and waste treatment operators regulated
- 3.24 pursuant to chapter 115;
- 3.25 (xliv) motor carriers regulated pursuant to chapter 221;
- 3.26 (xlv) professional firms regulated under chapter 319B;
- 3.27 (xlvi) real estate appraisers regulated pursuant to chapter
- 3.28 82B;
- 3.29 (xlvii) residential building contractors, residential
- 3.30 remodelers, residential roofers, manufactured home installers,
- 3.31 and specialty contractors regulated pursuant to chapter 326;
- 3.32 (xlviii) licensed professional counselors regulated
- 3.33 pursuant to chapter 148B;
- 3.34 (4) any driver's license required pursuant to chapter 171;
- 3.35 (5) any aircraft license required pursuant to chapter 360;
- 3.36 (6) any watercraft license required pursuant to chapter
- 4.1 86B;
- 4.2 (7) any license, permit, registration, certification, or
- 4.3 other approval pertaining to a regulatory or management program
- 4.4 related to the protection, conservation, or use of or
- 4.5 interference with the resources of land, air, or water, which
- is
- 4.6 required to be obtained from a state agency or instrumentality;

4.7 and

4.8 (8) any pollution control rule or standard established by  
4.9 the pollution control agency or any health rule or standard  
4.10 established by the commissioner of health or any licensing rule  
4.11 or standard established by the commissioner of human services.

4.12 Sec. 2. Minnesota Statutes 2002, section 148.6425,  
4.13 subdivision 3, is amended to read:

4.14 Subd. 3. [LICENSURE RENEWAL FOUR YEARS OR MORE AFTER  
4.15 LICENSURE EXPIRATION DATE.] (a) An individual who requests  
4.16 licensure renewal four years or more after the licensure  
4.17 expiration date must submit the following:

4.18 (1) a completed and signed application for licensure on  
4.19 forms provided by the commissioner;

4.20 (2) the renewal fee and the late fee required under section  
4.21 148.6445 if renewal application is based on paragraph (b),  
4.22 clause (1), (2), or (3), or the renewal fee required under  
4.23 section 148.6445 if renewal application is based on paragraph  
4.24 (b), clause (4);

4.25 (3) proof of having met the continuing education  
4.26 requirement for the most recently completed two-year continuing  
4.27 education cycle; and

4.28 (4) at the time of the next licensure renewal, proof of  
4.29 having met the continuing education requirement, which shall be  
4.30 prorated based on the number of months licensed during the  
4.31 biennial licensure period.

4.32 (b) In addition to the requirements in paragraph (a), the  
4.33 applicant must submit proof of one of the following:

4.34 (1) verified documentation of successful completion of 160  
4.35 hours of supervised practice approved by the commissioner as  
4.36 described in paragraph (c);

5.1 (2) verified documentation of having achieved a qualifying  
5.2 score on the credentialing examination for occupational  
5.3 therapists or the credentialing examination for occupational  
5.4 therapy assistants administered within the past year; ~~or~~

5.5 (3) documentation of having completed a combination of  
5.6 occupational therapy courses or an occupational therapy  
5.7 refresher program that contains both a theoretical and clinical  
5.8 component approved by the commissioner. Only courses completed  
5.9 within one year preceding the date of the application or one  
5.10 year after the date of the application qualify for approval; or

5.11 (4) evidence that the applicant holds a current and  
5.12 unrestricted credential for the practice of occupational  
therapy

5.13 in another jurisdiction and that the applicant's credential  
from

5.14 that jurisdiction has been held in good standing during the  
5.15 period of lapse.

5.16 (c) To participate in a supervised practice as described in  
5.17 paragraph (b), clause (1), the applicant shall obtain limited  
5.18 licensure. To apply for limited licensure, the applicant shall  
5.19 submit the completed limited licensure application, fees, and  
5.20 agreement for supervision of an occupational therapist or  
5.21 occupational therapy assistant practicing under limited  
5.22 licensure signed by the supervising therapist and the  
5.23 applicant. The supervising occupational therapist shall state  
5.24 the proposed level of supervision on the supervision agreement  
5.25 form provided by the commissioner. The supervising therapist

5.26 shall determine the frequency and manner of supervision based  
on

5.27 the condition of the patient or client, the complexity of the  
5.28 procedure, and the proficiencies of the supervised occupational  
5.29 therapist. At a minimum, a supervising occupational therapist  
5.30 shall be on the premises at all times that the person  
practicing

5.31 under limited licensure is working; be in the room ten percent  
5.32 of the hours worked each week by the person practicing under  
5.33 limited licensure; and provide daily face-to-face collaboration  
5.34 for the purpose of observing service competency of the  
5.35 occupational therapist or occupational therapy assistant,  
5.36 discussing treatment procedures and each client's response to  
6.1 treatment, and reviewing and modifying, as necessary, each  
6.2 treatment plan. The supervising therapist shall document the  
6.3 supervision provided. The occupational therapist participating  
6.4 in a supervised practice is responsible for obtaining the  
6.5 supervision required under this paragraph and must comply with  
6.6 the commissioner's requirements for supervision during the  
6.7 entire 160 hours of supervised practice. The supervised  
6.8 practice must be completed in two months and may be completed

at  
6.9 the applicant's place of work.

6.10 (d) In addition to the requirements in paragraphs (a) and  
6.11 (b), the applicant must submit additional information as  
6.12 requested by the commissioner to clarify information in the  
6.13 application, including information to determine whether the  
6.14 applicant has engaged in conduct warranting disciplinary action  
6.15 as set forth in section 148.6448. The information must be  
6.16 submitted within 30 days after the commissioner's request.

6.17 [EFFECTIVE DATE.] This section is effective the day  
6.18 following final enactment.

6.19 Sec. 3. Minnesota Statutes 2002, section 148A.01,  
6.20 subdivision 5, is amended to read:

6.21 Subd. 5. [PSYCHOTHERAPIST.] "Psychotherapist" means a  
6.22 physician, psychologist, nurse, chemical dependency counselor,  
6.23 social worker, member of the clergy, marriage and family  
6.24 therapist, mental health service provider, licensed

professional

6.25 counselor, or other person, whether or not licensed by the  
6.26 state, who performs or purports to perform psychotherapy.

6.27 LICENSED PROFESSIONAL  
6.28 COUNSELING

6.29 Sec. 4. [148B.50] [DEFINITIONS.]

6.30 Subdivision 1. [APPLICABILITY.] For the purposes of  
6.31 sections 148B.50 to 148B.593, the following terms have the  
6.32 meanings given.

6.33 Subd. 2. [APPROVED SUPERVISOR.] "Approved supervisor"  
6.34 means a licensed professional counselor, licensed psychologist,  
6.35 or other qualified supervisor as determined by the board, who  
6.36 has four years of professional counseling experience and  
7.1 documents to the board the completion of a training in  
7.2 counseling supervision that included content and experiences  
7.3 relevant to the supervision of professional counselors.

7.4 Subd. 3. [BOARD.] "Board" means the board of behavioral  
7.5 health and therapy established by section 148B.51.

7.6 Subd. 4. [LICENSED PROFESSIONAL COUNSELING.] "Licensed

7.7 professional counseling" means the application of counseling,  
7.8 human development, and mental health research, principles, and  
7.9 procedures to maintain and enhance the mental health,  
7.10 development, personal and interpersonal effectiveness, and  
7.11 adjustment to work and life of individuals and families.  
7.12 Subd. 5. [SCOPE OF PRACTICE.] (a) The scope of practice of  
7.13 a licensed professional counselor includes, but is not limited  
7.14 to:  
7.15 (1) the implementation of professional counseling treatment  
7.16 interventions including evaluation, treatment planning,  
7.17 assessment, and referral;  
7.18 (2) direct counseling services to individuals, groups, and  
7.19 families;  
7.20 (3) counseling strategies that effectively respond to  
7.21 multicultural populations;  
7.22 (4) knowledge of relevant laws and ethics impacting  
7.23 practice;  
7.24 (5) crisis intervention;  
7.25 (6) consultation; and  
7.26 (7) program evaluation and applied research.  
7.27 (b) For the purposes of paragraph (a), clause (1),  
7.28 "professional counseling treatment interventions" means the  
7.29 application of cognitive, affective, behavioral, systemic, and  
7.30 community counseling strategies which include principles of  
7.31 human development, wellness, and pathology. Counselors provide  
7.32 mental health services for clients whose symptoms significantly  
7.33 interfere with daily functioning and would most likely not  
7.34 improve in a reasonable time period without intervention.  
7.35 (c) Licensed professional counseling does not include  
7.36 activities or services undertaken by persons listed in section  
8.1 148B.592, or the performance of any act that licensed  
8.2 professional counselors are not educated and trained to  
perform.  
8.3 (d) In order to evaluate and treat mental illness, a  
8.4 licensed professional counselor must complete the postgraduate  
8.5 training specified in section 245.462, subdivision 18, clause  
8.6 (6), or 245.4871, subdivision 27, clause (6).  
8.7 Sec. 5. [148B.51] [BOARD OF BEHAVIORAL HEALTH AND  
8.8 THERAPY.]  
8.9 The board of behavioral health and therapy consists of 13  
8.10 members appointed by the governor. Five of the members shall  
be  
8.11 professional counselors licensed or eligible for licensure  
under  
8.12 sections 148B.50 to 148B.593. Five of the members shall be  
8.13 alcohol and drug counselors licensed under chapter 148C. Three  
8.14 of the members shall be public members as defined in section  
8.15 214.02. The board shall annually elect from its membership a  
8.16 chair and vice-chair. The board shall appoint and employ an  
8.17 executive director who is not a member of the board. Chapter  
8.18 214 applies to the board of behavioral health and therapy  
unless  
8.19 superseded by sections 148B.50 to 148B.593.  
8.20 Sec. 6. [148B.52] [DUTIES OF THE BOARD.]  
8.21 (a) The board of behavioral health and therapy shall:  
8.22 (1) establish by rule appropriate techniques, including  
8.23 examinations and other methods, for determining whether

8.24 applicants and licensees are qualified under sections 148B.50  
to  
8.25 148B.593;  
8.26 (2) establish by rule standards for professional conduct,  
8.27 including adoption of a code of professional ethics and  
8.28 requirements for continuing education and supervision;  
8.29 (3) issue licenses to individuals qualified under sections  
8.30 148B.50 to 148B.593;  
8.31 (4) establish by rule standards for initial education  
8.32 including coursework for licensure and content of professional  
8.33 education;  
8.34 (5) establish by rule procedures, including a standard  
8.35 disciplinary process, to assess whether individuals licensed as  
8.36 licensed professional counselors comply with the board's rules;  
9.1 (6) establish, maintain, and publish annually a register of  
9.2 current licensees and approved supervisors;  
9.3 (7) establish initial and renewal application and  
9.4 examination fees sufficient to cover operating expenses of the  
9.5 board and its agents;  
9.6 (8) educate the public about the existence and content of  
9.7 the laws and rules for licensed professional counselors to  
9.8 enable consumers to file complaints against licensees who may  
9.9 have violated the rules;  
9.10 (9) establish rules and regulations pertaining to treatment  
9.11 for impaired practitioners; and  
9.12 (10) periodically evaluate its rules in order to refine the  
9.13 standards for licensing professional counselors and to improve  
9.14 the methods used to enforce the board's standards.  
9.15 (b) The board may appoint a professional discipline  
9.16 committee for each occupational licensure regulated by the  
9.17 board, and may appoint a board member as chair. The  
9.18 professional discipline committee shall consist of five members  
9.19 representative of the licensed occupation and shall provide  
9.20 recommendations to the board with regard to rule techniques,  
9.21 standards, procedures, and related issues specific to the  
9.22 licensed occupation.  
9.23 Sec. 7. [148B.53] [REQUIREMENTS FOR LICENSURE.]  
9.24 Subdivision 1. [GENERAL REQUIREMENTS.] (a) To be licensed  
9.25 as a licensed professional counselor (LPC), an applicant must  
9.26 provide evidence satisfactory to the board that the applicant:  
9.27 (1) is at least 18 years of age;  
9.28 (2) is of good moral character;  
9.29 (3) has completed a master's degree program in counseling  
9.30 that includes a minimum of 48 semester hours and a supervised  
9.31 field experience of not fewer than 700 hours that is counseling  
9.32 in nature;  
9.33 (4) has submitted to the board a plan for supervision  
9.34 during the first 2,000 hours of professional practice;  
9.35 (5) has demonstrated competence in professional counseling  
9.36 by passing the National Counseling Exam (NCE) administered by  
10.1 the National Board for Certified Counselors, Inc. (NBCC)  
10.2 including obtaining a passing score on the examination accepted  
10.3 by the board based on the determinations made by the NBCC and  
10.4 oral and situational examinations if prescribed by the board;  
10.5 (6) will conduct all professional activities as a licensed  
10.6 professional counselor in accordance with standards for  
10.7 professional conduct established by the rules of the board; and

10.8 (7) has declared to the board and agrees to continue to  
10.9 declare areas of professional competencies through a statement  
10.10 of professional disclosure, describing the intended use of the  
10.11 license and the population to be served.  
10.12 (b) The degree described in paragraph (a), clause (3), must  
10.13 be from a counseling program recognized by the Council for  
10.14 Accreditation of Counseling and Related Education Programs  
10.15 (CACREP) or from an institution of higher education that is  
10.16 accredited by a regional accrediting organization recognized by  
10.17 the Council for Higher Education Accreditation (CHEA).

Specific

10.18 academic course content and training must meet standards  
10.19 established by the CACREP, including course work in the  
10.20 following subject areas:  
10.21 (1) the helping relationship, including counseling theory  
10.22 and practice;  
10.23 (2) human growth and development;  
10.24 (3) lifestyle and career development;  
10.25 (4) group dynamics, processes, counseling, and consulting;  
10.26 (5) assessment and appraisal;  
10.27 (6) social and cultural foundations, including  
10.28 multicultural issues;  
10.29 (7) principles of etiology, treatment planning, and  
10.30 prevention of mental and emotional disorders and dysfunctional  
10.31 behavior;  
10.32 (8) family counseling and therapy;  
10.33 (9) research and evaluation; and  
10.34 (10) professional counseling orientation and ethics.

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

11.3 Subd. 2. [MINIMUM HOUR EFFECTIVE DATE.] The minimum  
11.4 semester hour requirement imposed by subdivision 1, paragraph  
11.5 (a), clause (3), is not effective until July 1, 2004. This  
11.6 subdivision expires July 1, 2005.

11.7 Subd. 3. [FEE.] Each applicant shall pay a nonrefundable  
11.8 fee set by the board.

11.9 Sec. 8. [148B.54] [LICENSE RENEWAL REQUIREMENTS.]

11.10 Subdivision 1. [RENEWAL.] Licensees shall renew licenses  
11.11 at the time and in the manner established by the rules of the  
11.12 board.

11.13 Subd. 2. [CONTINUING EDUCATION.] At the completion of the  
11.14 first two years of licensure, a licensee must provide evidence  
11.15 satisfactory to the board of completion of 12 additional  
11.16 postgraduate semester credit hours in counseling as determined  
11.17 by the board. Thereafter, at the time of renewal, each

licensee

11.18 shall provide evidence satisfactory to the board that the  
11.19 licensee has completed during each two-year period at least the  
11.20 equivalent of 40 clock hours of professional postdegree  
11.21 continuing education in programs approved by the board and  
11.22 continues to be qualified to practice under sections 148B.50 to  
11.23 148B.593.

11.24 Sec. 9. [148B.55] [LICENSES; TRANSITION PERIOD.]

11.25 For two years beginning July 1, 2003, the board shall issue  
11.26 a license without examination to an applicant if the board

11.27 determines that the applicant satisfies the requirements in  
11.28 section 148B.53, subdivision 1, if the applicant is a licensed  
11.29 psychological practitioner, a licensed marriage and family  
11.30 therapist, or a licensed alcohol and drug counselor, or is in  
11.31 the process of being so licensed. An applicant licensed under  
11.32 this section must also agree to conduct all professional  
11.33 activities as a licensed professional counselor in accordance  
11.34 with standards for professional conduct established by the  
board  
11.35 by rule. This section expires July 1, 2005.  
11.36 Sec. 10. [148B.56] [RECIPROCITY.]  
12.1 The board may issue a license to an individual who holds a  
12.2 current license or other credential from another jurisdiction  
if  
12.3 the board finds that the requirements for that credential are  
12.4 substantially similar to the requirements in sections 148B.50  
to  
12.5 148B.593.  
12.6 Sec. 11. [148B.58] [NONTRANSFERABILITY OF LICENSES.]  
12.7 A professional counseling license is not transferable.  
12.8 Sec. 12. [148B.59] [GROUNDS FOR DISCIPLINARY ACTION; FORMS  
12.9 OF DISCIPLINARY ACTION; RESTORATION OF LICENSE.]  
12.10 (a) The board may impose disciplinary action as described  
12.11 in paragraph (b) against an applicant or licensee whom the  
12.12 board, by a preponderance of the evidence, determines:  
12.13 (1) has violated a statute, rule, or order that the board  
12.14 issued or is empowered to enforce;  
12.15 (2) has engaged in fraudulent, deceptive, or dishonest  
12.16 conduct, whether or not the conduct relates to the practice of  
12.17 licensed professional counseling, that adversely affects the  
12.18 person's ability or fitness to practice professional  
counseling;  
12.19 (3) has engaged in unprofessional conduct or any other  
12.20 conduct which has the potential for causing harm to the public,  
12.21 including any departure from or failure to conform to the  
12.22 minimum standards of acceptable and prevailing practice without  
12.23 actual injury having to be established;  
12.24 (4) has been convicted of or has pled guilty or nolo  
12.25 contendere to a felony or other crime, an element of which is  
12.26 dishonesty or fraud, or has been shown to have engaged in acts  
12.27 or practices tending to show that the applicant or licensee is  
12.28 incompetent or has engaged in conduct reflecting adversely on  
12.29 the applicant's or licensee's ability or fitness to engage in  
12.30 the practice of professional counseling;  
12.31 (5) has employed fraud or deception in obtaining or  
12.32 renewing a license, or in passing an examination;  
12.33 (6) has had any counseling license, certificate,  
12.34 registration, privilege to take an examination, or other  
similar  
12.35 authority denied, revoked, suspended, canceled, limited, or not  
12.36 renewed for cause in any jurisdiction;  
13.1 (7) has failed to meet any requirement for the issuance or  
13.2 renewal of the person's license. The burden of proof is on the  
13.3 applicant or licensee to demonstrate the qualifications or  
13.4 satisfy the requirements for a license under the licensed  
13.5 professional counseling act;  
13.6 (8) has failed to cooperate with an investigation of the

13.7 board;  
13.8 (9) has demonstrated an inability to practice professional  
13.9 counseling with reasonable skill and safety to clients due to  
13.10 any mental or physical illness or condition; or  
13.11 (10) has engaged in fee splitting. This clause does not  
13.12 apply to the distribution of revenues from a partnership, group  
13.13 practice, nonprofit corporation, or professional corporation to  
13.14 its partners, shareholders, members, or employees if the  
13.15 revenues consist only of fees for services performed by the  
13.16 licensee or under a licensee's administrative authority. Fee  
13.17 splitting includes, but is not limited to:  
13.18 (i) dividing fees with another person or a professional  
13.19 corporation, unless the division is in proportion to the  
13.20 services provided and the responsibility assumed by each  
13.21 professional; and  
13.22 (ii) referring a client to any health care provider as  
13.23 defined in section 144.335 in which the referring licensee has  
a  
13.24 significant financial interest, unless the licensee has  
13.25 disclosed in advance to the client the licensee's own financial  
13.26 interest.  
13.27 (b) If grounds for disciplinary action exist under  
13.28 paragraph (a), the board may take one or more of the following  
13.29 actions:  
13.30 (1) refuse to grant or renew a license;  
13.31 (2) revoke a license;  
13.32 (3) suspend a license;  
13.33 (4) impose limitations or conditions on a licensee's  
13.34 practice of professional counseling, including, but not limited  
13.35 to, limiting the scope of practice to designated competencies,  
13.36 imposing retraining or rehabilitation requirements, requiring  
14.1 the licensee to practice under supervision, or conditioning  
14.2 continued practice on the demonstration of knowledge or skill  
by  
14.3 appropriate examination or other review of skill and  
competence;  
14.4 (5) censure or reprimand the licensee;  
14.5 (6) refuse to permit an applicant to take the licensure  
14.6 examination or refuse to release an applicant's examination  
14.7 grade if the board finds that it is in the public interest; or  
14.8 (7) impose a civil penalty not exceeding \$10,000 for each  
14.9 separate violation, the amount of the civil penalty to be fixed  
14.10 so as to deprive the physical therapist of any economic  
14.11 advantage gained by reason of the violation charged, to  
14.12 discourage similar violations or to reimburse the board for the  
14.13 cost of the investigation and proceeding, including, but not  
14.14 limited to, fees paid for services provided by the office of  
14.15 administrative hearings, legal and investigative services  
14.16 provided by the office of the attorney general, court  
reporters,  
14.17 witnesses, reproduction of records, board members' per diem  
14.18 compensation, board staff time, and travel costs and expenses  
14.19 incurred by board staff and board members.  
14.20 (c) In lieu of or in addition to paragraph (b), the board  
14.21 may require, as a condition of continued licensure, termination  
14.22 of suspension, reinstatement of license, examination, or  
release

14.23 of examination grades, that the applicant or licensee:  
14.24 (1) submit to a quality review, as specified by the board,  
14.25 of the applicant's or licensee's ability, skills, or quality of  
14.26 work; and  
14.27 (2) complete to the satisfaction of the board educational  
14.28 courses specified by the board.  
14.29 (d) Service of the order is effective if the order is  
14.30 served on the applicant, licensee, or counsel of record  
14.31 personally or by mail to the most recent address provided to  
the  
14.32 board for the licensee, applicant, or counsel of record. The  
14.33 order shall state the reasons for the entry of the order.  
14.34 Sec. 13. [148B.591] [PROHIBITION AGAINST UNLICENSED  
14.35 PRACTICE OR USE OF TITLES.]  
14.36 Subdivision 1. [PRACTICE.] After the effective date of  
15.1 rules adopted by the board, no individual may engage in the  
15.2 practice of licensed professional counseling unless that  
15.3 individual holds a valid license or is exempt from licensure  
15.4 under section 148B.592.  
15.5 Subd. 2. [USE OF TITLES.] After the board adopts rules, no  
15.6 individual may be presented to the public by any title or  
15.7 practice incorporating the words "licensed professional  
15.8 counselor" or "LPC" unless that individual holds a valid  
license  
15.9 issued under sections 148B.50 to 148B.593.  
15.10 Sec. 14. [148B.592] [EXCEPTIONS TO LICENSE REQUIREMENT.]  
15.11 Subdivision 1. [OTHER PROFESSIONALS.] Nothing in sections  
15.12 148B.50 to 148B.593 prevents members of other professions or  
15.13 occupations from performing functions for which they are  
15.14 qualified or licensed. This exception includes, but is not  
15.15 limited to, licensed physicians, registered nurses, licensed  
15.16 practical nurses, licensed psychologists, probation officers,  
15.17 attorneys, social workers, marriage and family therapists,  
15.18 qualified rehabilitation consultants, natural family planning  
15.19 practitioners certified by the American Academy of Natural  
15.20 Family Planning, and registered occupational therapists or  
15.21 certified occupational therapist assistants. These persons  
must  
15.22 not, however, use a title incorporating the words "licensed  
15.23 professional counselor" or otherwise hold themselves out to the  
15.24 public by any title or description stating or implying that  
they  
15.25 are licensed to engage in the practice of professional  
15.26 counseling unless they are licensed under sections 148B.50 to  
15.27 148B.593.  
15.28 Subd. 2. [STUDENTS.] Nothing in sections 148B.50 to  
15.29 148B.593 prevents a student, intern, or trainee enrolled in an  
15.30 accredited program of professional counseling from engaging in  
15.31 professional counseling as part of the supervised course of  
15.32 study if the person is identified as a "counselor intern."  
15.33 Subd. 3. [GOVERNMENT AGENCIES; EDUCATIONAL INSTITUTIONS.]  
15.34 Nothing in sections 148B.50 to 148B.593 limits the activities  
15.35 and services of, or use of, an official title by a person  
15.36 employed as a counselor by a federal, state, county, or  
16.1 municipal agency, or public or private educational institution  
16.2 if the person is performing the activities within the scope of  
16.3 the person's employment.

16.4 Subd. 4. [UNLICENSED PRACTITIONERS.] (a) Nothing in  
16.5 sections 148B.50 to 148B.593 prohibits the provision of mental  
16.6 health services by an unlicensed mental health practitioner as  
16.7 defined in section 148B.60, subdivision 3. This paragraph  
16.8 expires July 1, 2004.  
16.9 (b) Nothing in this section limits the authority of  
16.10 unlicensed complementary and alternative health care  
16.11 practitioners to perform services under chapter 146A.  
16.12 Subd. 5. [NONRESIDENTS.] A nonresident may engage in the  
16.13 practice of professional counseling within the state without a  
16.14 license for up to 30 days during any calendar year if the  
16.15 nonresident is authorized to provide the services under the law  
16.16 of the state or country of residence and the nonresident has  
16.17 provided proof of credentials to the board, been found  
16.18 qualified  
16.19 to render services in the state, and been granted permission by  
16.20 the board to practice.  
16.21 Subd. 6. [CLERGY.] Nothing in sections 148B.50 to 148B.593  
16.22 limits the activities and services of a rabbi, priest,  
16.23 minister,  
16.24 or clergyperson of any religious denomination or sect, provided  
16.25 such activities and services are within the scope of the  
16.26 performance of regular or specialized ministerial duties.  
16.27 Subd. 7. [NONPROFIT ORGANIZATIONS AND CHARITIES.] Nothing  
16.28 in sections 148B.50 to 148B.593 limits the activities,  
16.29 services,  
16.30 and descriptions of persons offering volunteer or professional  
16.31 services for public or private nonprofit organizations or  
16.32 charities.  
16.33 Sec. 15. [148B.593] [DISCLOSURE OF INFORMATION.]  
16.34 (a) A person licensed under sections 148B.50 to 148B.593  
16.35 may not disclose without written consent of the client any  
16.36 communication made by the client to the licensee in the course  
16.37 of the practice of professional counseling, nor may any  
16.38 employee  
16.39 of the licensee reveal the information without the consent of  
16.40 the employer or client except as provided under section 626.556  
16.41 or 626.557.  
16.42 (b) For purposes of sections 148B.50 to 148B.593, the  
16.43 confidential relations and communications between the licensee  
16.44 and a client are placed upon the same basis as those that exist  
16.45 between a licensed psychologist and client. Nothing in  
16.46 sections  
16.47 148B.50 to 148B.593 may be construed to require any  
16.48 communications to be disclosed except by court order.  
16.49 Sec. 16. Minnesota Statutes 2002, section 148B.60,  
16.50 subdivision 3, is amended to read:  
16.51 Subd. 3. [UNLICENSED MENTAL HEALTH PRACTITIONER OR  
16.52 PRACTITIONER.] "Unlicensed mental health practitioner" or  
16.53 "practitioner" means a person who provides or purports to  
16.54 provide, for remuneration, mental health services as defined in  
16.55 subdivision 4. It does not include persons licensed by the  
16.56 board of medical practice under chapter 147 or registered by  
16.57 the  
16.58 board of medical practice under chapter 147A; the board of  
16.59 nursing under sections 148.171 to 148.285; the board of  
16.60 psychology under sections 148.88 to 148.98; the board of social

17.19 work under sections 148B.18 to 148B.289; the board of marriage  
17.20 and family therapy under sections 148B.29 to 148B.39; the board  
17.21 of behavioral health and therapy under sections 148B.50 to  
17.22 148B.593; or another licensing board if the person is

practicing

17.23 within the scope of the license; members of the clergy who are  
17.24 providing pastoral services in the context of performing and  
17.25 fulfilling the salaried duties and obligations required of a  
17.26 member of the clergy by a religious congregation; American  
17.27 Indian medicine men and women; licensed attorneys; probation  
17.28 officers; school counselors employed by a school district while  
17.29 acting within the scope of employment as school counselors;  
17.30 registered occupational therapists; or occupational therapy  
17.31 assistants. For the purposes of complaint investigation or  
17.32 disciplinary action relating to an individual practitioner, the  
17.33 term includes:

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

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

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

18.7 Sec. 17. Minnesota Statutes 2002, section 148C.01, is  
18.8 amended by adding a subdivision to read:

18.9 Subd. 2a. [BOARD.] "Board" means the board of behavioral  
18.10 health and therapy established by section 148B.51.

18.11 [EFFECTIVE DATE.] This section is effective July 1, 2005.

18.12 Sec. 18. Minnesota Statutes 2002, section 151.01,  
18.13 subdivision 27, is amended to read:

18.14 Subd. 27. [PRACTICE OF PHARMACY.] "Practice of pharmacy"  
18.15 means:

18.16 (1) interpretation and evaluation of prescription drug  
18.17 orders;

18.18 (2) compounding, labeling, and dispensing drugs and devices  
18.19 (except labeling by a manufacturer or packager of  
18.20 nonprescription drugs or commercially packaged legend drugs and  
18.21 devices);

18.22 (3) participation in clinical interpretations and  
18.23 monitoring of drug therapy for assurance of safe and effective  
18.24 use of drugs;

18.25 (4) participation in drug and therapeutic device selection;  
18.26 drug administration for first dosage and medical emergencies;  
18.27 drug regimen reviews; and drug or drug-related research;

18.28 (5) participation in administration of influenza and  
18.29 pneumococcal vaccine to individuals over 18 years of age under  
18.30 standing orders from a physician licensed under chapter 147 or  
18.31 by written protocol with a physician provided that:

18.32 (i) the pharmacist is trained in a program approved by the  
18.33 American Council of Pharmaceutical Education for the  
18.34 administration of immunizations or graduated from a college of  
18.35 pharmacy in 2001 or thereafter; and

18.36 (ii) the pharmacist reports the administration of the  
19.1 immunization to the patient's primary physician or clinic;

19.2        ~~(6)~~ participation in the practice of managing drug therapy  
19.3 and modifying drug therapy, according to section 151.21,  
19.4 subdivision 1, on a case-by-case basis according to a written  
19.5 protocol between the specific pharmacist and the individual  
19.6 dentist, optometrist, physician, podiatrist, or veterinarian  
who  
19.7 is responsible for the patient's care and authorized to  
19.8 independently prescribe drugs. Any significant changes in drug  
19.9 therapy must be reported by the pharmacist to the patient's  
19.10 medical record;  
19.11        ~~(6)~~ ~~(7)~~ participation in the storage of drugs and the  
19.12 maintenance of records;  
19.13        ~~(7)~~ ~~(8)~~ responsibility for participation in patient  
19.14 counseling on therapeutic values, content, hazards, and uses of  
19.15 drugs and devices; and  
19.16        ~~(8)~~ ~~(9)~~ offering or performing those acts, services,  
19.17 operations, or transactions necessary in the conduct,  
operation,  
19.18 management, and control of a pharmacy.

19.19        Sec. 19. Minnesota Statutes 2002, section 214.01,  
19.20 subdivision 2, is amended to read:

19.21        Subd. 2. [HEALTH-RELATED LICENSING BOARD.] "Health-related  
19.22 licensing board" means the board of examiners of nursing home  
19.23 administrators established pursuant to section 144A.19, the  
19.24 office of unlicensed complementary and alternative health care  
19.25 practice established pursuant to section 146A.02, the board of  
19.26 medical practice created pursuant to section 147.01, the board  
19.27 of nursing created pursuant to section 148.181, the board of  
19.28 chiropractic examiners established pursuant to section 148.02,  
19.29 the board of optometry established pursuant to section 148.52,  
19.30 the board of physical therapy established pursuant to section  
19.31 148.67, the board of psychology established pursuant to section  
19.32 148.90, the board of social work pursuant to section 148B.19,  
19.33 the board of marriage and family therapy pursuant to section  
19.34 148B.30, the office of mental health practice established  
19.35 pursuant to section 148B.61, the board of behavioral health and  
19.36 therapy established by section 148B.51, the alcohol and drug  
20.1 counselors licensing advisory council established pursuant to  
20.2 section 148C.02, the board of dietetics and nutrition practice  
20.3 established under section 148.622, the board of dentistry  
20.4 established pursuant to section 150A.02, the board of pharmacy  
20.5 established pursuant to section 151.02, the board of podiatric  
20.6 medicine established pursuant to section 153.02, and the board  
20.7 of veterinary medicine, established pursuant to section 156.01.

20.8        Sec. 20. Minnesota Statutes 2002, section 214.04,  
20.9 subdivision 3, is amended to read:

20.10        Subd. 3. [OFFICERS; STAFF.] The executive director of each  
20.11 health-related board and the executive secretary of each  
20.12 non-health-related board shall be the chief administrative  
20.13 officer for the board but shall not be a member of the board.  
20.14 The executive director or executive secretary shall maintain  
the  
20.15 records of the board, account for all fees received by it,  
20.16 supervise and direct employees servicing the board, and perform  
20.17 other services as directed by the board. The executive  
20.18 directors, executive secretaries, and other employees of the  
20.19 following boards shall be hired by the board, and the executive

20.20 directors or executive secretaries shall be in the unclassified  
20.21 civil service, except as provided in this subdivision:  
20.22 (1) dentistry;  
20.23 (2) medical practice;  
20.24 (3) nursing;  
20.25 (4) pharmacy;  
20.26 (5) accountancy;  
20.27 (6) architecture, engineering, land surveying, landscape  
20.28 architecture, geoscience, and interior design;  
20.29 (7) barber examiners;  
20.30 (8) cosmetology;  
20.31 (9) electricity;  
20.32 (10) teaching;  
20.33 (11) peace officer standards and training;  
20.34 (12) social work;  
20.35 (13) marriage and family therapy; ~~and~~  
20.36 (14) dietetics and nutrition practice; and  
21.1 (15) licensed professional counseling.  
21.2 The executive directors or executive secretaries serving  
21.3 the boards are hired by those boards and are in the  
unclassified  
21.4 civil service, except for part-time executive directors or  
21.5 executive secretaries, who are not required to be in the  
21.6 unclassified service. Boards not requiring full-time executive  
21.7 directors or executive secretaries may employ them on a  
21.8 part-time basis. To the extent practicable, the sharing of  
21.9 part-time executive directors or executive secretaries by  
boards  
21.10 being serviced by the same department is encouraged. Persons  
21.11 providing services to those boards not listed in this  
21.12 subdivision, except executive directors or executive  
secretaries  
21.13 of the boards and employees of the attorney general, are  
21.14 classified civil service employees of the department servicing  
21.15 the board. To the extent practicable, the commissioner shall  
21.16 ensure that staff services are shared by the boards being  
21.17 serviced by the department. If necessary, a board may hire  
21.18 part-time, temporary employees to administer and grade  
21.19 examinations.  
21.20 Sec. 21. Minnesota Statutes 2002, section 214.10,  
21.21 subdivision 9, is amended to read:  
21.22 Subd. 9. [ACTS AGAINST MINORS.] (a) As used in this  
21.23 subdivision, the following terms have the meanings given them.  
21.24 (1) "Licensed person" means a person who is licensed under  
21.25 this chapter by the board of nursing, the board of psychology,  
21.26 the social work licensing board, the board of marriage and  
21.27 family therapy, the board of unlicensed mental health service  
21.28 providers, the board of behavioral health and therapy, or the  
21.29 board of teaching.  
21.30 (2) "Crime against a minor" means conduct that constitutes  
21.31 a violation of section 609.185, 609.19, 609.195, 609.20,  
21.32 609.205, 609.21, 609.215, 609.221, 609.222, 609.223, 609.342,  
21.33 609.343, 609.345, or a felony violation of section 609.377.  
21.34 (b) In any license revocation proceeding, there is a  
21.35 rebuttable presumption that a licensed person who is convicted  
21.36 in a court of competent jurisdiction of committing a crime  
22.1 against a minor is unfit to practice the profession or

22.2 occupation for which that person is licensed.

22.3 Sec. 22. Minnesota Statutes 2002, section 609.341,

22.4 subdivision 17, is amended to read:

22.5 Subd. 17. "Psychotherapist" means a person who is or

22.6 purports to be a physician, psychologist, nurse, chemical

22.7 dependency counselor, social worker, marriage and family

22.8 therapist, licensed professional counselor, or other mental

22.9 health service provider; or any other person, whether or not

22.10 licensed by the state, who performs or purports to perform

22.11 psychotherapy.

22.12 Sec. 23. [INITIAL BOARD.]

22.13 Notwithstanding Minnesota Statutes, section 148B.51,

22.14 members of the first board appointed under that section need  
not

22.15 be licensed, but must meet all qualifications, other than

22.16 payment of fees, to be eligible for licensure under Minnesota

22.17 Statutes, sections 148B.50 to 148B.593.

22.18 Sec. 24. [INTERAGENCY AGREEMENT.]

22.19 The board of behavioral health and therapy and the board of

22.20 psychology may enter into an interagency agreement for shared

22.21 administrative services.

22.22 Sec. 25. [RECOMMENDATIONS FOR MERGING THERAPY-RELATED

22.23 BOARDS.]

22.24 The boards of behavioral health and therapy and marriage

22.25 and family therapy shall develop recommendations on merging the

22.26 two boards into one inclusive board that would encompass the

22.27 regulatory authority for all behavioral therapy licensed

22.28 occupations. The recommendations shall include a timeline for

22.29 accomplishing the merger, the possibility of including other

22.30 occupational-related boards, and all necessary legislative

22.31 changes. These recommendations shall be submitted to the

22.32 legislature by January 15, 2004.

22.33 Sec. 26. [TRANSFER OF POWERS AND DUTIES.]

22.34 Effective July 1, 2005, the powers and duties of the

22.35 commissioner of health under Minnesota Statutes, chapter 148C,

22.36 are transferred to the board of behavioral health and therapy

23.1 created under Minnesota Statutes, section 148B.51, pursuant to

23.2 Minnesota Statutes, section 15.039.

23.3 Sec. 27. [APPROPRIATION.]

23.4 \$175,000 in fiscal year 2004 and \$145,000 in fiscal year

23.5 2005 are appropriated from the state government special revenue

23.6 fund to the board of behavioral health and therapy for the

23.7 purposes of Minnesota Statutes, sections 148B.50 to 148B.593,  
to

23.8 be available until July 1, 2005.

23.9 Sec. 28. [REVISOR INSTRUCTION.]

23.10 (a) The revisor of statutes shall insert the "board of

23.11 behavioral health and therapy" or "board" wherever  
"commissioner

23.12 of health" or "commissioner" appears in Minnesota Statutes,

23.13 chapter 148C, and Minnesota Rules, chapter 4747.

23.14 [EFFECTIVE DATE.] This paragraph is effective July 1, 2005.

23.15 (b) The revisor of statutes shall strike the terms

23.16 "unlicensed mental health practitioner" and "the office of

23.17 unlicensed mental health practitioner" from Minnesota Statutes

23.18 and Minnesota Rules.

23.19 [EFFECTIVE DATE.] This paragraph is effective July 1, 2004.

- 23.20       Sec. 29. [REPEALER.]
- 23.21       (a) Minnesota Statutes 2002, sections 148B.60; 148B.61;
- 23.22       148B.63; 148B.64; 148B.65; 148B.66; 148B.67; 148B.68; 148B.69;
- 23.23       148B.70; and 148B.71, are repealed.
- 23.24       [EFFECTIVE DATE.] This paragraph is effective July 1, 2004.
- 23.25       (b) Minnesota Statutes 2002, section 148C.01, subdivision
- 23.26       6, is repealed.
- 23.27       [EFFECTIVE DATE.] This paragraph is effective July 1, 2005.
- 23.28       Sec. 30. [EFFECTIVE DATE.]
- 23.29       This act is effective July 1, 2003.

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March 25, 2004

Reverend C. Scot Giles  
Counseling Ministries, Incorporated  
1211 East Pershing Avenue  
Wheaton, Illinois 60187-6735

Dear Rev. Giles:

RE: Repeal of Minn. Stat. § 148B.60-148B.71 &  
Chapter 118-H.F. No. 692

I am in receipt of your e-mail of March 17, 2004 in which you raise concerns relative to the repeal of the above referenced sections of Minnesota Statutes Chapter 148B on July 1, 2004. I relied on "Chapter 118-H.F. No. 692" to prepare this memorandum for you since your "PDF" file did not reproduce well and have limited my analysis to Chapters 148B and 146A only. Therefore, the impact of other statutory schemes is unknown at this time.

You are correct in your conclusion that the above referenced sections of Chapter 148B are repealed as of July 1, 2004. Therefore, any protection or exemption these sections provided unlicensed practitioners is also gone as of July 1, 2004. The amendment to the statute, also referenced above, restates this position.

Section 148B.18 through 148B.289 applies to all persons, licensees or unlicensed persons, who engage in social work practice. See 148B.185. Social work practice includes psychotherapy. 148B.18, Subd.'s 9 through 11. The unlicensed practice of social work is a misdemeanor. 148B.27. This is a serious cause for concern as the terms are somewhat broad and could potentially reach anyone who engages in the practice of psychotherapy in any context.

It does appear from a quick read of Chapter 146A, that this statute may be a better fit for you and your group as hypnotism is perhaps more of a "tool" used by various mind-body professionals. However, I must caution you that if hypnotism is used in the social work/psychotherapeutic context, this places the practitioner under 148B.18 through 289 again and the safest path may be to pursue licensing in some form.

I hope this is helpful to you. Should you have any questions regarding this matter, please feel free to contact me or Pat Panciocco, who is new in my office and worked on this matter for me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory E. Michael', with a long horizontal flourish extending to the right.

Gregory E. Michael

Giles2.ltr

Minnesota Statutes 2003, Chapter 146A.

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==146A.01

146A.01 Definitions.

Subdivision 1. Terms. As used in this chapter, the following terms have the meanings given them.

Subd. 2. Commissioner. "Commissioner" means the commissioner of health or the commissioner's designee.

Subd. 3. Complementary and alternative health care client. "Complementary and alternative health care client" means an individual who receives services from an unlicensed complementary and alternative health care practitioner.

Subd. 4. Complementary and alternative health care practices. (a) "Complementary and alternative health care practices" means the broad domain of complementary and alternative healing methods and treatments, including but not limited to: (1) acupressure; (2) anthroposophy; (3) aroma therapy; (4) ayurveda; (5) cranial sacral therapy; (6) culturally traditional healing practices; (7) detoxification practices and therapies; (8) energetic healing; (9) polarity therapy; (10) folk practices; (11) healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold, water, touch, and light; (12) Gerson therapy and colostrum therapy; (13) healing touch; (14) herbology or herbalism; (15) homeopathy; (16) nondiagnostic iridology; (17) body work, massage, and massage therapy; (18) meditation; (19) mind-body healing practices; (20) naturopathy; (21) noninvasive instrumentalities; and (22) traditional Oriental practices, such as Qi Gong energy healing.

(b) Complementary and alternative health care practices do not include surgery, x-ray radiation, administering or dispensing legend drugs and controlled substances, practices that invade the human body by puncture of the skin, setting fractures, the use of medical devices as defined in section 147A.01, any practice included in the practice of dentistry as

defined in section 150A.05, subdivision 1, or the manipulation or adjustment of articulations of joints or the spine as described in section 146.23 or 148.01.

(c) Complementary and alternative health care practices do not include practices that are permitted under section 147.09, clause (11), or 148.271, clause (5).

(d) This chapter does not apply to, control, prevent, or restrict the practice, service, or activity of lawfully marketing or distributing food products, including dietary supplements as defined in the federal Dietary Supplement Health and Education Act, educating customers about such products, or explaining the uses of such products. Under Minnesota law, an unlicensed complementary and alternative health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments.

Subd. 5. Office of Unlicensed Complementary and Alternative Health Care Practice or office. "Office of Unlicensed Complementary and Alternative Health Care Practice" or "office" means the Office of Unlicensed Complementary and Alternative Health Care Practice established in section 146A.02.

Subd. 6. Unlicensed complementary and alternative health care practitioner. (a) "Unlicensed complementary and alternative health care practitioner" means a person who:

(1) either:

(i) is not licensed or registered by a health-related licensing board or the commissioner of health; or

(ii) is licensed or registered by the commissioner of health or a health-related licensing board other than the Board of Medical Practice, the Board of Dentistry, the Board of Chiropractic Examiners, or the Board of Podiatric Medicine, but does not hold oneself out to the public as being licensed or registered by the commissioner or a health-related licensing board when engaging in complementary and alternative health care;

(2) has not had a license or registration issued by a

health-related licensing board or the commissioner of health revoked or has not been disciplined in any manner at any time in the past, unless the right to engage in complementary and alternative health care practices has been established by order of the commissioner of health;

(3) is engaging in complementary and alternative health care practices; and

(4) is providing complementary and alternative health care services for remuneration or is holding oneself out to the public as a practitioner of complementary and alternative health care practices.

(b) A health care practitioner licensed or registered by the commissioner or a health-related licensing board, who engages in complementary and alternative health care while practicing under the practitioner's license or registration, shall be regulated by and be under the jurisdiction of the applicable health-related licensing board with regard to the complementary and alternative health care practices.

HIST: 2000 c 460 s 9

==146A.02

146A.02 Office of Unlicensed Complementary and Alternative Health Care Practice.

Subdivision 1. Creation. The Office of Unlicensed Complementary and Alternative Health Care Practice is created in the Department of Health to investigate complaints and take and enforce disciplinary actions against all unlicensed complementary and alternative health care practitioners for violations of prohibited conduct, as defined in section 146A.08. The office shall also serve as a clearinghouse on complementary and alternative health care practices and unlicensed complementary and alternative health care practitioners through the dissemination of objective information to consumers and through the development and performance of public education activities, including outreach, regarding the provision of complementary and alternative health care practices and unlicensed complementary and alternative health care practitioners who provide these services.

Subd. 2. Rulemaking. The commissioner shall adopt rules necessary to implement, administer, or enforce provisions of this chapter pursuant to chapter 14.

HIST: 2000 c 460 s 10

==146A.025

146A.025 Maltreatment of minors.

Nothing in this chapter shall restrict the ability of a local welfare agency, local law enforcement agency, the commissioner of human services, or the state to take action regarding the maltreatment of minors under section 609.378 or 626.556. A parent who obtains complementary and alternative health care for the parent's minor child is not relieved of the duty to seek necessary medical care consistent with the requirements of sections 609.378 and 626.556. A complementary or alternative health care practitioner who is providing services to a child who is not receiving necessary medical care must make a report under section 626.556. A complementary or alternative health care provider is a mandated reporter under section 626.556, subdivision 3.

HIST: 2000 c 460 s 11

==146A.03

146A.03 Reporting obligations.

Subdivision 1. Permission to report. A person who has knowledge of any conduct constituting grounds for disciplinary action relating to complementary and alternative health care practices under this chapter may report the violation to the office.

Subd. 2. Institutions. A state agency, political subdivision, agency of a local unit of government, private agency, hospital, clinic, prepaid medical plan, or other health care institution or organization located in this state shall report to the office any action taken by the agency, institution, or organization or any of its administrators or medical or other committees to revoke, suspend, restrict, or condition an unlicensed complementary and alternative health

care practitioner's privilege to practice or treat complementary and alternative health care clients in the institution or, as part of the organization, any denial of privileges or any other disciplinary action for conduct that might constitute grounds for disciplinary action by the office under this chapter. The institution, organization, or governmental entity shall also report the resignation of any unlicensed complementary and alternative health care practitioners prior to the conclusion of any disciplinary action proceeding for conduct that might constitute grounds for disciplinary action under this chapter or prior to the commencement of formal charges but after the practitioner had knowledge that formal charges were contemplated or were being prepared.

Subd. 3. Professional societies. A state or local professional society for unlicensed complementary and alternative health care practitioners shall report to the office any termination, revocation, or suspension of membership or any other disciplinary action taken against an unlicensed complementary and alternative health care practitioner. If the society has received a complaint that might be grounds for discipline under this chapter against a member 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 office.

Subd. 4. Licensed professionals. A licensed health professional shall report to the office personal knowledge of any conduct that the licensed health professional reasonably believes constitutes grounds for disciplinary action under this chapter by any unlicensed complementary and alternative health care practitioner, including conduct indicating that the individual may be incompetent or may be mentally or physically unable to engage safely in the provision of services. If the information was obtained in the course of a client relationship, the client is an unlicensed complementary and alternative health care practitioner, and the treating individual successfully counsels the other practitioner to limit or withdraw from practice to the extent required by the impairment, the office may deem this limitation of or withdrawal from practice to be sufficient disciplinary action.

Subd. 5. Insurers. Four times each year as

prescribed by the commissioner, each insurer authorized to sell insurance described in section 60A.06, subdivision 1, clause (13), and providing professional liability insurance to unlicensed complementary and alternative health care practitioners or the medical Joint Underwriting Association under chapter 62F shall submit to the office a report concerning the unlicensed complementary and alternative health care practitioners against whom malpractice settlements or awards have been made. The response must contain at least the following information:

(1) the total number of malpractice settlements or awards made;

(2) the date the malpractice settlements or awards were made;

(3) the allegations contained in the claim or complaint leading to the settlements or awards made;

(4) the dollar amount of each malpractice settlement or award;

(5) the regular address of the practice of the unlicensed complementary and alternative health care practitioner against whom an award was made or with whom a settlement was made; and

(6) the name of the unlicensed complementary and alternative health care practitioner against whom an award was made or with whom a settlement was made.

The insurance company shall, in addition to the above information, submit to the office any information, records, and files, including clients' charts and records, it possesses that tend to substantiate a charge that an unlicensed complementary and alternative health care practitioner may have engaged in conduct violating this chapter.

Subd. 6. Courts. The court administrator of district court or any other court of competent jurisdiction shall report to the office any judgment or other determination of the court that adjudges or includes a finding that an unlicensed complementary and alternative health care practitioner is

mentally ill, mentally incompetent, guilty of a felony, guilty of a violation of federal or state narcotics laws or controlled substances act, or guilty of abuse or fraud under Medicare or Medicaid; or that appoints a guardian of the unlicensed complementary and alternative health care practitioner under sections 525.54 to 525.61 or commits an unlicensed complementary and alternative health care practitioner under chapter 253B.

Subd. 7. Self-reporting. An unlicensed complementary and alternative health care practitioner shall report to the office any personal action that would require that a report be filed with the office by any person, health care facility, business, or organization pursuant to subdivisions 2 to 5. The practitioner shall also report the revocation, suspension, restriction, limitation, or other disciplinary action against the practitioner's license, certificate, registration, or right of practice in another state or jurisdiction for offenses that would be subject to disciplinary action in this state and also report the filing of charges regarding the practitioner's license, certificate, registration, or right of practice in another state or jurisdiction.

Subd. 8. Deadlines; forms. Reports required by subdivisions 2 to 7 must be submitted not later than 30 days after the reporter learns of the occurrence of the reportable event or transaction. The office 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 ensure prompt and accurate reporting.

HIST: 2000 c 460 s 12

==146A.04

146A.04 Immunity.

Subdivision 1. Reporting. Any person, other than the unlicensed complementary and alternative health care practitioner who committed the violation, health care facility, business, or organization is immune from civil liability or criminal prosecution for submitting a report to the office, for otherwise reporting to the office violations or alleged violations of this chapter, or for cooperating with an investigation of a report, except as provided in this

subdivision. Any person who knowingly or recklessly makes a false report is liable in a civil suit for any damages suffered by the person or persons so reported and for any punitive damages set by the court or jury. An action requires clear and convincing evidence that the defendant made the statement with knowledge of falsity or with reckless disregard for its truth or falsity. The report or statement or any statement made in cooperation with an investigation or as part of a disciplinary proceeding is privileged except in an action brought under this subdivision.

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

HIST: 2000 c 460 s 13

==146A.05

146A.05 Disciplinary record on judicial review.

Upon judicial review of any disciplinary action taken by the commissioner under this chapter, the reviewing court shall seal the portions of the administrative record that contain data on a complementary and alternative health care client or a complainant under section 146A.03, and shall not make those portions of the administrative record available to the public.

HIST: 2000 c 460 s 14

==146A.06

146A.06 Professional cooperation; unlicensed practitioner.

Subdivision 1. Cooperation. An unlicensed complementary and alternative health care practitioner who is the subject of an investigation, or who is questioned in connection with an investigation, by or on behalf of the office, shall cooperate fully with the investigation. Cooperation

includes responding fully and promptly to any question raised by or on behalf of the office relating to the subject of the investigation, whether tape recorded or not; providing copies of client records, as reasonably requested by the office, to assist the office in its investigation; and appearing at conferences or hearings scheduled by the commissioner. If the office does not have a written consent from a client permitting access to the client's records, the unlicensed complementary and alternative health care practitioner shall delete in the record any data that identifies the client before providing it to the office. If an unlicensed complementary and alternative health care practitioner refuses to give testimony or produce any documents, books, records, or correspondence on the basis of the fifth amendment to the Constitution of the United States, the commissioner may compel the unlicensed complementary and alternative health care practitioner to provide the testimony or information; however, the testimony or evidence may not be used against the practitioner in any criminal proceeding. Challenges to requests of the office may be brought before the appropriate agency or court.

Subd. 2. Data. (a) Data relating to investigations of complaints and disciplinary actions involving unlicensed complementary and alternative health care practitioners are governed by this subdivision and section 13.41 does not apply. Except as provided in section 13.39, subdivision 2, and paragraph (b), data relating to investigations of complaints and disciplinary actions involving unlicensed complementary and alternative health care practitioners are public data, regardless of the outcome of any investigation, action, or proceeding.

(b) The following data are private data on individuals, as defined in section 13.02:

(1) data on a complementary and alternative health care client;

(2) data on a complainant under section 146A.03; and

(3) data on the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action.

Subd. 3. Exchanging information. (a) The office shall establish internal operating procedures for:

(1) exchanging information with state boards; agencies, including the Office of Ombudsman for Mental Health and Mental Retardation; health-related and law enforcement facilities; departments responsible for licensing health-related occupations, facilities, and programs; and law enforcement personnel in this and other states; and

(2) coordinating investigations involving matters within the jurisdiction of more than one regulatory agency.

(b) The procedures for exchanging information must provide for the forwarding to the entities described in paragraph (a), clause (1), of information and evidence, including the results of investigations, that are relevant to matters within the regulatory jurisdiction of the organizations in paragraph (a). The data have the same classification in the hands of the agency receiving the data as they have in the hands of the agency providing the data.

(c) The office shall establish procedures for exchanging information with other states regarding disciplinary action against unlicensed complementary and alternative health care practitioners.

(d) The office shall forward to another governmental agency any complaints received by the office that do not relate to the office's jurisdiction but that relate to matters within the jurisdiction of the other governmental agency. The agency to which a complaint is forwarded shall advise the office of the disposition of the complaint. A complaint or other information received by another governmental agency relating to a statute or rule that the office is empowered to enforce must be forwarded to the office to be processed in accordance with this section.

(e) The office shall furnish to a person who made a complaint a description of the actions of the office relating to the complaint.

==146A.07

146A.07 Professional accountability.

The office shall maintain and keep current a file containing the reports and complaints filed against unlicensed complementary and alternative health care practitioners within the commissioner's jurisdiction. Each complaint filed with the office must be investigated. If the files maintained by the office show that a malpractice settlement or award has been made against an unlicensed complementary and alternative health care practitioner, as reported by insurers under section 146A.03, subdivision 5, the commissioner may authorize a review of the practitioner's practice by the staff of the office.

HIST: 2000 c 460 s 16

==146A.08

146A.08 Prohibited conduct.

Subdivision 1. Prohibited conduct. The commissioner may impose disciplinary action as described in section 146A.09 against any unlicensed complementary and alternative health care practitioner. The following conduct is prohibited and is grounds for disciplinary action:

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

(b) Conviction of any crime against a person. For purposes of this chapter, a crime against a person means violations of the following: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.2242; 609.23; 609.231; 609.2325; 609.233; 609.2335; 609.235;

609.24; 609.245; 609.25; 609.255; 609.26, subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343; 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50, subdivision 1, clause (1); 609.561; 609.562; 609.595; and 609.72, subdivision 3.

(c) Failure to comply with the self-reporting requirements of section 146A.03, subdivision 7.

(d) Engaging in sexual contact with a complementary and alternative health care client or former client, engaging in contact that may be reasonably interpreted by a client as sexual, engaging in any verbal behavior that is seductive or sexually demeaning to the patient, or engaging in sexual exploitation of a client or former client. For purposes of this paragraph, "former client" means a person who has obtained services from the unlicensed complementary and alternative health care practitioner within the past two years.

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

(f) Conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a complementary and alternative health care client; or any other practice that may create danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established.

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

(h) Inability to engage in complementary and alternative health care practices with reasonable safety to complementary and alternative health care clients.

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

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

in chapter 151, or any controlled substance as defined in chapter 152.

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

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

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

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

(o) Failure to make reports as required by section 146A.03 or cooperate with an investigation of the office.

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

(q) Undertaking or continuing a professional relationship with a complementary and alternative health care client in which the objectivity of the unlicensed complementary and alternative health care practitioner would be impaired.

(r) Failure to provide a complementary and alternative health care client with a copy of the client bill of rights or violation of any provision of the client bill of rights.

(s) Violating any order issued by the commissioner.

(t) Failure to comply with any provision of sections 146A.01 to 146A.11 and the rules adopted under those sections.

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

(v) Revocation, suspension, restriction, limitation, or other disciplinary action against any health care license, certificate, registration, or right to practice of the unlicensed complementary and alternative health care practitioner in this or another state or jurisdiction for offenses that would be subject to disciplinary action in this state or failure to report to the office that charges regarding the practitioner's license, certificate, registration, or right of practice have been brought in this or another state or jurisdiction.

(w) Use of the title "doctor," "Dr.," or "physician" alone or in combination with any other words, letters, or insignia to describe the complementary and alternative health care practices the practitioner provides.

(x) Failure to provide a complementary and alternative health care client with a recommendation that the client see a health care provider who is licensed or registered by a health-related licensing board or the commissioner of health, if there is a reasonable likelihood that the client needs to be seen by a licensed or registered health care provider.

Subd. 2. Less customary approach. The fact that a complementary and alternative health care practice may be a less customary approach to health care shall not constitute the basis of a disciplinary action per se.

Subd. 3. Evidence. In disciplinary actions alleging a violation of subdivision 1, paragraph (a), (b), (c), or (g), a copy of the judgment or proceeding under the seal of the court administrator or of the administrative agency that entered the same is admissible into evidence without further authentication and constitutes prima facie evidence of its contents.

Subd. 4. Examination; access to medical data. (a) If the commissioner has probable cause to believe that an unlicensed complementary and alternative health care practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j), the commissioner may issue an

order directing the practitioner to submit to a mental or physical examination or chemical dependency evaluation. For the purpose of this subdivision, every unlicensed complementary and alternative health care practitioner is deemed to have consented to submit to a mental or physical examination or chemical dependency evaluation when ordered to do so in writing by the commissioner and further to have waived all objections to the admissibility of the testimony or examination reports of the health care provider performing the examination or evaluation on the grounds that the same constitute a privileged communication. Failure of an unlicensed complementary and alternative health care practitioner to submit to an examination or evaluation when ordered, unless the failure was due to circumstances beyond the practitioner's control, constitutes an admission that the unlicensed complementary and alternative health care practitioner violated subdivision 1, paragraph (g), (h), (i), or (j), based on the factual specifications in the examination or evaluation order and may result in a default and final disciplinary order being entered after a contested case hearing. An unlicensed complementary and alternative health care practitioner affected under this paragraph shall at reasonable intervals be given an opportunity to demonstrate that the practitioner can resume the provision of complementary and alternative health care practices with reasonable safety to clients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the commissioner shall be used against an unlicensed complementary and alternative health care practitioner in any other proceeding.

(b) In addition to ordering a physical or mental examination or chemical dependency evaluation, the commissioner may, notwithstanding section 13.384; 144.651; 595.02; or any other law limiting access to medical or other health data, obtain medical data and health records relating to an unlicensed complementary and alternative health care practitioner without the practitioner's consent if the commissioner has probable cause to believe that a practitioner has engaged in conduct prohibited by subdivision 1, paragraph (g), (h), (i), or (j). The medical data may be requested from a provider as defined in section 144.335, subdivision 1, paragraph (b), an insurance company, or a government agency, including the Department of Human Services. A provider, insurance company, or government agency shall comply with any written request of the commissioner

under this subdivision and is not liable in any action for damages for releasing the data requested by the commissioner if the data are released pursuant to a written request under this subdivision, unless the information is false and the person or organization giving the information knew or had reason to believe the information was false. Information obtained under this subdivision is private data under section 13.41.

HIST: 1999 c 227 s 22; 2000 c 460 s 17

==146A.09

146A.09 Disciplinary actions.

Subdivision 1. Forms of disciplinary action. When the commissioner finds that an unlicensed complementary and alternative health care practitioner has violated any provision of this chapter, the commissioner may take one or more of the following actions, only against the individual practitioner:

(1) revoke the right to practice;

(2) suspend the right to practice;

(3) impose limitations or conditions on the practitioner's provision of complementary and alternative health care practices, impose rehabilitation requirements, or require practice under supervision;

(4) impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed so as to deprive the practitioner of any economic advantage gained by reason of the violation charged or to reimburse the office for all costs of the investigation and proceeding;

(5) censure or reprimand the practitioner;

(6) impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the Office of Administrative Hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the staff of the Office of Unlicensed Complementary

and Alternative Health Care Practice; or

(7) any other action justified by the case.

Subd. 2. Discovery; subpoenas. In all matters relating to the lawful activities of the office, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. Any person failing or refusing to appear or testify regarding any matter about which the person may be lawfully questioned or failing to produce any papers, books, records, documents, or other evidentiary materials in the matter to be heard, after having been required by order of the commissioner or by a subpoena of the commissioner to do so may, upon application to the district court in any district, be ordered to comply with the order or subpoena. The commissioner 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 may be served upon a person it names anywhere within the state by any officer authorized to serve subpoenas or other process in civil actions in the same manner as prescribed by law for service of process issued out of the district court of this state.

Subd. 3. Hearings. If the commissioner proposes to take action against the practitioner as described in subdivision 1, the commissioner must first notify the practitioner against whom the action is proposed to be taken and provide the practitioner with an opportunity to request a hearing under the contested case provisions of chapter 14. If the practitioner does not request a hearing by notifying the commissioner within 30 days after service of the notice of the proposed action, the commissioner may proceed with the action without a hearing.

Subd. 4. Reinstatement. The commissioner may at the commissioner's discretion reinstate the right to practice and may impose any disciplinary measure listed under subdivision 1.

Subd. 5. Temporary suspension. In addition to any other remedy provided by law, the commissioner may, acting through a person to whom the commissioner has delegated this

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

Subd. 6. Automatic suspension. The right of an unlicensed complementary and alternative health care practitioner to practice is automatically suspended if (1) a guardian of an unlicensed complementary and alternative health care practitioner is appointed by order of a court under sections 525.54 to 525.61, or (2) the practitioner is committed by order of a court pursuant to chapter 253B. The right to practice remains suspended until the practitioner is restored to capacity by a court and, upon petition by the practitioner, the suspension is terminated by the commissioner after a hearing or upon agreement between the commissioner and the practitioner.

Subd. 7. Licensed or regulated practitioners. If a practitioner investigated under this section is licensed or registered by the commissioner of health or a health-related licensing board, is subject to the jurisdiction of the commissioner under section 146A.01, subdivision 6, paragraph

(a), clause (1), item (ii), and the commissioner determines that the practitioner has violated any provision of this chapter, the commissioner, in addition to taking disciplinary action under this section:

(1) may, if the practitioner is licensed or regulated in another capacity by the commissioner, take further disciplinary action against the practitioner in that capacity; or

(2) shall, if the practitioner is licensed or registered in another capacity by a health-related licensing board, report the commissioner's findings under this section, and may make a nonbinding recommendation that the board take further action against the practitioner in that capacity.

HIST: 2000 c 460 s 18

==146A.10

146A.10 Additional remedies.

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

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

(c) When a request for a stay accompanies a timely hearing request, the commissioner may, in the commissioner's discretion, grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the Office of

Administrative Hearings within three working days of receipt of the request. Within ten days after receiving the request from the commissioner, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner shall grant or deny the stay within five days of receiving the administrative law judge's recommendation.

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

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

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

HIST: 2000 c 460 s 19

==146A.11

146A.11 Complementary and alternative health care client bill of rights.

Subdivision 1. Scope. All unlicensed complementary and alternative health care practitioners shall provide to each complementary and alternative health care client prior to providing treatment a written copy of the complementary and alternative health care client bill of rights. A copy must also

be posted in a prominent location in the office of the unlicensed complementary and alternative health care practitioner. Reasonable accommodations shall be made for those clients who cannot read or who have communication impairments and those who do not read or speak English. The complementary and alternative health care client bill of rights shall include the following:

(1) the name, complementary and alternative health care title, business address, and telephone number of the unlicensed complementary and alternative health care practitioner;

(2) the degrees, training, experience, or other qualifications of the practitioner regarding the complimentary and alternative health care being provided, followed by the following statement in bold print:

"THE STATE OF MINNESOTA HAS NOT ADOPTED ANY EDUCATIONAL AND TRAINING STANDARDS FOR UNLICENSED COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONERS. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATION PURPOSES ONLY.

Under Minnesota law, an unlicensed complementary and alternative health care practitioner may not provide a medical diagnosis or recommend discontinuance of medically prescribed treatments. If a client desires a diagnosis from a licensed physician, chiropractor, or acupuncture practitioner, or services from a physician, chiropractor, nurse, osteopath, physical therapist, dietitian, nutritionist, acupuncture practitioner, athletic trainer, or any other type of health care provider, the client may seek such services at any time.";

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

(4) notice that a complementary and alternative health care client has the right to file a complaint with the practitioner's supervisor, if any, and the procedure for filing complaints;

(5) the name, address, and telephone number of the office of unlicensed complementary and alternative health care practice and notice that a client may file complaints with the office;

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

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

(8) a brief summary, in plain language, of the theoretical approach used by the practitioner in providing services to clients;

(9) notice that the client has a right to complete and current information concerning the practitioner's assessment and recommended service that is to be provided, including the expected duration of the service to be provided;

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

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

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

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

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

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

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

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

Subd. 2. Acknowledgment by client. Prior to the provision of any service, a complementary and alternative health care client must sign a written statement attesting that the client has received the complementary and alternative health care client bill of rights.

HIST: 2000 c 460 s 20