

1.1 moves to amend H.F. No. 2555, the fourth engrossment, as follows:

1.2 Page 6, after line 25, insert:

1.3 "Sec. Minnesota Statutes 2010, section 148.261, subdivision 1, is amended to read:

1.4 Subdivision 1. **Grounds listed.** The board may deny, revoke, suspend, limit, or
1.5 condition the license and registration of any person to practice professional, advanced
1.6 practice registered, or practical nursing under sections 148.171 to 148.285, or to otherwise
1.7 discipline a licensee or applicant as described in section 148.262. The following are
1.8 grounds for disciplinary action:

1.9 (1) Failure to demonstrate the qualifications or satisfy the requirements for a license
1.10 contained in sections 148.171 to 148.285 or rules of the board. In the case of a person
1.11 applying for a license, the burden of proof is upon the applicant to demonstrate the
1.12 qualifications or satisfaction of the requirements.

1.13 (2) Employing fraud or deceit in procuring or attempting to procure a permit, license,
1.14 or registration certificate to practice professional or practical nursing or attempting to
1.15 subvert the licensing examination process. Conduct that subverts or attempts to subvert
1.16 the licensing examination process includes, but is not limited to:

1.17 (i) conduct that violates the security of the examination materials, such as removing
1.18 examination materials from the examination room or having unauthorized possession of
1.19 any portion of a future, current, or previously administered licensing examination;

1.20 (ii) conduct that violates the standard of test administration, such as communicating
1.21 with another examinee during administration of the examination, copying another
1.22 examinee's answers, permitting another examinee to copy one's answers, or possessing
1.23 unauthorized materials; or

1.24 (iii) impersonating an examinee or permitting an impersonator to take the
1.25 examination on one's own behalf.

1.26 (3) Conviction ~~during the previous five years~~ of a felony or gross misdemeanor
1.27 reasonably related to the practice of professional, advanced practice registered, or practical

2.1 nursing. Conviction as used in this subdivision includes a conviction of an offense that if
2.2 committed in this state would be considered a felony or gross misdemeanor without regard
2.3 to its designation elsewhere, or a criminal proceeding where a finding or verdict of guilt is
2.4 made or returned but the adjudication of guilt is either withheld or not entered.

2.5 (4) Revocation, suspension, limitation, conditioning, or other disciplinary action
2.6 against the person's professional or practical nursing license or advanced practice
2.7 registered nursing credential, in another state, territory, or country; failure to report to the
2.8 board that charges regarding the person's nursing license or other credential are pending in
2.9 another state, territory, or country; or having been refused a license or other credential by
2.10 another state, territory, or country.

2.11 (5) Failure to or inability to perform professional or practical nursing as defined in
2.12 section 148.171, subdivision 14 or 15, with reasonable skill and safety, including failure
2.13 of a registered nurse to supervise or a licensed practical nurse to monitor adequately the
2.14 performance of acts by any person working at the nurse's direction.

2.15 (6) Engaging in unprofessional conduct, including, but not limited to, a departure
2.16 from or failure to conform to board rules of professional or practical nursing practice that
2.17 interpret the statutory definition of professional or practical nursing as well as provide
2.18 criteria for violations of the statutes, or, if no rule exists, to the minimal standards of
2.19 acceptable and prevailing professional or practical nursing practice, or any nursing
2.20 practice that may create unnecessary danger to a patient's life, health, or safety. Actual
2.21 injury to a patient need not be established under this clause.

2.22 (7) Failure of an advanced practice registered nurse to practice with reasonable
2.23 skill and safety or departure from or failure to conform to standards of acceptable and
2.24 prevailing advanced practice registered nursing.

2.25 (8) Delegating or accepting the delegation of a nursing function or a prescribed
2.26 health care function when the delegation or acceptance could reasonably be expected to
2.27 result in unsafe or ineffective patient care.

2.28 (9) Actual or potential inability to practice nursing with reasonable skill and safety
2.29 to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or
2.30 as a result of any mental or physical condition.

2.31 (10) Adjudication as mentally incompetent, mentally ill, a chemically dependent
2.32 person, or a person dangerous to the public by a court of competent jurisdiction, within or
2.33 without this state.

2.34 (11) Engaging in any unethical conduct, including, but not limited to, conduct likely
2.35 to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard

3.1 for the health, welfare, or safety of a patient. Actual injury need not be established under
3.2 this clause.

3.3 (12) Engaging in conduct with a patient that is sexual or may reasonably be
3.4 interpreted by the patient as sexual, or in any verbal behavior that is seductive or sexually
3.5 demeaning to a patient, or engaging in sexual exploitation of a patient or former patient.

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

3.9 (14) Revealing a privileged communication from or relating to a patient except when
3.10 otherwise required or permitted by law.

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

3.13 (16) Improper management of patient records, including failure to maintain adequate
3.14 patient records, to comply with a patient's request made pursuant to sections 144.291 to
3.15 144.298, or to furnish a patient record or report required by law.

3.16 (17) Knowingly aiding, assisting, advising, or allowing an unlicensed person to
3.17 engage in the unlawful practice of professional, advanced practice registered, or practical
3.18 nursing.

3.19 (18) Violating a rule adopted by the board, an order of the board, or a state or federal
3.20 law relating to the practice of professional, advanced practice registered, or practical
3.21 nursing, or a state or federal narcotics or controlled substance law.

3.22 (19) Knowingly providing false or misleading information that is directly related
3.23 to the care of that patient unless done for an accepted therapeutic purpose such as the
3.24 administration of a placebo.

3.25 (20) Aiding suicide or aiding attempted suicide in violation of section 609.215 as
3.26 established by any of the following:

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

3.29 (ii) a copy of the record of a judgment of contempt of court for violating an
3.30 injunction issued under section 609.215, subdivision 4;

3.31 (iii) a copy of the record of a judgment assessing damages under section 609.215,
3.32 subdivision 5; or

3.33 (iv) a finding by the board that the person violated section 609.215, subdivision
3.34 1 or 2. The board shall investigate any complaint of a violation of section 609.215,
3.35 subdivision 1 or 2.

4.1 (21) Practicing outside the scope of practice authorized by section 148.171,
4.2 subdivision 5, 10, 11, 13, 14, 15, or 21.

4.3 (22) Practicing outside the specific field of nursing practice for which an advanced
4.4 practice registered nurse is certified unless the practice is authorized under section 148.284.

4.5 (23) Making a false statement or knowingly providing false information to the
4.6 board, failing to make reports as required by section 148.263, or failing to cooperate with
4.7 an investigation of the board as required by section 148.265.

4.8 (24) Engaging in false, fraudulent, deceptive, or misleading advertising.

4.9 (25) Failure to inform the board of the person's certification status as a nurse
4.10 anesthetist, nurse-midwife, nurse practitioner, or clinical nurse specialist.

4.11 (26) Engaging in clinical nurse specialist practice, nurse-midwife practice, nurse
4.12 practitioner practice, or registered nurse anesthetist practice without current certification
4.13 by a national nurse certification organization acceptable to the board, except during the
4.14 period between completion of an advanced practice registered nurse course of study and
4.15 certification, not to exceed six months or as authorized by the board.

4.16 (27) Engaging in conduct that is prohibited under section 145.412.

4.17 (28) Failing to report employment to the board as required by section 148.211,
4.18 subdivision 2a, or knowingly aiding, assisting, advising, or allowing a person to fail to
4.19 report as required by section 148.211, subdivision 2a."

4.20 Page 10, after line 18, insert:

4.21 "Sec. **[214.0732] REQUIREMENT FOR CRIMINAL BACKGROUND**
4.22 **CHECK.**

4.23 Subdivision 1. **Applicants.** Each health-related licensing board, as defined in section
4.24 214.01, subdivision 2, and the commissioner of health, as regulator for occupational
4.25 therapy practitioners, speech-language pathologists, audiologists, and hearing instrument
4.26 dispensers, shall complete a fingerprint-based criminal background check on each
4.27 applicant for initial licensure or other credential prior to granting a credential to practice.
4.28 Each applicant must:

4.29 (1) submit a full set of fingerprints to the commissioner or board or its designee in a
4.30 form and manner specified by the commissioner or board; and

4.31 (2) provide consent authorizing the board or commissioner to obtain the applicant's
4.32 state and national criminal history record information for the purpose of determining the
4.33 applicant's suitability and eligibility for a credential to practice.

4.34 Subd. 2. **Fees.** The applicant shall be responsible for all fees associated with
4.35 preparation of the fingerprints and the criminal background check and are not refundable.

5.1 Subd. 3. **Refusal to consent.** The boards and the commissioner of health shall
5.2 not issue a credential to practice to any applicant who refuses to consent to a criminal
5.3 background check or fails to submit fingerprints within 90 days after the application is
5.4 submitted. Any fees paid by the applicant to a board or commissioner shall be forfeited
5.5 if the applicant refuses to consent to the criminal background check or fails to submit
5.6 fingerprints.

5.7 Subd. 4. **Submission of fingerprints.** A board or its designee and the commissioner
5.8 of health shall submit applicant fingerprints to the Minnesota Bureau of Criminal
5.9 Apprehension (BCA). The BCA shall perform a check for state criminal justice
5.10 information and shall forward the applicant's fingerprints to the Federal Bureau of
5.11 Investigation to perform a check for national criminal justice information regarding the
5.12 applicant. The BCA shall report to the board or the commissioner the results of the state
5.13 and national background checks.

5.14 Subd. 5. **Alternative to fingerprint-based background check.** A board or the
5.15 commissioner of health may require an alternative method of criminal history check
5.16 for an applicant who has submitted at least three sets of fingerprints under this section
5.17 that cannot be read.

5.18 Subd. 6. **Opportunity to challenge accuracy of report.** Prior to taking disciplinary
5.19 action against an applicant based on a criminal conviction, a board or the commissioner
5.20 of health shall provide the applicant with the opportunity to complete, or challenge the
5.21 accuracy of, the criminal justice information reported to the board or commissioner. The
5.22 applicant shall have 30 calendar days following notice from a board or the commissioner
5.23 of the intent to take disciplinary action on a license to request an opportunity to correct or
5.24 complete the record prior to a board or the commissioner taking disciplinary action based
5.25 on the report. The applicant shall be allowed up to 180 days to challenge the accuracy or
5.26 completeness of the report with the agency that is responsible for the record.

5.27 Subd. 7. **Disciplinary action.** A board or the commissioner of health shall review
5.28 each criminal history report and determine whether the criminal convictions, if any, relate
5.29 to the practice of the regulated profession or occupation. If the criminal convictions are
5.30 found to relate to the profession or occupation, the regulating board or commissioner
5.31 may take any disciplinary action allowed by the respective practice act and pursuant
5.32 to sections 214.10 and 214.103.

5.33 Subd. 8. **Factors to be considered.** In determining whether an applicant is suitable
5.34 to receive a credential to practice, a board or the commissioner of health shall consider:

5.35 (1) the number of crimes for which the applicant has been convicted;

6.1 (2) the nature and seriousness of the crimes and vulnerability of the victims of the
6.2 crimes, including whether the commission of the crimes involved the abuse of trust or the
6.3 exploitation of a unique position or knowledge;

6.4 (3) the relationship between the crimes and the practice of the applicable profession
6.5 or occupation;

6.6 (4) the age of the applicant at the time the crimes were committed;

6.7 (5) the amount of time that has elapsed since the crimes occurred;

6.8 (6) steps taken by the applicant to address substance abuse or mental or physical
6.9 health issues present at the time of the crimes or subsequent to the crimes;

6.10 (7) evidence of the applicant's work history;

6.11 (8) whether the applicant has successfully completed the terms of any sentence
6.12 imposed; and

6.13 (9) any other evidence demonstrating the applicant does not pose a risk of harm to
6.14 the health or safety of the public.

6.15 Subd. 9. **Conviction.** For purposes of this section, an applicant is considered to
6.16 have been convicted of a crime if the applicant has pleaded guilty or nolo contendere,
6.17 been found guilty, or entered an Alford plea to any offense by any court in the state of
6.18 Minnesota or similar offense in another state or United States territory or federal court.
6.19 An applicant is considered to have been convicted of a crime if the applicant has been
6.20 convicted or found guilty but adjudication was withheld. A board or the commissioner of
6.21 health may consider public records from a juvenile delinquency proceeding where there
6.22 has been a judicial determination that the elements of the offense occurred.

6.23 Subd. 10. **Data practices.** Fingerprints and all criminal history record information
6.24 obtained by the boards or the commissioner of health is private data on individuals under
6.25 section 13.02, subdivision 12, and restricted to the exclusive use of the board and its
6.26 members and staff, the commissioner, investigative staff, agents, and attorneys for the
6.27 purpose of evaluating an applicant's eligibility or qualifications to practice. The boards and
6.28 the commissioner shall maintain fingerprints and the criminal history records information
6.29 in a secure manner and comply with all applicable state and federal requirements.

6.30 Subd. 11. **Instructions to the boards; plan.** The boards and the commissioner
6.31 of health shall collaborate with the commissioner of human services and the BCA to
6.32 conduct a study on the practicability of completing criminal background checks of all
6.33 credentialed individuals who received their credential to practice before the effective date
6.34 of this section. This plan shall be developed no later than 2015 and may be contingent
6.35 upon the BCA's implementation of a system in which any new crimes that an applicant
6.36 or credentialed individual commits after an initial background check are flagged in

7.1 the BCA database and reported to the board or commissioner. The plan will include
7.2 recommendations for any necessary statutory changes and shall seek to minimize
7.3 duplication of requirements for background studies.

7.4 **EFFECTIVE DATE.** This section is effective July 1, 2013, or as soon as the
7.5 necessary agency interagency infrastructure and related business processes are operational,
7.6 whichever is later."

7.7 Renumber the sections in sequence and correct the internal references

7.8 Amend the title accordingly