

1.1 A bill for an act

1.2 relating to licensed health professionals; modifying complaint, investigation, and
1.3 hearing procedures; requiring a report to a health licensing board; amending
1.4 Minnesota Statutes 2008, sections 214.04, subdivision 2a; 214.103, as amended.

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

1.6 Section 1. Minnesota Statutes 2008, section 214.04, subdivision 2a, is amended to read:

1.7 Subd. 2a. **Performance of executive directors.** (a) The governor may request
1.8 that a health-related licensing board or the Emergency Medical Services Regulatory
1.9 Board review the performance of the board's executive director. Upon receipt of the
1.10 request, the board must respond by establishing a performance improvement plan or
1.11 taking disciplinary or other corrective action, including dismissal. The board shall include
1.12 the governor's representative as a voting member of the board in the board's discussions
1.13 and decisions regarding the governor's request. The board shall report to the governor on
1.14 action taken by the board, including an explanation if no action is deemed necessary.

1.15 (b) The office of the attorney general may request that a health-related licensing
1.16 board review the performance of the board's executive director when the executive
1.17 director:

1.18 (1) has committed a violation of the data practices act when exercising duties
1.19 under section 214.103;

1.20 (2) initiates an investigation under section 214.103, of a health care provider who
1.21 is regulated by another licensing board;

1.22 (3) investigates a complaint under section 214.103, of a health care provider without
1.23 notifying the designee of the attorney general; or

2.1 (4) continues to investigate a complaint that has been dismissed by the executive
 2.2 director's board.

2.3 The office of the attorney general may present evidence to the board of the violation.
 2.4 The board must respond by establishing a performance improvement plan or taking
 2.5 disciplinary or other corrective action, including dismissal. The board shall report to the
 2.6 office of the attorney general and to the governor on action taken by the board, including
 2.7 an explanation if no action is deemed necessary.

2.8 Sec. 2. Minnesota Statutes 2008, section 214.103, as amended by Laws 2009, chapter
 2.9 157, article 1, section 15, is amended to read:

2.10 **214.103 HEALTH-RELATED LICENSING BOARDS; COMPLAINT,**
 2.11 **INVESTIGATION, AND HEARING.**

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

2.16 Subd. 2. **Receipt of complaint.** The boards shall receive and resolve complaints
 2.17 or other communications, whether oral or written, against regulated persons. Before
 2.18 resolving an oral complaint, the executive director or a board member designated by the
 2.19 board to review complaints ~~may~~ must require the complainant to state the complaint
 2.20 in writing. ~~The executive director or the designated board member shall determine~~
 2.21 ~~whether the complaint alleges or implies a violation of a statute or rule which the board~~
 2.22 ~~is empowered to enforce.~~ The executive director or the designated board member ~~may~~
 2.23 must consult with the designee of the attorney general as to a board's jurisdiction over a
 2.24 complaint. The designee of the attorney general shall determine whether the complaint
 2.25 alleges a violation of statute or rule which the board is empowered to enforce. If the
 2.26 ~~executive director or the designated board member~~ designee of the attorney general
 2.27 determines that it is necessary, the executive director may seek additional information to
 2.28 determine whether the complaint is jurisdictional or to clarify the nature of the allegations
 2.29 by obtaining records or other written material related to the specific allegations in the
 2.30 complaint, obtaining a handwriting sample from the regulated person, and clarifying the
 2.31 alleged facts with the complainant, ~~and requesting.~~ The executive director must request a
 2.32 written response from the subject of the complaint.

2.33 Subd. 3. **Referral to other agencies.** (a) The executive director shall forward to
 2.34 another governmental agency any complaints received by the board which the designee of
 2.35 the attorney general determines do not relate to the board's jurisdiction but which relate

3.1 to matters within the jurisdiction of another governmental agency. The agency shall
 3.2 advise the executive director of the disposition of the complaint. A complaint or other
 3.3 information received by another governmental agency relating to a statute or rule which a
 3.4 board is empowered to enforce must be forwarded to the executive director of the board to
 3.5 be processed in accordance with this section.

3.6 (b) An executive director shall not take any action, including a request for records,
 3.7 against a subject of a complaint who is regulated by another agency or board.

3.8 Subd. 4. **Role of the attorney general.** ~~The~~ (a) Within 21 days of receipt of a
 3.9 complaint, the executive director or the designated board member shall forward ~~a~~ the
 3.10 complaint and any additional information to the designee of the attorney general when
 3.11 the executive director or the designated board member ~~determines~~ believes that ~~a~~ the
 3.12 complaint is jurisdictional ~~and~~. The designee of the attorney general shall determine
 3.13 whether the board has jurisdiction to proceed.

3.14 (b) If the designee of the attorney general determines the complaint is not within the
 3.15 jurisdiction of the board, then the designee shall forward the complaint to the executive
 3.16 director of the appropriate board or agency.

3.17 (c) If the designee of the attorney general determines there is no credible evidence to
 3.18 support the complaint, the designee shall make a written recommendation to the board
 3.19 to dismiss the complaint.

3.20 (d) When the designee of the attorney general makes a determination the board
 3.21 has jurisdiction to act upon the complaint, the designee shall inform the board and the
 3.22 designee's supervisor in writing.

3.23 ~~(1) requires investigation before the executive director or the designated board~~
 3.24 ~~member may resolve the complaint;~~

3.25 ~~(2) that attempts at resolution for disciplinary action or the initiation of a contested~~
 3.26 ~~case hearing is appropriate;~~

3.27 ~~(3) that an agreement for corrective action is warranted; or~~

3.28 ~~(4) that the complaint should be dismissed, consistent with subdivision 8.~~

3.29 Subd. 5. **Investigation by attorney general.** After consultation with the designee
 3.30 of the attorney general regarding the action that will be taken on the complaint, If
 3.31 the executive director or the designated board member ~~determines that investigation~~
 3.32 ~~is necessary before resolving the complaint, the executive director shall forward the~~
 3.33 complaint and any additional information to the designee ~~of the attorney general.~~ The
 3.34 designee of the attorney general shall evaluate the communications forwarded and
 3.35 investigate as appropriate. The designee of the attorney general may also investigate any
 3.36 other complaint forwarded under subdivision 3 when the designee of the attorney general

4.1 determines that investigation is necessary. If the designee determines there is no credible
4.2 evidence to substantiate the complaint, then the designee shall return the complaint to the
4.3 executive director or designated board member with instructions to dismiss the complaint.
4.4 In the process of evaluation and investigation, the designee shall consult with or seek the
4.5 assistance of the executive director or the designated board member. The designee may
4.6 also consult with or seek the assistance of other qualified persons who are not members
4.7 of the board who the designee believes will materially aid in the process of evaluation
4.8 or investigation. Upon completion of the investigation, the designee shall forward the
4.9 investigative report to the executive director.

4.10 Subd. 6. **Attempts at resolution.** (a) At any time after receipt of a complaint, the
4.11 executive director or the designated board member may attempt to resolve the complaint
4.12 with the regulated person. The available means for resolution include a conference or any
4.13 other written or oral communication with the regulated person. A conference may be held
4.14 for the purposes of investigation, negotiation, education, or conciliation, and if held,
4.15 must be held within 90 days of receipt of the initial complaint. The results of attempts
4.16 at resolution with the regulated person may include a recommendation to the board for
4.17 disciplinary action, an agreement between the executive director or the designated board
4.18 member and the regulated person for corrective action, or the dismissal of a complaint. If
4.19 attempts at resolution are not in the public interest or are not satisfactory to the executive
4.20 director or the designated board member, then the executive director or the designated
4.21 board member may initiate a contested case hearing. The executive director or the
4.22 designated board member must initiate the contested case hearing proceeding under
4.23 chapter 14 within one year of receipt of the initial complaint. If the contested case hearing
4.24 is not initiated within one year of the receipt of the initial complaint, the designee of the
4.25 attorney general shall take action to dismiss the complaint.

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

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

5.1 action shall provide for dismissal of the complaint upon successful completion by the
5.2 regulated person of the corrective action.

5.3 (3) The designee of the attorney general shall make written recommendations to the
5.4 board for nondisciplinary corrective action when the designee finds there is insufficient
5.5 evidence as a result of the designee's investigation to support disciplinary action by the
5.6 board. The designee shall provide supporting documentation to the board and to the
5.7 designee's supervisor.

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

5.17 **Subd. 7. Contested case hearing.** (a) If, after consultation with the designee of the
5.18 attorney general, the executive director or the designated board member determines that
5.19 attempts at resolution of a complaint are not in the public interest ~~or are not satisfactory~~
5.20 ~~to the executive director or the designated board member~~, the executive director or the
5.21 designated board member, ~~after consultation with the designee of the attorney general,~~
5.22 may initiate a contested case hearing under chapter 14. The executive director or the
5.23 designated board member must initiate the contested case hearing proceeding within
5.24 one year of receipt of the initial complaint.

5.25 (b) The designee of the attorney general shall provide a written recommendation to
5.26 the executive director or designated board member board to proceed with the contested
5.27 case hearing in cases in which the designee's evidence supports a disciplinary action.
5.28 When the designee's evidence does not support a disciplinary action, the designee shall
5.29 provide a written report to the executive director or the designated board member and the
5.30 designee's supervisor with evidence that disciplinary action is not warranted.

5.31 (c) The designated board member or any board member who was consulted during
5.32 the course of an investigation may participate at the contested case hearing. A designated
5.33 or consulted board member may not deliberate or vote in any proceeding before the board
5.34 pertaining to the case.

6.1 Subd. 8. **Dismissal of a complaint.** (a) A complaint may not be dismissed without
6.2 the concurrence of at least two board members and, upon the request of the complainant, a
6.3 review by a representative of the attorney general's office.

6.4 (b) The designee of the attorney general must review before dismissal any
6.5 complaints which allege any violation of chapter 609, any conduct which would be
6.6 required to be reported under section 626.556 or 626.557, any sexual contact or sexual
6.7 conduct with a client, any violation of a federal law, any actual or potential inability to
6.8 practice the regulated profession or occupation by reason of illness, use of alcohol, drugs,
6.9 chemicals, or any other materials, or as a result of any mental or physical condition,
6.10 any violation of state medical assistance laws, or any disciplinary action related to
6.11 credentialing in another jurisdiction or country which was based on the same or related
6.12 conduct specified in this subdivision.

6.13 (c) Dismissal of a complaint constitutes the final decision in the case, and no action
6.14 or investigation shall be initiated or continued on the complaint.

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

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