



Memorandum

TO: Reproductive Health Access Project
FROM: If/When/How
DATE: December 15, 2016
RE: Physician Licensing Laws - Minnesota

Disclaimer: This memorandum includes general information about legal issues and developments in the law. Such materials are for informational purposes only, and are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances.

I. Introduction

Under Minnesotan law, a person is “practicing medicine” or engaged in the “practice of medicine,” if the person does any of the following:¹

- 1) Advertises, hold out to the public, or represents in any manner that the person is authorized to practice medicine in the state of Minnesota;
- 2) Offers or undertakes to prescribe, give, or administer any drug or medicine for the use of another;
- 3) Offers or undertakes to prevent or to diagnose, correct, or treat in any manner or by any means, methods, or devices, any disease, illness, pain, wound, infirmity, or defect of any person;
- 4) Offers or undertakes to perform any surgical operation including any invasive or noninvasive procedures involving the use of a laser or laser assisted device upon any person;
- 5) Offers to use hypnosis for the treatment or relief of any wound, fracture, bodily injury, infirmity, or disease; or
- 6) Uses in the conduct of any occupation or profession pertaining to the diagnosis of human disease or conditions, the designation “doctor of medicine,” “medical doctor,” “doctor of osteopathic medicine,”

¹ 2016 MINN. REV. STAT §147.081.

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“osteopathic physician,” “physician,” “surgeon,” “M.D.,” “D.O.,” or any combination of these designations.

II. Requirements for a Professional License

A. Standard License – Physician

To be eligible for a medical license in Minnesota, an applicant must not be under license suspension or revocation by the Board of Medical Practice (“the Board”) and must not have engaged in conduct warranting a disciplinary action. The applicant must also:²

- 1) Show to the Board’s satisfaction that the applicant is of good moral character;
- 2) Graduate from an approved medical or osteopathic medical school;
- 3) Pass a comprehensive examination, or combination of examinations, for initial licensure approved by the Board;
- 4) Complete at least one year of postgraduate clinical medical training approved by the Board; and,
- 5) Pay the required fee of \$392.

The Board may refuse to grant a license if an applicant fails to demonstrate the qualifications required for a license. The Board may also refuse to grant a license if an applicant has engaged in the following prohibited conduct:³

- 1) Attempting to subvert the licensing examination process or obtain a license by fraud or cheating;
- 2) Conviction, during the previous five years, of a felony reasonably related to the practice of medicine;
- 3) Revocation, suspension, or other disciplinary action against the applicant’s medical license in another state or jurisdiction;

² 2016 MINN. REV. STAT §147.02; see also Fee List, at <https://mn.gov/boards/medical-practice/licensees/fee-list/>.

³ 2016 MINN. REV. STAT §147.091.

- 4) Advertising which is false or misleading, which violates any rule of the Board;
- 5) Engaging in any unethical conduct;
- 6) Failure to supervise a physician assistant;
- 7) Aiding or abetting an unlicensed person the practice of medicine;
- 8) Adjudication as mentally incompetent, mentally ill, or developmentally disabled, or as a chemically dependent person or a person dangerous to the public;
- 9) Engaging in unprofessional conduct;
- 10) Inability to practice medicine with reasonable skill and safety by reason of illness, drunkenness, use of drugs or narcotics or as a result of any mental or physical condition;
- 11) Revealing a privileged communication from or relating to a patient;
- 12) Improper management of medical records;
- 13) Fee splitting, or engaging in abusive or fraudulent billing practices;
- 14) Becoming addicted to a drug or intoxicant;
- 15) Engaging in sexual conduct with a patient; or
- 16) Aiding suicide or aiding attempted suicide.

The licensing requirements for graduates of foreign medical schools differ and may be found under 2016 MINN. REV. STAT §143.037.

B. Physician Assistant Licensure

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To be eligible for a physician assistant license in Minnesota, an applicant must:⁴

- 1) Have current certification from the National Commission on Certification of Physician Assistants, or its successor agency as approved by the Board;
- 2) Certify that the applicant is mentally and physically able to engage safely in practice as a physician assistant;
- 3) Have no licensure, certification, or registration as a physician assistant under current discipline or revocation, unless the Board considers the condition and agrees to licensure; and
- 4) Have been approved by the Board.
- 5) Pay a fee of \$255 (with prescribing) or \$235 (without prescribing).

C. Temporary Licenses

If an individual licensed in another state that has licensing standards substantially equivalent to Minnesota, he or she may be granted a temporary license to practice medicine pending the Board's decision on the individual's application for a standard license.⁵ **This licensing option was discontinued for physicians and physician assistants, effective December 15, 2016.**⁶

D. Licensure by Endorsement⁷

Minnesota provides licenses to physicians from other jurisdictions through an endorsement and reciprocity process. To obtain a license this way, the applicant must be a graduate of a medical school approved by the Board as equivalent to accredited Minnesotan schools and must have passed a comprehensive medical examination for initial licensure. In addition, the

⁴ 2016 MINN. REV. STAT §147A.02; see also *Fee List*, at <https://mn.gov/boards/medical-practice/licensees/fee-list/>.

⁵ 2016 MINN. REV. STAT §147.037(1a).

⁶ Notice by Minnesota Board of Medical Practice, http://mn.gov/boards/assets/Effective%20December%202015%2C%202016%2C%20Temporary%20Permits%20Discontinued_tcm21-265313.pdf.

⁷ 2016 MINN. REV. STAT §147.037(1).

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applicant must have passed an examination prepared and graded by the Federation of State Medical Boards, and have a current license from the equivalent licensing agency in another state. If the examination was passed more than ten years earlier, the applicant must either pass the Special Purpose Examination of the Federation of State Medical Boards or have a current certification by a specialty board of the American Board of medical Specialties. In addition, the applicant must submit proof that they are not currently subject to any disciplinary action.

E. Exemptions from Licensure Requirements

There are fifteen listed exemptions where no license is required to practice medicine in certain circumstances, and a penalty for practicing without a license does not apply.⁸

- 1) A person who is a commissioned medical officer or employed by the armed forces of the United States, the United States Public Health Service, the Veterans Administration, any federal institution or federal agency while engaged in the performance of official duties within the state;
- 2) A licensed physician from a state or country who is in actual consultation in the state;
- 3) A licensed or registered physician who treats the physician's home state patients while the physician and those patients are participating in outdoor recreations in the state;
- 4) A medical student practicing under the direct supervision of a preceptor while the student is enrolled in and regularly attending a recognized medical school;
- 5) A medical student performing the duties of an intern or resident or engaged in postgraduate work;
- 6) A person employed in a scientific, sanitary, or teaching capacity by the state university, the Department of Education, a public or private school, college, or other bona fide educational institution;

⁸ 2016 MINN. REV. STAT §147.09.

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- 7) A person who practices ritual circumcision pursuant to the requirements or tenets of any established religion;
- 8) A Christian Scientist or other person who endeavors to prevent or cure disease or suffering exclusively by mental or spiritual means or by prayer;
- 9) A physician licensed to practice medicine in another state who is in this state for the sole purpose of providing medical services at a competitive athletic event; or
- 10) Any person issued a training course certificate or credentialed by the Emergency Medical Services Regulatory Board.

III. Limitations

A. License by Endorsement; Reciprocity

The applicant cannot be subject to disciplinary action in another state, including revocation or suspension of the license. If this condition is not met the Board can place restrictions or limitations on the license as they see fit.⁹

B. Interstate Practice of Telemedicine

An out-of-state physician who meets the requirements to practice telemedicine in Minnesota cannot open an office, meet with patients, or receive calls from patients in Minnesota.¹⁰

IV. Medical Students

Medical students practicing under the direct supervision of a preceptor and who are currently enrolled in medical school are not required to carry a separate license.¹¹

Medical residents who are currently enrolled in an accredited residency program must apply and be approved for a Residency Permit by the Board.¹²

⁹ 2016 MINN. REV. STAT. § 147.03.

¹⁰ 2016 MINN. REV. STAT. § 147.032(a)(3).

¹¹ 2016 MINN. REV. STAT. § 147.09(4).

¹² 2016 MINN. REV. STAT. § 147.0391(1); Residency Permit Application, available at https://mn.gov/boards/assets/Residency_Permit_Application_Residency.pdf_tcm21-36596.pdf.

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There are no requirements in the University of Minnesota medical education program to learn or be exposed to an abortion procedure. Student testimony shows that they must go outside of the traditional clinical education through school or outside organizations to gain exposure.¹³ However, University of Minnesota's Obstetrics and Gynecology Residency Program does work with pro-choice clinics.¹⁴ University of Minnesota's residency program also considered a "fully integrated or offers an elective in abortion training" in its Family Medicine program.¹⁵

V. Training Sites

There are no specific regulations on training sites for medical students. However, there have been multiple attempts to introduce Targeted Restrictions for Abortion Provider legislation.¹⁶

VI. Denial and Revocation of Licenses

There are several grounds for revocation of licenses in Minnesota. Among other reasons, a physician may be subject to disciplinary action by the Board, including revocation of license, for "unethical" or "unprofessional" conduct.¹⁷ Substantially similar grounds for revocation as those imposed on physicians apply to nurses,¹⁸ physician assistants,¹⁹ and midwives.²⁰

Minnesota allows for suspension or revocation of license of any "responsible medical personnel" who "does not take all reasonable measures consistent with good medical practice to preserve the life and health" when a live birth occurs in the provision of an abortion, and the suspension is mandatory if the practitioner is successfully sued in "an action for death of or injury."²¹

VII. Malpractice / Professional Liability Insurance

¹³ Mara Gordan, "The Scarcity of Abortion Training in America's Medical Schools." (Jun. 9, 2015) <http://www.theatlantic.com/health/archive/2015/06/learning-abortion-in-medical-school/395075/>.

¹⁴ <https://www.obgyn.umn.edu/educational-opportunities/obstetrics-and-gynecology-residency>.

¹⁵ <http://www.rhedi.org/resources/programs.php#elective>.

¹⁶ <http://www.prochoiceminnesota.org/updates/political-updates.shtml>.

¹⁷ See generally 2016 MINN. REV. STAT. § 147.091.

¹⁸ 2016 MINN. REV. STAT. § 148.261.

¹⁹ 2016 MINN. REV. STAT. § 147A.13.

²⁰ 2016 MINN. REV. STAT. § 147D.23.

²¹ 2016 MINN. REV. STAT. § 145.423(5)(a-b).

Minnesota does not require malpractice insurance to hold a license to practice medicine.

VIII. Special Provisions for Abortion Procedures

It is a criminal offense in Minnesota for anyone except a physician or physician in training under the supervision of a licensed physician to perform an abortion.²² Additionally, all abortions taking place after the first trimester must take place in a hospital, doing otherwise is a felony.²³

In Minnesota, certain provisions are specific to the provision of abortions, or related to those seeking abortions. Under the Born Alive Infants Protection Act, any "born alive infant as a result of an abortion" is afforded "immediate protection under the law," and Minnesota likewise requires in the case of post-viability abortions performed for health reasons that "a physician, other than the physician performing the abortion, shall be immediately accessible...to preserve the life and health of any born alive infant."²⁴ Liability is imposed if the born-alive infant dies as a result of negligence, including simple negligence.²⁵

The Woman's Right to Know Act makes consent for an abortion voluntary and informed only if preceded by notice of medical risks of both abortion and carrying to term, gestational age of the fetus, that benefits for birth and childcare may be available, as well as paternal child support, and various printed materials.²⁶ For abortions performed after twenty weeks, the risks of anesthesia must also be disclosed.²⁷ The disclosure must be followed by a 24-hour waiting period, unless in cases of medical emergency.²⁸ This information may be provided by phone, receipt must be certified in writing and kept on file for three years.²⁹ Various statistics about these disclosures must be reported by the physician.³⁰

²² 2016 MINN. REV. STAT. § 145.412(1).

²³ See 2016 MINN. REV. STAT. § 145.412 (2).

²⁴ See 2016 MINN. REV. STAT. § 145.423(1-2).

²⁵ 2016 MINN. REV. STAT. § 145.423(5).

²⁶ See 2016 MINN. REV. STAT. § 145.4241.

²⁷ 2016 MINN. REV. STAT. § 145.4241.

²⁸ 2016 MINN. REV. STAT. § 145.4241.

²⁹ 2016 MINN. REV. STAT. § 145.4241.

³⁰ 2016 MINN. REV. STAT. § 145.4241.

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Notice must be provided to parents when an abortion is to be performed on an unemancipated minor.³¹

Minnesota law bars so-called "wrongful life" and "wrongful birth" actions, meaning that there is no cause of action based on the claim that but for the negligent conduct of another, a child would have been aborted.³²

Although Minnesota statute provides that "state commissioner of health shall license and promulgate rules" for facilities providing abortions,³³ the rules adopted under that provision were ruled unconstitutional in 1977, and no subsequent rules have been adopted.³⁴ There has been a recent movement in Minnesota to pass legislation such as H. F. No. 606 that would mandate licenses, inspections, fees, compliance with Minnesota Rules, chapter 4675 (covering outpatient surgical centers), however, such bills have so far failed to pass in 2015 and 2016 - indeed, a similar bill was vetoed in 2012 by then-governor Mark Dayton.

³¹ 2016 MINN. REV. STAT. § 144.343.

³² See 2016 MINN. REV. STAT. § 145.424.

³³ 2016 MINN. REV. STAT. § 145.416.

³⁴ See generally Minn. Dept. of Pub. Health, "Abortion Facility Oversight and Regulation," <http://www.house.leg.state.mn.us/comm/docs/9f66ad69-f104-452b-9021-2bac1eab1c05.pdf>.