



## Minnesota Statute §148A

In 1986, the Minnesota Legislature enacted Statute 148A, “Action for Sexual Exploitation: Psychotherapists” in response to public concern about the sexual exploitation of patients by professional therapists. Under §148A, a person who has had sexual contact with a therapist may sue that therapist and, under certain circumstances, that therapist's employer. If an employer of a therapist wishes to avoid liability under §148A, it must, among other things, conduct background checks on the therapist before he/she is hired. In particular, it must ask all those who employed the therapist in the past five years if they have any knowledge of sexual contact between the therapist and any person whom he/she counseled.

### §148A's Application to Pastors

Section 148A applies not only to those commonly regarded as professional therapists, such as psychiatrists and psychologists, but also to members of the clergy. Yet, because §148A is written in the language of the medical profession, it is often difficult to discern how the statute is meant to apply to clergy. But who are the “patients” of pastors? And how are members of a pastor's former congregation supposed to know who were his/her “patients”? And when will a congregation be considered to have “knowledge” of sexual contact between its pastor and a “patient”? When a single member of the congregation knows? A member of the congregation council? The president of the congregation?

Although these are difficult questions, §148A must be heeded. In order to assist congregations in meeting their obligations under §148A, each of the ELCA's six Minnesota synods has implemented a common §148A compliance procedure. No synod can force its congregations to use the procedure, of course, just as no synod can guarantee that use of the procedure will shield congregations from all liability; however, the synods encourage congregations to make reasonable efforts to comply with §148A by availing themselves of the synods' assistance.

### The Synods' §148A Compliance Procedure

The ELCA synods' compliance procedure is designed only to assist congregations in complying with §148A and not in any way to replace the traditional responsibilities of the congregation council and call committee regarding both interim ministers and regularly called pastors. The procedure is also intended to protect the rights of the pastors who will be the subject of these inquiries.

Bear in mind that §148A is, in some respects, quite narrow: It requires only that some (not all) of the candidates' current and former employers (not acquaintances or bishops or even the candidates themselves) be contacted and that they be asked only about sexual misconduct (not other types of misconduct), and then only about sexual misconduct with counselees (not sexual misconduct generally). Call committees should continue to inquire into the wide range of professional and personal qualities that bear upon whether a particular candidate can provide the pastoral leadership sought by a particular congregation.

Moreover, nothing in §148A or in any part of the synods' §148A compliance procedure alters the responsibilities or authority of Lutheran bishops. Bishops must decide, pursuant to the constitutions and bylaws of their synods and the ELCA, if and when disciplinary proceedings should be initiated



against a pastor based upon information that comes to light during a §148A inquiry.

Each Minnesota synod has appointed a “§148A compliance administrator” to assist congregations in conducting the necessary sexual misconduct background checks. To utilize the assistance of the compliance administrator, an agreement form must be signed and returned to the synod office. When a congregation chooses to accept the administrator’s assistance, the call process will go forth essentially as follows:

1. The call committee notifies the synod office when interviews are scheduled.
2. The administrator contacts interviewees to identify all employers during the previous five years and to sign a release giving the synod permission to ask those employers about possible sexual misconduct.
3. The call committee notifies the synod office when there is a finalist and a vote is scheduled.
4. The administrator writes to the finalist’s employers and asks them to report any knowledge of sexual misconduct between the finalist and a counselee.
5. If all employers respond to the administrator’s inquiry and none reports any knowledge of sexual misconduct, the §148A inquiry is concluded and the congregation is free to call the finalist.
6. If all employers who respond to the administrator’s inquiry report no knowledge of sexual misconduct, but at least one employer does not respond, the §148A inquiry is concluded and the congregation is free to call the finalist. The committee will be advised that it should consider carefully how it wishes to respond to the fact that at least one of the finalist’s employers failed to contact the administrator.
7. If an employer reports knowledge of sexual misconduct, the finalist’s bishop will meet with the finalist privately to discuss that report. The finalist will be given an opportunity to respond in writing to the report and to withdraw from consideration for call. If the finalist withdraws, the report will not be shared with the call committee. If the finalist does not withdraw, the report and the finalist’s written response will be shared. It will be up to the call committee to evaluate the report and decide whether or not to recommend that the finalist be called.

## Questions About §148A

General questions about the synods’ compliance procedure should be addressed to the compliance administrator: Liza Eekhoff, (507) 637-3904, [liza.eekhoff@swmnelca.org](mailto:liza.eekhoff@swmnelca.org).

Questions about how congregations should respond to particular inquiries or to particular information should be addressed to an attorney, not the administrator. The administrator acts solely as a collector and transmitter of information. While the administrator can advise congregations generally about how the synods’ procedure works, he/she cannot advise congregations about their legal obligations or how particular problems should be resolved.

It is understood that congregations may need to consult with an attorney regarding problems that arise under §148A. For example, the president of a congregation may want advice on whether a particular rumor should be reported in response to a §148A inquiry. Or a congregation council that learns of sexual contact between its pastor and a counselee may need advice on what will be considered “reasonable action” under §148A.