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Date _____

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of Proposed New Rules
Relating to Rules of Conduct, General
Waivers, and Variances, and Amendments
Relating to Application for Licensure,
Requirements for Professional Experience,
Waivers From Examination, and Collaboration

STATEMENT OF NEED
AND REASONABLENESS

The above-captioned rules contain both new rules and amendments to existing rules of the Minnesota Board of Psychology (hereinafter "Board").

The proposed rules of conduct and rules governing the granting of waivers and variances are new. The remainder of the proposed rules are amendments to existing rules.

1. The legal authority to promulgate the rules of conduct is contained in Minn. Stat. § 148.98 (1980). That statute directs the Board to adopt a code of ethics to govern appropriate practices and behavior. These rules of conduct are needed in order to define for the public and for licensees and applicants those minimum standards of acceptable conduct below which disciplinary action may be initiated.

2. The legal authority to promulgate rules governing the granting of waivers is contained in Minn. Stat. § 148.90, subd. 2(4) (1980). That statute allows the Board to "prescribe rules as may be necessary to enable it to carry into effect the provision of Laws 1973, Chapter 685" (the Minnesota licensing law for psychologists). The proposed waiver rules are necessary to allow the Board, within established criteria, to grant a time-limited waiver of a rule in special circumstances when application of the rule would impose an undue hardship on the applicant or licensee. The rule is needed to assure that the rules do not inhibit appropriate changes in professional practice.

3. The legal authority to promulgate rules governing the granting of variances is contained in Minn. Stat. § 15.0412, subd. 1(a) (1980). That statute authorizes an agency to promulgate rules setting forth procedures and standards by which variances shall be granted and denied. These rules allowing variances are necessary to enable the Board, within established guidelines, to modify the rule for an applicant or licensee with special circumstances.

4. The legal authority for promulgating the remaining amendment to the existing rules is contained in Minn. Stat. § 148.90, subd. 2(4) (1980) which grants the Board authority to make rules which are necessary to effectuate the provision of the licensing law.

5. The Board has proposed changes to Minn. Rule Psych 4 by further defining the requirements of professional experience employment to include supervision and defining what comprises supervision. A requirement that the applicant's professional employment be supervised by one who meets Board requirements is necessary to ensure that the applicant has developed adequate skills and competency in the practice of psychology to warrant licensure. Supervision is also necessary to protect the consumer of psychological services. Since the purpose of professional employment experience is to train an applicant for the privilege of independent practice, supervision by one who is qualified is a necessary adjunct to accomplishing this goal.

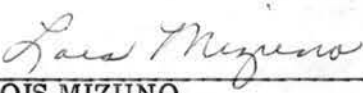
6. The amendments to Psych 2 are proposed to simplify the licensure process by separating it into two distinct parts—application for admission to examination and application for licensure. The proposed amendment permits an applicant to sit for examination before he completes the supervised employment requirement. This amendment does not alter or reduce the requirements for licensure.

7. The amendments to Psych 7 are proposed to clarify the date on which a licensee or applicant is legally permitted to practice.

Further need is set forth in the Statement of Reasonableness which is attached hereto and made a part hereof.

Dated: March , 1982

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY



LOIS MIZUNO
Executive Secretary

RECEIVED

MAR 1 1982

ADMINISTRATIVE
HEARINGS

STATEMENT OF REASONABLENESS

Proposed Rules

March 1, 1982

Introduction

In the intervening years since the Board of Psychology adopted its original Rules following passage of the Psychology Practice Act (1973), the Board has become increasingly aware of difficulties in interpreting and administering the Rules. Ambiguities and omissions have made it difficult for applicants, licensees, and the consumers of psychological services to understand the exact meaning of and/or to abide by the Rules.

It is easy to understand how this has come about. The original Rules were drafted and adopted before the Board and its staff had had any practical experience in administration of the law. Under these conditions it is virtually impossible to anticipate all future problems and needs and to draft anything approaching a perfect set of Rules. The needed experience is simply not available.

While the Board makes no claims that the proposed revision of the Rules is perfect, it does claim that this draft provides reasonable procedures in compliance with the law, eliminates the more problematic ambiguities, and clarifies both the process of licensure and the standards against which the ethics of professional practice can be measured.

There are two major thrusts to this revision: 1) to simplify the

licensure process by separating it into distinct parts: a) application for admission to examination and b) application for licensure; and 2) to change the emphasis in the code of ethics from a somewhat vague and idealistic statement regarding ethical professional behavior to a set of concrete minimum standards regarding what a psychologist must and must not do in order to be ethical in professional practice. The remaining changes generally involve clarification of existing language without materially altering the original intent. A section by section explanation of the changes begins on page 5. However, an overview at this point serves to highlight the reasons for the two major changes mentioned above.

1. Change in Licensing Procedures

The proposed change in licensing procedures is fully in compliance with the law. Minn. Stat. S 148.91 states the requirements for each level of licensure but does not specify the sequence or time period in which requirements must be met before licensure can be granted.

Present procedures require the applicant for licensure to wait until the two years of post degree employment required by law have been completed before being permitted to sit for the examination. Because the objective part of the examination is scheduled only twice each year (April and October), some applicants have had to wait as much as six months after completing employment requirements before they could sit for the examination. This situation has often resulted in severe economic hardship and anxiety for the applicant.

This procedure also causes an uneven workload for the Board and its staff, with the bulk of licensure-related work occurring in February-March and August-September. While not unmanageable, such peaking is not as efficient as spreading the paper-work evenly throughout the year which will happen under the new procedures.

The proposed changes will permit the applicant to apply for admission to examination any time after completing the education requirements, that is, after obtaining the degree required for the level of licensure sought. Because the only documentation required over and above the application itself is the academic transcript, the paper work is extremely simple and quickly completed.

If the applicant passes the objective part of the examination, the application is kept in the active file until the requisite two years of employment have been completed. The applicant then files an application for licensure. Documentation at this stage involves verifying the claimed employment and obtaining endorsements of the claimed areas of competence. This activity requires a great deal of staff and Board time, so that spreading it evenly throughout the year without deadline pressure will be conducive to more efficient use of staff and better service to the applicant.

When documentation is complete and the application has been reviewed by the Board for verification that all requirements of the law have been met, the applicant is administered the oral part of the examination. If the applicant performs successfully, licensure is granted. As the Board meets regularly throughout the year, an applicant can be licensed within two

months after completing employment requirements, compared with up to eight months of waiting under present procedures.

The proposed system provides other advantages to applicants who fail to pass the objective part of the examination: 1) if they try again, they need to pay only that portion of the fee allotted to the application for admission to examination (one half the present total fee); 2) there is time to retake the examination during the two-year employment period without delaying licensure, assuming the applicants eventually pass; and 3) applicants who recognize that they cannot pass the objective part of the examination can seek other career choices before investing in two full years of post degree employment.

The proposed licensure procedures, then, are more reasonable than their current counterparts.

2. Rules of Conduct

Minn. Stat. S 148.98 mandates the Board to adopt a code of ethics and requires three principles to be included: recognizing boundaries of competence, assisting clients in obtaining professional help for problems outside of the psychologist's competence, and prohibiting misrepresentation of qualifications. The present Code of Ethics, except for the four introductory paragraphs, was taken from the "Ethical Standards of Psychologists", 1973 edition, of the American Psychological Association.

There is nothing inherently wrong with the content of the present code. The difficulty lies in attempting to use it to determine whether an allegation concerning the conduct of a psychologist against whom a complaint has

been made is, in fact, a violation of the Rules. The language in places is so vague and imprecise that the Board does not have clear direction in determining whether alleged conduct constitutes a violation. Furthermore, to the extent that legal standards are ambiguous, the enforcement of such standards becomes more problematic.

The proposed new code is called "Rules of Conduct" rather than a "Code of Ethics" to place emphasis on conduct which is a violation of the Rules. The three principles mandated by the law are included and elaborated upon. In addition, the Rules of Conduct provide minimum requirements for the ethics of practice in specific enough terms to serve as a yardstick in processing complaints of unprofessional or unethical conduct in professional practice. As such, the Rules of Conduct provide greater protection for the public than does the present Code of Ethics.

What follows is a section by section description of the changes which are proposed and an explanation of why the changes are needed and how they meet the test of reasonableness.

7 MCAR S 10.001 General Definitions

Law

The definition of law is stricken because the term as it is used in the proposed Rules does not refer specifically to the licensing law for psychologists. Statutory references are cited in the text of the proposed Rules as they are needed.

Board

The only change in the definition of "Board" reflects the change made

in the law regarding the name of the Board.

Licenses Issued

The definition is stricken because it repeats wording in Minn. Stat. S 148.91, subd. 1. "Licensee" is defined in E. instead.

Original License

The definition of original license is stricken because the term no longer appears in the text.

Year

The definition of year is stricken because it is preferable not to assign a specific definition to a word which has a generally accepted meaning. Minn. Stat. S 148.91, subd. 3, sets the renewal period at two years, but does not specify the time of beginning or ending. To avoid any problems which might arise, rather than define "year", the period of a valid license is now clearly stated at the beginning of 7 MCAR S 10.006B.

Waiver

The definition of "waiver" is stricken because the Rule to which it pertains is repealed. The time period involved has long since expired.

Collaboration, Collaborative Contact

Minn. Stat. S 148.93 specifies that a licensed psychologist may engage in private practice only in collaboration with a licensed consulting psychologist. Minn. Stat. S 148.89, subd. 2, defines what collaboration is: consultation on at least an annual basis, but not consultation on each case referred to the

licensed psychologist. Minn. Stat. S 148.97, subd. 3(1) uses the term "supervision" in an entirely different context. It is clear that in the licensing law for psychologists "collaboration" does not mean "supervision". Nevertheless, the Board is repeatedly made aware of widespread misunderstanding of the term. Many licensees, especially licensed consulting psychologists, appear to believe that licensed psychologists are not permitted to engage in private practice without supervision. It is therefore reasonable to make a distinction between the terms as is done in the Rule definition of collaboration and to reinforce the concept that it is not confined to case consultation.

Area of Competence

The term "area of competence" is defined in order to impart meaning to the expression "boundaries of his competence" as it is used in Minn. Stat. S 148.98. In order to determine by some objective measure whether a psychologist recognizes (and by implication stays within) the boundaries of his competence, areas of competence must be defined. It is reasonable to define the phrase in terms of proficiency gained through education, training or experience, as these are factors used to determine whether an applicant qualifies for licensure.

Informed Written Consent

The term "informed written consent" has widespread use and has a fairly universal meaning not different from its use in these Rules. It is reasonable to include this definition in the Rules because a clear understanding of the term in the context of ethical conduct is so fundamental to the protection of a client's rights that the term needs to be spelled out.

Licensee of the Board/Licensee

The need for a shorthand term meaning "Licensed Consulting Psychologist or Licensed Psychologist" is obvious in reading the text, since the term is used frequently.

Private Information

It is reasonable to define the term "private information" because its meaning and usage are not the same as the meaning and usage of the term "private data on individuals" as defined in the Minnesota Government Data Practices Act, Minn. Stat. S 15.162, subd. 5a (1981 Supplement), and the difference could lead to confusion. It is reasonable to include in private information all communication which occurs during a professional relationship to ensure that a client's confidences and information about his problems will not become public without his consent.

Professional Relationship

It is reasonable to restrict the meaning of "professional relationship" to the association which occurs when psychological services are actually provided by a psychologist to a client so that absurdities are avoided, such as a claim that a casual encounter at a cocktail party between a psychologist and a lay person is a professional relationship.

Psychologist

The term "psychologist" is used only in the Rules of Conduct, and is synonymous with "licensee". It is reasonable to employ the term "psychologist" instead of "licensee" in this context in order to emphasize the professional nature of the practice being regulated.

Supervision

The term "supervision" is defined because in general usage it has many meanings. Minn. Stat. S 148.97, subd. 3(2) requires that the performance of psychological functions during the two years of post degree employment must be under "supervision". In order to provide adequate protection to the consumer of psychological services, the Rules must clearly spell out what constitutes supervision.

It is reasonable to specify that supervision means full professional responsibility for all that goes into the work product of the supervisee because the supervisee is an unlicensed person and as such cannot legally engage in independent private practice. In the context of the licensure law, then, the supervisee cannot be independently responsible to the Board for his work product. It is also reasonable to specify the form and frequency of the contact between the supervisor and supervisee which constitute the minimum interaction to ensure the development of the supervisee's competence. Requiring face-to-face contact is reasonable because it provides the setting for optimum interaction. With weekly conferences generally considered to be necessary for development of competence in the supervisee, requiring ten hourly sessions per quarter is reasonable as it allows for possible illness or vacations which might interfere with the schedule.

Test

"Test" is defined as broadly as possible to cover any measurement, evaluation or assessment of mental or psychological characteristics in order to ensure that a narrow construction cannot be invoked as a defense to a complaint. The definition is essentially the same as that used generally in the practice of psychology. It is reasonable to include the definition in the Rules to make the public, particularly consumers of

psychological services, aware of the meaning of the term to avoid misinterpretation.

Variance

"Variance" is defined to avoid having to repeat the longer phrase it replaces: "board authorized permission to comply with a rule in a manner other than that generally specified in the rule".

Waiver

"Waiver" is defined to avoid having to repeat the longer phrase it replaces: "board authorized permission to not comply with a rule".

7 MCAR S 10.002 General Requirements for Licensure

Although present Psych 2 also covers the application process, it was not feasible to set forth the application requirements in an orderly fashion by amending existing language. Psych 2 is therefore repealed.

A. The change in the licensing procedure to require separate applications for examination and for licensure is basic to this Rule. It is therefore reasonable to state this fact at the beginning of the Rule. To summarize the arguments supporting this change which are presented in the introduction, the change to a two application procedure is reasonable because it shortens the delay between completion of employment requirements and licensure, it permits applicants who fail the objective part of the examination to retake the examination without paying the full licensure fee, and it spreads the work load for the Board and its staff evenly throughout the year, which in turn promotes efficiency in processing applications.

B. This section states the requirement for admission to examination. Since the applicant is permitted to sit for the objective part of the examination before completing the employment requirements, only the education requirements stated in Minn. Stat. S 148.91, subds. 4 and 5,

need to be completed, and the fee paid as prescribed in Minn. Stat. S 148.91, subd. 3. The only new requirement in this section is that the application be signed in the presence of a notary and affirmed as to the truth and correctness of the statements made. This provision is reasonable because it provides some guarantee that the statements made in the application are true and also provides grounds for discipline or denial of licensure if the applicant knew the statements were false. The requirement for transcripts and direct verification of the degree or degree equivalency from the institution granting the degree is not changed from Psych 2E.

C. This section requires the Board to admit an applicant to the objective part of the examination if the applicant meets the requirements stated in B. The specific examination to which the applicant is admitted must be the earliest examination scheduled 40 days or more after verification that requirements have been met. This requirement is reasonable because the examination service requires a 30-day lead time and the Board must be allowed sufficient time to meet and admit applicants to examination prior to that deadline.

The former deadline for filing the application far in advance of the examination is no longer necessary because staff work at this stage is minimal. Furthermore, under the new procedure, incomplete documentation at deadline results in deferral, not denial.

D. This section, requiring written notification of denial and reasons for the denial, for example, lack of sufficient psychology credits or obtaining a degree from an unaccredited institution, is reasonable to ensure that the applicant is officially informed of his status and can then take steps to meet requirements, request a waiver, or appeal.

Denial of admission to examination is confined only to the application to which it pertains, whether or not this fact is explicitly stated in the Rules. It is reasonable to state that a new application may be filed and if so it must be accompanied by the current fee so that any possible misinterpretation is avoided.

E. This section outlines clearly the requirements for the second stage of the process, that is, application for licensure. Most of the provisions are a restatement of existing explicit or implicit requirements.

One change is the requirement that the applicant sign in the presence of a notary and affirm that the statements made are true and correct to the applicant's best knowledge and belief. This provision is reasonable because it provides some guarantee that the statements made in the application are true and also provides grounds for discipline or denial of licensure if the applicant knew the statements were false.

Another change from present Rules is the requirement that the applicant state at least one area of competence. Present Psych 2E requires that "satisfactory evidence of the candidate's qualifications has been supplied in writing", without explicit reference to competence.

The proposed requirement that the applicant state at least one area of competence is based on Minn. Stat. S 148.98(1) and the Rules of Conduct, 7 MCAR S 10.008B. Both require a licensee to recognize the limits of his competence. In order to do so, a licensee must be aware of what his areas of competence are. Competence in one or more areas of psychological practice result from education, training and professional employment. In fact, the rationale for the education and employment requirements for licensure in the law is assurance that a person engaging in private practice is competent to do so. It is therefore reasonable to require an applicant for licensure to state formally those areas of

practice in which he is competent.

If there were no area in which a licensee was competent to practice, the licensee would be practicing in violation of the sections of the statutes and Rules cited above. It is therefore reasonable to require that at least one area of competence be stated for the reasons cited above and in order to provide a standard for reviewing complaints alleging a violation of 7 MCAR S 10.008B.

A third change reduces the number of required endorsements from three to two. This change is coupled with a tightening of qualifications for endorsers in H. It is reasonable to reduce the number of endorsements in conjunction with an increase in the qualification standards for endorsers because together these changes should have no deleterious effect on the quality of persons granted licensure. An endorsement of competence from two licensed or licensable persons should carry as much or more weight as three endorsements from professionals in related fields. It is also reasonable to reduce the number of endorsers because some applicants may work in settings where few or none of their associates are licensees or licensable (for example, the Sister Kenny Institute, where associates are likely to be non-psychiatrist M. D. s.)

F. Because the procedures separate the application for examination from application for licensure, it is reasonable to state explicitly what is already implicit in the procedures, that both applications may be submitted at the same time if all requirements for licensure have been met. If both are submitted at the same time, only the documentation for the application for admission to examination must be completed by the 40-day deadline. There is no deadline pertaining to the application for licensure.

G. This section states the minimum amount of information necessary to allow the Board to judge whether the applicant's employment meets the qualifications for licensure. The information required is reasonable since it relates directly to the requirements in Minn. Stat. SS 148.91, subds. 4 and 5, and 148.97, subd. 3(2), and includes data necessary to implement the provisions of these statutes.

H. This section states the qualifications necessary for persons who endorse an applicant's areas of competence. The qualifications are reasonable because they provide assurance that endorsements are made by persons who are themselves competent to judge. In an ideal situation endorsers are licensees. However, not all qualified psychologists in Minnesota are required to be licensed (see Minn. Stat. S 148.96) and not all potential endorsers live or practice in Minnesota. Therefore, it is reasonable to permit persons not licensed in Minnesota to endorse, provided they meet Minnesota's education and experience standards for licensure.

Beyond that, in order to ensure a bona fide endorsement, it is reasonable to exclude as endorsers the employees of an applicant, because employees may be reluctant to provide a justifiably unflattering evaluation; persons who have no personal knowledge of the applicant's competence, because they would have no basis on which to make an evaluation; and current Board members, since it would be a conflict of interest to provide an endorsement and then evaluate the applicant for whom it was made.

The provision permitting an applicant to add endorsers' names is reasonable because the application is not final until the Board evaluates it for admission to licensure, and because the endorsers listed on the application may not return the form or not provide a complete endorsement.

The provision permitting an applicant to delete an area of competence if two endorsements are not forwarded to the Board is reasonable because endorsers for that area of competence may be unavailable at the time of application, or the applicant may be working in a setting in which his associates are not licensees or licensable persons. It would be unreasonable to deny licensure because an area of competence is not endorsed for reasons unrelated to the applicant's competence.

I. There is no counterpart in the present Rules for this section which provides for adding areas of competence after a person has been licensed. In practice, however, many licensees do add to their areas of competence by obtaining additional education, training, and/or supervised experience. It is reasonable to permit a formal procedure for added areas of competence to be documented so that licensees can prove compliance with the provisions of 7 MCAR S 10.008B. It is reasonable to require the same degree of documentation as is required in the original application to assure that licensees are as competent in added areas as they were in areas claimed at the time of licensure.

J. This section simply restates the concept in Psych 2J.

K. This section restates the provisions of Psych 2G. and 2H., with a new provision requiring a written notice when licensure is denied. It is reasonable for an applicant who is denied licensure to be informed of the denial in writing so that he may take steps to meet the requirements, request a waiver, or appeal.

7 MCAR S 10.003 Educational Requirements for Licensure

Almost all of the revisions in this rule are a restatement of the provisions of Psych 3 in simpler language, using parallel construction and removing ambiguities in order to make the meaning clear. The exceptions are listed below.

Because the provisions of A2 and C2 are identical except for the degree to which each pertains, the two sections are discussed together to avoid repetition. This is also true for sections B2 and D2.

1) A2, C2. These sections specify the majors which the Board considers to be psychology majors for purposes of meeting the educational requirements for licensure. The list includes educational, child, counseling, and industrial psychology. It is reasonable to include these hyphenated psychology majors as bona fide psychology majors since the open language of Minn. Stat. S 148.91, subds. 4 and 5, permits inclusion of psychology majors which may not originate within a Department of Psychology. The statute requires a major in psychology "which may include educational and child psychology..." The statute does not specify that the psychology major must be obtained in a department of psychology. In addition, the statute's use of the open term "may" implies that child psychology and educational psychology are examples of majors which the Board may consider as psychology majors not requiring evaluation of course credits as a test of meeting the education requirements.

In its evaluation of transcripts of majors other than psychology under the provisions of Psych 3(b) and 3(d), the Board has consistently found that the four hyphenated psychology majors listed meet psychological course credit requirements of those sections. Thus, for all practical purposes, these hyphenated psychology majors are psychology majors in both name and course requirements. There is, therefore, no rational reason to distinguish between them.

2) B2, D2. These sections specify the criteria for determining whether a dissertation or thesis for a major other than psychology is

psychological in topic and method. It is reasonable to require the topic to be listed in an edition of the "Annual Review of Psychology" because that ensures its psychological nature without excluding any legitimate psychological inquiry. The paragraph which specifies what constitutes psychological method results from a court challenge of the Board's right to deny admission to examination on the ground that the applicant's dissertation was not psychological in method. The court upheld the Board's right to deny admission to examination based on the criteria which have been included in this rule. The criteria are therefore reasonable.

3) B3. Existing Rules require that for doctorates with non-psychology majors one-half the course credits be in courses which are predominantly psychological in content. The amendment raises the proportion to two-thirds. It is reasonable that the proportion of psychology course credits be the same for both the doctoral and the master's level, and that the higher of the two figures be used, since course work is a determining factor for both levels of licensure in acquiring competence to provide psychological services. This change, of course, necessitates the provision for "grandfathering" doctoral candidates who began their degree programs prior to adoption of these Rules.

The other change in this section limits already permitted post degree courses which can be applied to the education requirements to the five year period immediately following the granting of the degree. This limit is reasonable since it permits sufficient time to complete required course work while guarding against loss of competence which may result from the passage of too much time after receiving the degree.

4) D3. The change in this section permits post-master course work to count toward the two-thirds requirement for non-psychology majors, paralleling existing provisions for the doctoral level. It is reasonable for provisions to be identical for the two levels since course work is a determining factor for both levels of licensure in acquiring competence to provide psychological services.

7 MCAR S 10.004 Professional Employment

The title of this Rule is changed from "Professional Experience" to "Professional Employment" so that the terminology agrees with that used in Minn. Stat. S 148.91, subds. 4(4) and 5(2). Wherever in the Rule that "experience" was used, it has been changed to "employment".

A1. The first paragraph of section A remains unchanged except to make the section as a whole more grammatical.

A2. This paragraph is added to clarify what qualifications are necessary for a supervisor of a person undergoing the two years of post-degree, pre-licensure employment required for licensure by Minn. Stat. S 148.91, subds. 4(4) and 5(2). It is reasonable to require the supervisor to be a licensee or to have the education and experience required for licensure and be competent in the area being supervised in order to ensure that the supervisee has adequate professional training to engage in private practice following licensure.

The second sentence in A2 is necessary to clarify the ambiguity of the law as it relates to private practice. The Board has held the position since its inception that Minn. Stat. S 148.97, subd. 3(2) permits persons preparing for licensure to perform the functions described in Minn.

Stat. S 148.89, subd. 1, but only as employees under supervision, on the ground that the section as a whole prohibits anyone but a licensee of the Board from engaging in the private practice of psychology as it is defined in Minn. Stat. S 148.89, subd. 1. However, it is possible to interpret the cited sections to mean that persons preparing for licensure may engage in the private practice of psychology -- for a fee-- provided they are supervised. Since the law makes licensure a requirement for engaging in private practice, the Board has consistently considered it unreasonable to adopt this second interpretation. Until now, however, the Board's interpretation has never been stated as a rule, which has led to confusion and in some cases to engaging in private practice prior to licensure.

It is also necessary, however, to specify that licensed psychologists are permitted to engage in the private practice of psychology without supervision, since some licensed consulting psychologists have mistakenly informed licensed psychologists that they cannot practice without supervision. It is reasonable to make it clear that a licensed psychologist seeking licensure as a licensed consulting psychologist does not require supervision during the two years of post-degree experience (except for gaining competence in another area) so that licensees and the public are made aware that such experience is not a violation of the law.

To be consistent, it is also reasonable to exclude private practice in other states prior to licensure from counting toward the two year employment requirement.

B. The changes in this section are made only for the purposes of increasing clarity and they do not alter intent.

C. This section permits the supervisor to delegate training in specific skills to other persons, including non-psychologists, but does not permit the supervisor to transfer supervisory responsibility. This provision is reasonable because it gives the supervisor the needed leeway to provide quality training without diluting his responsibility for the training.

It is reasonable to strike the existing language in this section because it does not add to the provisions of B, which sets forth the employment criterion. Clerical, routine, and repetitive tasks do not relate to skill and knowledge acquired in formal education in psychology.

D., E. The changes in these sections were made only for the purposes of increasing clarity, omitting duplicative language, and removing language which is contrary to state law ((h)(1) is contrary to Minn. Stat. S 148.96), and they do not alter intent.

F. This section describes what constitutes two years of employment. The provisions are reasonable because they permit time off for holidays and vacations without requiring that the hours be made up, they permit part-time employment, and they set the minimum number of hours of employment per year at 1800 to allow for positions which have irregular work schedules, all of which are standard practices in most work settings.

G. This section puts reasonable limits on the duration of part-time work which will be accepted in lieu of full-time work. It is reasonable to require a minimum number of hours per week and weeks per year in order to ensure that the position provides adequate training. Quarter-time for a minimum of three months for any one position is reasonable because a smaller time commitment is unlikely to foster the development of competence.

7 MCAR S 10.005 Examinations

A. This section serves the same purpose as present (a), with the changes reflecting the changes in procedure set forth in 7 MCAR S 10.002.

B. This section replaces present (d) and adds a brief description of the two parts of the examination. It is reasonable to include a description so that potential applicants have some idea of what to expect. The provisions are moved to this position because a description of the examination logically follows the provisions for announcing the examination.

C. The first sentence in this section requires the Board to notify applicants admitted to examination. This provision is new in the Rules but it does not represent a new procedure, since notification is now done routinely. The second part of C. is new only because it reflects the new waiver procedure in 7 MCAR S 10.009 for permission not to comply with a Rule. Since written request for deferment is required at present, this provision is not really new.

Present section (c) is stricken because it duplicates the provisions of 7 MCAR S 10.002D.

D. This section provides for acceptance of an applicant's score on the objective part of the examination taken in another state or taken in Minnesota for a different level of licensure, and for acceptance of a "pass" on the oral part of the examination achieved when the applicant applied for another level of licensure. Since the objective part of the examination is given nationwide, it does not matter where an applicant has taken it. The quality of the examination from year to year and from state to state is uniform. It is reasonable to waive that part of the examination which has been passed previously, since there is no reason to assume that requiring repassage provides greater competence to practice or better protection for the public.

E. The only change in this section, apart from clarifying the language, is the deletion of the reference to the next examination. There is no sound reason for requiring that an applicant who has not performed satisfactorily on any part of the examination must reapply for the next examination. A re-examination will be valid regardless of when it occurs. Furthermore, this change is consistent with the change in procedure in 7 MCAR S 10.002, which provides in most cases two full years in which an applicant can attempt to pass the objective part of the examination (which has a much higher failure rate than the oral part) without delaying his professional career.

7 MCAR S 10.006 Licenses, License Renewal

A. This section is a substitution for Psych 12, which is repealed. It is reasonable to require the license to be displayed where the licensee spends most of his professional time, so that clients and potential clients have the opportunity to see first-hand that the psychologist is licensed. Furthermore, "in a professional manner" which is the present language is vague and susceptible to a variety of interpretations.

B. This section is a new provision which states the time period in which a license is valid. The provision is needed to avoid ambiguity about whether a licensee is licensed to practice on the date the Board grants licensure or on the first day of the following month (the renewal date). Because the present Rules lack a provision clarifying this, much confusion has been the result. In the absence of specifics in the law, it is reasonable to state that a person is legally licensed to engage in the private practice of psychology from the date of Board's granting of the license, and unreasonable to consider that person unable to legally engage in private practice for as much as three weeks after he is granted

a license.

C. The changes in this section are made only for the purpose of increasing the clarity of the meaning and they do not alter intent.

D. Most of the changes in this section are made only for the purpose of increasing clarity without altering intent. The amount of the renewal fee is stricken because Minn. Stat. S 214.06 permits fees to be set without incorporating the fee amount in the Rules. The other change requires the renewal application to be signed in the presence of a notary and affirmed as to the truth and correctness of the statements made. This provision is reasonable because it provides some assurance that the statements made in the renewal are true and also provides grounds for discipline if the applicant knew the statements were false.

E., F. The changes in these sections are made only for the purpose of increasing clarity without altering intent.

Present D. is stricken because its purpose is served by the new provisions in B.

G., H. These sections are amended only for the purpose of increasing clarity without altering intent.

7 MCAR S 10.007 Collaboration

Present (a) and (b) are stricken because they duplicate the provisions of 7 MCAR S 10.002E. 6. and Minn. Stat. SS 148.89, subd. 2, and 148.93.

A. The amendment to this section requires the collaborator to be provided with a summary of the applicant's training, experience and areas of competence. It is reasonable to require this summary so that a licensed consulting psychologist asked to serve as a collaborator may have a rational basis for deciding whether to serve as a collaborator.

B. The first sentence of this section requires that the responsibility

for determining the nature and frequency of collaborative contacts be shared by both the licensed psychologist and the licensed consulting psychologist who is the collaborator. This provision is reasonable because it reinforces the provision of Minn. Stat. S 148.89, subd. 2, that collaboration is not confined to case consultation, and by implication, is not supervision.

The remaining changes in this section are made only for the purpose of increasing clarity without altering intent.

C. This section is all new language but is a new concept only to the extent that it is not now in the Rules. Because Minn. Stat. S 148.93 requires collaboration only for licensed psychologists who engage in private practice, the Board has permitted licensed psychologists who are not in private practice to state that fact on the renewal form. It is reasonable to state in the Rules that a collaboration report is not required of licensed psychologists who are not in private practice in order to avoid confusing and contradictory provisions.

D. This section is a new provision. Its purpose is to remind all licensees that under certain circumstances, as indicated by the cited Rules, they are required to consult. It is reasonable to include this provision so that licensees are alerted to the fact that certain of the Rules of Conduct require consultation under certain circumstances.

7 MCAR S 10.008 Rules of Conduct

The Rules of Conduct are all new material which replaces Psych 10, the Code of Ethics (repealed). In many cases the new provisions paraphrase concepts occurring in Psych 10. Where this is the case, it is indicated in the explanation.

Both the present Code of Ethics and the proposed Rules of Conduct

are based on the premise that client welfare is the primary consideration for a psychologist practicing his profession. It is reasonable to apply to psychologists the physician's admonition "do no harm," because they, too, are practitioners of one of the healing arts.

As was stated in the introduction, the Rules of Conduct are an attempt to set forth minimum standards for ethical practice to safeguard consumers of psychological services against unethical or unprofessional practice.

A. Scope and Purpose. This section states what the Rules of Conduct are and to whom they apply. It is obvious that they apply to all licensees. It is reasonable also to include conduct during the education and training period, since Minn. Stat. S 148.91, subd. 4(2) requires the applicant to be of good moral character and not found to be engaging in unethical practices. If the Rules of Conduct did not apply to the education and training period, there would be no standard for determining whether an applicant has engaged in unethical or unprofessional practices, and therefore no standard for denial of licensure on unethical grounds which is mandated by law.

In order to be absolutely clear to consumers of psychological services and to applicants and licensees, and because ethical conduct is so fundamental to the provision of quality services, it is reasonable to state that the Rules of Conduct are the standard for measuring professional conduct and that a violation of the Rules of Conduct is ground for disciplinary action or denial of licensure. Because it is not possible to anticipate every possible unethical or unprofessional act, it is also reasonable to state that the Rules are not all-inclusive and that there may be other grounds not specifically mentioned. It is anticipated that psychologists

will also be familiar with the American Psychological Association's "Ethical Principles of Psychologists". It is reasonable to state that a violation of the Principles may also be ground for disciplinary action, except where they may be in conflict with the Rules of Conduct, because both documents relate to ethical conduct in psychological practice.

B. Competence. This section is based upon Minn. Stat. S 148.98 (1) and (3) and expands upon the provisions of Psych 10(a)(1) and (3) and (b)(2)(cc). This section also complements 7 MCAR S 10.002E.3, which requires the applicant to state at least one area of competence and to provide endorsements verifying the areas of competence stated.

Because the field of psychology is extremely broad and because licensure is not based on specialties, it is not possible for a psychologist to be competent in all the areas in which he is licensed to practice. It is reasonable to require a psychologist not to practice outside of the documented areas of competence because of the risk of harm to clients in providing services in which the psychologist has inadequate background.

It is reasonable to require psychologists to state their areas of competence accurately so that clients are not misled into contracting for services which cannot be adequately provided, again because of potential harm to clients.

When new services, techniques, or specializations evolve out of existing practices, traditional ways of gaining competence may not apply since formal education and supervised training geared to them are not available. In such cases it is reasonable to provide an alternate method for gaining competence so that legitimate innovations are not stifled. It is reasonable to permit consultation with other professionals and continuing education, if available, until the new service, technique or

specialty is proved reliable and efficacious, because ongoing consultation provides the necessary checks to insure adequate client care. It is also reasonable to require that the client be informed about the newness and unproved nature of the service, technique or specialty so that the client can make an informed decision on whether to proceed.

It is reasonable to require a psychologist to refer a client to another professional when the psychologist has reached the boundaries of his competence in providing efficacious services to the client so that the client is neither abandoned nor given services which do not help and may even cause harm to the client.

C. Protecting the Privacy of Clients. Most of the provisions of this section paraphrase in clearer language the provisions of Psych 10(b)(6), (b)(7)(aa) and (b)(8)(aa).

Protecting the privacy of communication between a psychologist and a client is fundamental to providing services which benefit the client. In order to provide beneficial services, the psychologist must be aware of the true nature of the client's problems. If the client has no assurance that what he reveals to the psychologist will be kept confidential, he may conceal facts which, if known by the psychologist, might lead to successful treatment. It is therefore reasonable to require that psychologists keep communications with clients private.

The requirement, however, should not be absolute, because there are circumstances in which the interests of the client are better served by not keeping the information private, or in which revealing certain kinds of information is mandated by law.

It is obvious that a client should have the right to give permission for private information to be disclosed. It is therefore reasonable to

allow the psychologist to disclose private information about a client to others provided he has the client's consent. It is reasonable to require that the client sign a written consent form which indicates the client has been informed of reason for and use of the information so that it is clearly understood by both parties and so that the psychologist has the consent form to prove he has the client's consent for disclosure.

It is reasonable to permit a psychologist to disclose private information about a client without his consent when the client threatens suicide or murder, because it is in the best interests of the client that the authorities and the intended victim (of threatened murder) are warned.

In cases in which a person or agency requests psychological services to be provided to a third party, for example a court-ordered psychological evaluation of a person charged with a crime, it is not reasonable to require the informed written consent from the third party before disclosing information to the requestor, because the third party is not a client. It is reasonable in this situation, however, to require the psychologist to inform the third party that information will not be kept private, so that the third party is alerted to the consequences of what he might reveal. The provision is protection against self-incrimination.

Because the law does not recognize a minor's absolute right to privacy, a psychologist need not always obtain the informed written consent of the minor to disclose information to his parent or guardian. In this case, however, it is necessary that the minor be informed before he begins to communicate with the psychologist as to what the limits of his right to privacy are so he is protected from revealing information he does not want others to know.

It is reasonable to allow access to a client's records by a staff member who needs access to perform his duties, since requiring prior written consent would unnecessarily increase the burden of paper work without providing additional protection to the client. However, it is then reasonable to require the psychologist to instruct the staff that they, too, as agents of the psychologist, are responsible for protecting the privacy of clients, because private information about a client can be equally damaging whether disclosed by the psychologist or a staff member.

It is reasonable to require that a psychologist instruct his staff to comply with clients' requests regarding billing because sending a bill to someone other than the client is in fact disclosing private information to the person receiving the bill.

It is reasonable to require that case reports used for instructional purposes be disguised sufficiently to prevent identifying the individuals they relate to because the case reports are private information .

Because taping or permitting observation of sessions between a psychologist and a client means that privacy of communications between them may be breached, it is reasonable to require the informed written consent of the client to do so.

It is reasonable to require that a psychologist keep a client's records private as long as they are in his possession, since the reason for protecting the client's privacy does not cease with the cessation of professional services.

It is reasonable to include the provision that a psychologist may disclose private information when required to do so by law, so that the

disclosure cannot be considered a violation of the Rules of Conduct.

This principle applies to sections 10 and 11.

D. Impaired Objectivity. This section restates in clearer language the provisions of Psych 10(b)(2)(dd), (b)(8)(cc) and (b)(12)(cc).

If a psychologist's objectivity concerning a client's psychological problems is impaired, his ability to provide services appropriate to the client is decreased. The psychologist loses the capacity to remain objective and at arm's length. The psychologist's view of the problem becomes distorted and the appraisal and resulting treatment can be faulty. Because of this, it is reasonable to include rules regarding what a psychologist must do if objectivity is impaired for whatever reason.

It would be unreasonable to prohibit the provision of psychological services in all instances in which an interpersonal relationship exists between the client and the psychologist or in which the psychologist has severe personal problems, because not all such instances are objectivity impairing. It is reasonable to require such prohibition only when the interpersonal relationship or personal problem impairs the psychologist's objectivity.

When objectivity is impaired because of an interpersonal relationship or personal problem which develops after a professional relationship has begun, it is reasonable to provide a method for extricating the psychologist from the professional relationship because continuing the professional relationship is potentially harmful to the client. In such cases it is reasonable to require the psychologist to terminate the professional relationship and to assist the client in obtaining services from another professional so that the client is not abandoned and can continue to receive help for his problems. It is reasonable to notify the client in

writing so that the client really knows that the professional relationship is terminated and so that the psychologist has proof that the client was notified.

It is reasonable to prohibit a psychologist from requesting or authorizing a client to solicit business for the psychologist because the very nature of the vendor/agent relationship is objectivity impairing. The vendor/agent relationship is an interpersonal relationship in which the boundary between the psychologist's self interest and his perception of the client's best interests becomes blurred.

E. Client Welfare. Client welfare, as has already been stated, underlies all of the Rules of Conduct, since the psychologist's primary concern must be to provide psychological services which benefit his clients and to avoid causing harm while doing so. Some aspects of the psychologist-client relationship are so compelling, however, that they require emphasis. These are set forth in a separate category.

1. The first requirement in this category is that the psychologist must provide the client with a non-technical explanation of the nature and purpose of the psychological services and the results of tests he is given. It is reasonable to require an explanation of psychological services so that the client can make an informed decision on whether to accept the services. It is reasonable to require an explanation of test results so that the client is aware of the reasons for recommended treatment. A non-technical explanation also promotes the trust which is necessary to a successful professional relationship. Frequent client complaints to the Board are, "I didn't know what I was getting into," and "He didn't tell me anything."

2. The second requirement is that a psychologist must inform the

client of his areas of competence and of the Clients' Bill of Rights, either by posting them in a prominent place on his premises or by offering the information as a handout. This requirement, which has no counterpart in Psych 10, is reasonable because it is notification that clients and potential clients have certain rights, are informed of what those rights are, and are made aware of how they can measure the services they receive against those rights. Since only clients and professionals themselves are in a position to police the profession, it is reasonable to alert clients to their rights and how to seek remedy when the need arises.

The items included in the Clients' Bill of Rights are reasonable as they explain how to evaluate the psychologist's conduct (items a, b, c, e, f, and g) and how to seek remedy if they believe the psychologist is practicing in an unethical or unprofessional manner (d).

3. The requirement that a psychologist shall not stereotype a client, which has no counterpart in Psych 10, is reasonable because stereotyping interferes with objective assessment of a client's problems, which in turn may lead to the choice of an inappropriate therapy. Pre-cast ideas prevent the openminded, objective approach which is necessary to fit the treatment to the client.

4. In the practice of psychology there are many methods of treating each problem. Each psychologist prefers, because of his own personality and where and by whom he was trained, one or more methods over others. Yet other methods may be equally beneficial for the particular client. It is reasonable to require the psychologist to reveal his value preferences so that the client is able to make an informed decision on whether to accept or reject the psychologist's choice. This provision also has no counterpart in Psych 10.

5. It is possible for a psychologist and a client to have such different values that the psychologist cannot establish the rapport necessary to provide beneficial services. It is reasonable in such cases to permit the psychologist to terminate the professional relationship so that neither is wasting time and the client isn't wasting money. This provision also has no counterpart in Psych 10.

6. This section restates in clearer language the provisions of Psych 10(b)(7)(cc). It is reasonable to require a psychologist to terminate a professional relationship when the client is not benefiting from it to prevent the client from returning merely for the economic benefit of the psychologist. It is reasonable to require the psychologist to notify the client of the termination in writing so that the termination is absolutely clear to the client and so that the psychologist has proof he terminated the professional relationship.

It is a fundamental principle of psychology that a client must not be abandoned before his need for psychological services has been met, since such abandonment might exacerbate the client's problems. It is therefore reasonable to require a psychologist when terminating a professional relationship to assist the client in obtaining professional services from someone else.

7. This section has no counterpart in Psych 10. It is reasonable to require a psychologist to make a prompt referral when requested, to ensure continuity of services and to avoid appearing to retain the client for economic reasons.

8. This section prohibits a psychologist from engaging in sexual intercourse or other physical intimacies with a client, and from engaging in verbal or physical behavior which is sexually seductive or sexually

demeaning to a client. This provision has no exact counterpart in Psych 10, although Psych 10(b)(3) touches on the moral and social codes related to this provision. The provision is reasonable for the following reasons:

A study completed by the American Psychological Association in 1975 indicated that women who have been sexually exploited by therapists are bitter, and that sexual exploitation occurs for the therapist's own gratification, not for the client's benefit. In the study one psychologist said: "This is the ultimate in sex-role bias: the rationalization of the therapist that his exploitation of the doctor-patient relationship for his gratification could be construed as therapeutic for a woman." The report also states that literature on the subject has failed to reveal even anecdotal cases in which sex with the therapist was reported as beneficial to the client.

Clients who seek psychological help are already in a more vulnerable state than peers around them who can work out their own problems. Sexual exploitation tends to increase that vulnerability and has been shown to increase the client's feelings of worthlessness and humiliation.

It should be evident that the findings regarding sexual exploitation of female clients by male psychologists apply also to sexual exploitation when the psychologist and the client are the same gender.

It is obvious, also, that a psychologist who is intimate with a client cannot maintain objectivity, since the relationship from that point on is not longer strictly professional.

9. This section has no counterpart in Psych 10. It is reasonable to require a psychologist to make an attempt to determine whether a

client has had or continues to have a professional relationship with another psychologist because if such a relationship exists, providing psychological services could be counterproductive. This would be true especially when the two psychologists use techniques which are greatly dissimilar or when the diagnoses do not match. It is reasonable to require the psychologist to attempt to coordinate the services provided if another professional relationship exists, provided the client agrees, because coordination would avoid the provision of services which are counterproductive.

10, 11. These two sections replace Psych 10(b)(2)(aa). As stated above, client welfare is fundamental to ethical and professional conduct in practice. These sections are reasonable because they provide remedies in situations in which a psychologist is made aware that another psychologist has been or is engaged in unethical or unprofessional conduct. Section 10 mandates a psychologist to file a complaint with the Board if there is reason to believe another psychologist is or has engaged in conduct which is a violation of section 8, sexual contact with a client, or C. 11, failure to report suspected abuse of children or vulnerable adults. Mandated reporting in these cases is reasonable because the conduct involved results in such serious consequences for the client or the abused person. Attempting to solve the problem by talking to the alleged offender could result in the destruction or alteration of records which could prove the allegations true.

Section 11 provides that for other kinds of suspected violations of the Rules of Conduct the psychologist may either communicate with the alleged offender or report to the Board. This provision is reasonable because the consequences of the suspected violations to the clients are

less severe. Communicating with the offending psychologist could frequently result in a correction of the psychologist's behavior without the necessity of reporting to the Board.

Because of the self-policing nature of the profession, it is reasonable to consider the failure to take action when violations of the Rules of Conduct are suspected as ground for disciplinary action. Failure to act in cases of suspected serious violations could result in continued harm to clients.

It is reasonable to not require a psychologist to file a complaint when he learns of the violation from the offending psychologist during the course of a professional relationship with that psychologist as his client, because to require him to report would cause him to disclose private information, which is also a violation of the Rules of Conduct.

12. This section restates the provision of Psych 10(a)(4). Because the right of a client to file a complaint with the Board when he believes a psychologist's conduct is in violation of the Rules of Conduct is so important, it is reasonable to require psychologists to provide information on how to file a complaint if asked. It would be unreasonable to require the psychologist to assist with filing the complaint because he may not agree that a violation has occurred.

F. Tests.

1. This section restates the provisions of Psych 10(b)(15)(aa), (bb), (cc) and (ee). It is reasonable to assure that tests employed in evaluating clients' problems are valid and reliable so that a resulting course of treatment matches as closely as possible the needs of the client, and so that the client is not "labeled" incorrectly. To accomplish this goal it is reasonable to require tests to be administered properly and to be

documented as to their validity, reliability and the population for which they are designed. It follows, then, that it is also reasonable to require a psychologist who designs tests for use by others to provide that documentation and to advertise them factually without evaluation.

2. This section restates the first paragraph of Psych 10(b)(15). It is reasonable to require that psychological tests be offered for publication only to publishers who have presented tests in a professional manner and who have distributed them only to qualified users, because tests in the hands of unqualified users can be damaging to individuals to whom they are administered.

3. This section has no counterpart in Psych 10. As a protection to the client it is reasonable to require a psychologist to note in the test report any reservations he has because of the testing circumstances or possible deficiencies of the test norms for the individual tested, and of how these reservations or qualifications have been applied to the score. Test scores can so easily be distorted by the circumstances under which the tests are administered that it is reasonable to require a psychologist to take precautions to ensure an accurate interpretation of the scores.

4. It is reasonable to state in this Rule that test results are private information so that they cannot be disclosed to others without the client's consent.

G. Public Announcement of Services. This section restates the provisions of Psych 10(b)(10)(bb), (cc), (dd) and (ee). It is now legal for psychologists to advertise their services. It is reasonable for the purpose of protecting consumers of psychological services to require that such advertising does not include false statements, does not make

evaluative statements, and does not include testimonials. Such statements may cause potential clients to seek services unsuited to them or to have too high an expectation of treatment success. If the services subsequently turn out to have little or no beneficial effect, the client may believe it is his fault and be worse off than before treatment was started.

The second paragraph restates the provisions of Psych 10(b)(4)(aa) and (bb). As with false statements in advertising, misrepresentation of the psychologist's qualifications and professional affiliations is a form of lying. It can lead to unreasonably high client expectations with the same consequences as are stated above.

H. Fees and Statements.

1. It is reasonable to require the psychologist to inform the client about the cost of the psychological services he provides so that the client is able to make an informed judgment as to whether he can afford them and whether the fees are reasonable and consistent with fees charged by other psychologists for similar services.

2., 3., and 4. These paragraphs, which have no counterpart in Psych 10, could be called the "Truth in Billing" rule. It is reasonable to require a psychologist to itemize fees for services to ensure that clients (and third party payers when applicable) know what they are paying for, to avoid billing clients for services not rendered, to prevent psychologists from being reimbursed for services which they had no hand in providing or directing, and to aid in promoting the trust between the psychologist and the client which must be present for effective treatment.

5. This section restates the provisions of Minn. Stat. S 148.93 and Psych 10(b)(12)(bb). It is reasonable to prohibit rebates for referrals to prevent inflated fees and/or unnecessary referrals.

6. This section is based on Minn. Stat. S 148.93, but has no counterpart in Psych 10. It is reasonable to include this provision in order to clarify the intent of the statutory language. so that division of fees based on actual performance of services and with the client's consent is not prohibited. It is also reasonable to provide that the prohibition against dividing fees does not apply to the financial arrangements of business organizations such as partnerships and corporations, because dividing profits is not technically the same as dividing fees in the sense intended by the statutory language.

I. Practicing Without a License. This section replaces part of Psych 10(b)(2)(aa). While there is a specific prohibition against engaging in the private practice of psychology in Minn. Stat. S 148.97, subd. 1, there is no prohibition in the statutes against aiding and abetting unlicensed persons in the private practice of psychology. The licensure law is designed to protect consumers of psychological services from being unwitting clients of incompetent, untrained, unprofessional, or unethical persons. It is therefore reasonable to include in the Rules a provision which makes aiding and abetting an unlicensed person in the practice of psychology a violation, not only because it is unethical to help another person violate the law, but also because of the potential harmful consequences to the public.

It is reasonable to exclude psychologists who supervise persons preparing for licensure from this prohibition, first of all, because the supervisees as employees are not engaging in private practice, and second, because it would be absurd to state that supervision required by law is a violation of the Rules.

J. Welfare of Research Subjects. This section is a restatement of the provisions of Psych 10(b)(16) in a much abbreviated form.

According to the definition in Minn. Stat. S 148.89, subd. 1, conducting behavioral research is included in the list of practices which constitute the private practice of psychology, along with assessment, treatment, counseling and teaching. It can reasonably be inferred from the definition that research subjects and clients occupy the same position with respect to the licensee, regardless of whether the licensee is a therapist or a researcher. It is therefore reasonable to equate research subjects with clients, which is implicit in the Rules of Conduct. It is reasonable to state this explicitly, including the fact that human research subjects enjoy the same rights as clients, so that there is no confusion as to their status vis a vis the Rules of Conduct.

K. Violation of the Law. This section has no counterpart in Psych 10. The provisions of this section are reasonable because a violation of the law which involves the provision of psychological services directly impacts upon the psychologist's ability to provide those services in an ethical and professional manner. It is reasonable to include criteria

for judging whether the violation of the law involves the provision of psychological services so that the Board has clear guidelines in disciplinary actions related to the violation of a law. The criteria are reasonable because they relate directly to the factors which make up ethical and professional practice and do not impose arbitrary or capricious standards. It is reasonable to include the provision that conviction of a crime is proof of the underlying factual elements needed to constitute a violation of the rule because a conviction is a higher order of proof than the results of a Board investigation would be.

7 MCAR S 10.009 Waivers and Variances

Because it is virtually impossible to draft a set of rules which anticipates every need, it is reasonable to provide in the Rules a mechanism for dealing with situations in which strict compliance with a rule might be inappropriate or counter-productive.

An example of this type of circumstance is an application for licensure of a person who began his two years of post-degree employment one-and-a-half years before the adoption of these Rules. His supervisor met with him once every two weeks for an hour during the period before the Rules become effective. Under the present Rules, the degree of supervision would be accepted. Under the proposed Rules it would not. The applicant began his employment with the good faith belief that he was in compliance with the Rules, then suddenly his employment is not in compliance. The waiver provisions provide him with the opportunity to request a waiver of the Rules so that his supervised employment can be accepted.

The specific provisions of this Rules are reasonable because they set forth the conditions under which a time-limited waiver or variance can be granted, renewed or revoked, so that the Board's actions under this Rule cannot be arbitrary or capricious. The provisions are reasonable also because the public is safeguarded by requiring the burden of proof to be on the requestor to demonstrate that these three conditions have been met: the rule in question does not address a problem of significance to the public in relation to the licensee's practice or the applicant's application, in the case of a waiver, or, in case of a variance, that the rationale of the rule can be met or exceeded by the variance; adherence to the rule would impose an undue burden on the licensee or applicant; and granting the waiver or variance will not adversely affect the public welfare.

It is the Board's intention to examine each request for a waiver or variance with care, and to grant the waiver or variance only if the requestor provides proof that all three of the above conditions have been met.

Repealers

Psych 2

Many of the concepts of Psych 2 are restated in the proposed Rules. Those that are not are repealed for the reasons stated below:

B. The instruction sheet is not part of the Rules, therefore the Rule should not require that it be followed in completing the application.

C. It is not necessary to set the application fee by Rule, as Minn. Stat. S 214.06 permits fees to be set by administrative action.

D. There is no longer a need to require a written notification of deficiencies in applications, because the consequences of temporary deficiencies will not be as serious as they are under present Rules. There is no deadline for applications for licensure, and applicants for admission to examination can be deferred. As a practical matter, however, applicant's are routinely notified of deficiencies.

E. Because of the new two-step procedure, the procedures relating to completion of the application in a one-step procedure are obsolete. Proposed provisions prevent an application from being considered - at either step - before it is complete.

I. The provision of this section is redundant. Minn. Stat. S 148.91 clearly states that requirements must be met before the Board can grant licensure, and the Proposed Rules clearly state which requirements must be met for each step of the process. The Board would have no way of knowing whether an application met requirements if it did not review the application.

Psych 5

Psych 5 is repealed because the section of the law it was designed to implement, Minn. Stat. S 148.92, the so-called "grandfather" section, expired on July 1, 1975. The Rule therefore does not need to be retained, and should not be retained because the term "waiver" in the Proposed Rules has a different meaning. Retention would create unnecessary

confusion.

Psych 8

Psych 8, pertaining to disciplinary procedures, is repealed because the Board follows the disciplinary procedures set forth in Minn. Stat. S 214.10. Retaining this Rule will simply cause confusion without adding substance.

Psych 10

Psych 10 is repealed because it is replaced by 7 MCAR S 10.008.

The following table indicates the provisions of Psych 10 which correspond in content to 7 MCAR S 10.008:

<u>Psych 10</u>	<u>7 MCAR S 10.008</u>	<u>Psych 10</u>	<u>7 MCAR S 10.008</u>
(a) (1)	B. 1.	(b) (7) (ff)	J.
(a) (2)	B. 4.	(b) (8) (aa)	C. 8.
(a) (3)	B. 2.	(b) (8) (bb)	D. 1., D. 2.
(a) (4)	E. 11. (partial)	(b) (8) (cc)	D. 1.
(b) (2) (aa)	E. 9., E. 10., I.	(b) (10) (bb)	G. 1.
(b) (2) (bb)	(Minn. Stat. S 148.91)	(b) (10) (cc)	G. 1.
(b) (2) (cc)	B. 1., B. 4.	(b) (10) (dd)	G. 1.
(b) (2) (dd)	D. 2.	(b) (10) (ee)	G. 1.
(b) (4) (aa)	G. 2.	(b) (10) (ff)	G. 1.
(b) (4) (bb)	G. 2.	(b) (11) (bb)	E. 9.
(b) (4) (dd)	G. 2.	(b) (12) (bb)	H. 4.
(b) (5) (aa)	G. 1.	(b) (12) (cc)	D. 3.
(b) (5) (bb)	F. 2.	(b) (13)	F. 2.
(b) (6)	C.	(b) (14) (aa)	E. 1., F. 3.
(b) (6) (aa)	C. 2.	(b) (14) (bb)	E. 1., F. 3.
(b) (6) (cc)	C. 7.	(b) (14) (cc)	E. 1., F. 3.
(b) (6) (ee)	C. 1.	(b) (15)	F. 2.
(b) (6) (ff)	C. 5., C. 9.	(b) (15) (aa)	F. 1.
(b) (7) (aa)	C. 3.	(b) (15) (bb)	F. 1.
(b) (7) (bb)	E.	(b) (15) (cc)	F. 1.
(b) (7) (cc)	E. 6.	(b) (15) (dd)	F. 1.
(b) (7) (dd)	C.	(b) (15) (ee)	F. 1.
(b) (7) (ee)	D. 1., D. 2., E. 6., E. 7.	(b) (16)	J.

The reasons for repealing the remaining provisions of Psych 10 are listed below.

Because all of Psych 10(b) was borrowed intact from the American Psychological Association's "Ethical Standards of Psychologists" (since changed to "Ethical Principles of Psychologists") many of its provisions concern the psychologist's relationship with the APA and do do relate to the welfare of clients. These provisions are marked "APA related" in the list below.

(b) (1). The provisions in this section speak to what a psychologist believes, recognizes, or knows, not to what he does. Thus they do not translate into rules of conduct and because of that, are unenforceable.

(b) (3). This section also speaks to what a psychologist recognizes regarding his professional behavior with respect to moral and legal standards, and is unenforceable for the reason given above.

(b) (4) (cc). This section is APA related.

(b) (5). This section, which prohibits a psychologist from participating in radio and television ads recommending products, is repealed because it encroaches on First Amendment rights.

(b) (6) (bb). This section is repealed because it conflicts with the Rules of Conduct pertaining to the privacy of clients. It permits disclosure of private information without informed written consent.

(b) (6) (dd). This section is repealed also because it conflicts with the Rules of Conduct pertaining to privacy of clients. It permits communications about clients to be disseminated among professionals

but not shown to the client.

(b) (7) (gg). This section is repealed because it encroaches on a teacher's right to present classroom instructions as he believes best to inform students, and does not directly relate to the welfare of clients.

(b) (7) (hh). This section is repealed because it does not relate to specific conduct and is therefore not enforceable. Furthermore, its concept is contrary to accepted theory that clients may benefit from a wide variety of settings.

(b) (7) (ii). This section is repealed because it does not spell out how a psychologist can ensure that a collaborating physician provides suitable safeguards in the use of drugs with a client.

(b) (9). This section is repealed because as written it does not provide specifics for guaranteeing protection of the public and protection of the psychologist from encroachment on his first amendment rights.

(b) (11). This section is APA related.

(b) (12) (aa) and (dd). These sections are repealed because the setting of fees is not an ethical matter, as long as the client is informed of what the fees will be.

(b) (13) (aa) and (bb). These sections are repealed because while interpreting a test may be more difficult or be rendered invalid by being described in publications available to lay persons, such publication is not an ethical concern relating to clients.

(b) (17) This section is repealed because it is APA related.

(b) (18). This section is repealed because it is APA related.

(b) (19). This section is repealed because a psychologist who does not give public credit to co-authors of a publication is in fact misrepresenting his own qualifications. That kind of conduct is prohibited by 7 MCAR S 10.008G. 1 and 2. so that a separate provision is unnecessary.

Psych 11

This rule is repealed because, like Psych 8, it is superseded by the complaint procedure in Minn. Stat. S 214.10.

Psych 12

This rule is repealed because its intent was incorporated into 7 MCAR S. 10.006A.

Psych 13

This rule is repealed because Minn. Stat. S 214.06 permits the adoption of fees without formal incorporation into rules.