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ADMINISTRATIVE
HEARINGS

DEPARTMENT OF LABOR AND INDUSTRY

Workers' Compensation Rehabilitation Services

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES OF THE STATE
WORKERS' COMPENSATION REHABILITATION
SERVICES GOVERNING QUALIFIED
REHABILITATION CONSULTANTS AND
REHABILITATION VENDORS.

STATEMENT OF NEED
AND REASONABLENESS

On January 21, 1980, Rules were promulgated to implement M.S. 176.102 regarding rehabilitation of work related injuries and diseases, including Rules necessary to be a qualified rehabilitation consultant or registered rehabilitation vendor.

During the last two legislative sessions, a number of concerns were expressed regarding rehabilitation services and fees and qualifications and standards for rehabilitation consultants and vendors. In 1981, M.S. 176.136 was revised authorizing the Commissioner of Insurance to report to the legislature by January 15, 1983 regarding the delivery of medical and health care services, including rehabilitation services, under the Workers' Compensation Laws of this state. The Commissioner of Insurance was also charged with conducting a study of the qualifications and background of rehabilitation consultants and vendors providing services under section 176.102 for the purpose of determining whether there are adequate professional standards provided, including safeguards to protect against conflicts of interest.

In the Spring of 1982, the Commissioner of Labor and Industry appointed two task forces consisting of employers, insurers, labor, attorneys and rehabilitation consultants. One task force studied the area of standards of performance for rehabilitation providers and the other task force studied standards for fees and services. Both groups developed recommendations for Rules which were submitted to the Rehabilitation Review Panel and the Commissioner of Labor and Industry for proposed rule making procedures.

The promulgation of these Rules is authorized by M.S. 176.102, subd. 10 and 12, which require the agency to promulgate rules relating to qualified rehabilitation consultants and any other rules necessary to implement M.S. 176.102. This authority was reiterated in the new workers' compensation law, Minnesota Laws 1983, Chapter 176, Section 165.

A public hearing was scheduled for Tuesday, December 28, 1982 on rules proposed November 22, 1982 regulating qualified rehabilitation consultants and registered rehabilitation vendors.

Because of adverse weather conditions, the rule hearing was cancelled. Subsequently the rules were withdrawn by the agency for additional revisions. Currently, a public hearing is scheduled for Friday, September 23, 1983 on the newly revised rules. Notice of this hearing was published in the State Register August 22, 1983.

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R.S. 1
Definitions

The reason for the deletion of number 17 and the insertion of number 19 is to accurately reflect sections of the rule. Since there are two new sections of the rule 18 and 19, this change is merely a housekeeping change.

R.S. 1 L.

Rehabilitation Services. The term "Rehabilitation Services" is added to the list of definitions to designate the official title of the Division of Rehabilitation Services of the Department of Labor and Industry.

R.S. 1 N.

Rehabilitation Provider. The term "Rehabilitation Provider" is used in these rules as a term of reference to four generally recognized categories of rehabilitation professionals. Those four categories are: qualified rehabilitation consultants; qualified rehabilitation consultant intern; qualified rehabilitation consultant firms; and registered rehabilitation vendors. Because of the frequent reference to these four categories of professionals in the rule the term "rehabilitation provider" serves as a shorthand usage in referring to all four categories.

R.S. 14
Line 15

The deletions in this section of the words "following" and the addition of the phrase "in A.-D." are for style and grammatical purposes only.

R.S. 14 A. 1.

This section of the rule specifically sets forth the credentials necessary for a qualified rehabilitation consultant to apply for and gain that status. In lines 23 and 24, the related fields of counseling and guidance, psychology, and social work, are added as additional disciplines which curriculum most closely resembles the skills necessary to function as a qualified rehabilitation consultant. These fields are considered related fields because of an analysis of courses usually contained in their curriculum, from experience in dealing with individuals who have successfully completed these courses of study and an analysis of transcripts and content of study and its relationship to vocational rehabilitation. Other fields of study are not considered to be related to vocational rehabilitation because they provide too general a background and are not specifically related to vocational rehabilitation. Therefore, the conclusion that the specific related fields listed

in R.S. 14 A. 1. are indeed related comes about through experience and analysis of the other related fields by the staff of the Rehabilitation Services division.

Lines 28, 29

This change of the rule specifically requires that prior to becoming a full-fledged qualified rehabilitation consultant (hereinafter "QRC"), an individual must have spent at least one year as a qualified rehabilitation consultant intern (hereinafter "QRC intern"). The additional deletion and insertion in lines 30 and 31 is merely for grammatical purposes. Specifically, this change is needed in implementing these rules because it insures consistency and the professional background that a QRC will have prior to practicing in the field. The one year spent as an intern gives them virtually on-the-job training under supervision which allows them the ability to function in a professional role. This requirement is reasonable because it guarantees that employees who have selected QRC's will know that a new QRC will have had at least one year of training prior to being able to handle their specific case. This one-year time period is a reasonable amount of time for an individual to gain sufficient experience to be able to handle the current and past complexities of the workers' compensation law and related rehabilitation concerns.

R.S. 14 A. 2.

The change in this section is identical to the change in the proceeding section R.S. 14 A. 1. The rationale for this change is identical to the preceding one. Therefore, the reasons why such a change is needed and reasonable is set forth in the preceding section.

R.S. 14 A. 2.
Lines 9-25

These three sections which have been deleted were present under the old rule for several important reasons. One of the purposes of the rules which are being promulgated is to provide consistent standards and sufficient professionalism in handling injured workers rehabilitation. The consistent standards are important to protect the employees in their rehabilitation efforts. The employee will be counseled and assisted in a professional manner that gives them the best benefit of rehabilitation expertise. The worker compensation law has grown increasingly complex and the related rehabilitation possibilities have also grown

increasingly complex over the last few years. It is more important than ever that academic expertise in the specific areas listed in the preceding rules as well as on-the-job training are essential to offer adequate rehabilitation care to injured employees in Minnesota. To maintain a high level of consistent, professional rehabilitation care, it is essential that there are strict and equally high standards for admission to this qualified status by the State of Minnesota. Because of the increased complexities of the law and the field of rehabilitation, the academic training and practical experience required under the new rule is both needed to protect the injured employees and reasonable given the complexities of the law and the desire to increase professionalism of care sanctioned by the State of Minnesota.

Another difficulty with the categories of qualifications listed in lines 9-25 were that evaluating individual applications was extremely difficult based upon merely a person completing a degree or background from an accredited institution and then evaluating in turn their significant experience to make them qualified for this status. The difficulty was in evaluating an individual's experience to determine if it was appropriately related to rehabilitation. The new classification removes the opportunity for inconsistency in evaluation of applicants when the biggest question as to whether or not they are qualified is based upon their past work experience. Therefore, with a combination of desire for increased professionalism and administrative consistency, the new categories set forth in the rule are both needed and reasonable.

R.S. 14 B.
Page 3
Line 2

This addition is merely to make reference that an intern must meet the minimum standards set forth in the preceding sections for full-fledged QRC status.

R.S. 14 B.
Page 3
Lines 3-7

The reason for this additional paragraph in the rules is to set forth that the responsibilities of a QRC apply also to a QRC intern. In other words, an intern may also be subject to discipline and evaluation for their performance in their role as a QRC intern. However, a QRC intern, as set forth in this

paragraph, also has the rights of appeal as a full-fledged QRC. Also, any violations of the rules during the internship period may be considered in evaluating an application by a QRC intern for full-fledged QRC status.

R.S. 14 C.
Lines 20-27

Because of the deletion of the three categories set forth in R.S. 14 A. 2. iii, iv and v, the earlier stated criteria for the type and period of time over which experience shall be attained is no longer applicable. Therefore, it is needed and reasonable that this section shall be deleted at this time.

R.S. 14 C.
Page 14
Lines 27-31

To further clarify the type of experience necessary to meet the requirements set forth above in R.S. 14 A., this rule specifies that the experience may not be part of educational training. In other words, the only experience accepted under the rule is that which occurs subsequent to the educational training. Therefore, an individual must have their year internship at some period of time either before or after school for them to apply and be granted QRC status. The volunteer activities and other casual backgrounds which have no full-fledge responsibilities should not be considered similar to the internship status sanctioned by the rules. The test here is basically that the experience must be with full responsibilities for the worker. The volunteer or other casual intern experience during school is usually such that the individual is not truly responsible for the case or the individual's rehabilitation.

R.S. 14 D.
Page 4
Line 14-20

This language is added for purposes of specifying that existing registered qualified rehabilitation consultants shall be deemed to meet the standards of this rule on the date that the rules take effect. The reason this is needed is that the public has been protected by the current on-going evaluation of existing QRC's over a period of time. Individuals who either should not or could not meet the standards through their experience under the old rules would have been disciplined or revoked from that status prior to the effective date of the new rules. The public has a need for experienced qualified QRC's who have practiced in the field for some time. The existing registered QRC's on the date of these rules being effective have proven themselves to

have a minimum level of professionalism which makes them able to adequately serve the needs of injured workers on into the future. They have attended sessions by Rehabilitation Services, they have been informed of the law changes, and are currently practicing with changes in the law and rehabilitation. Therefore, they are deemed because of this added experience and training, to meet the standards whether or not they may have some of the specific academic training set forth in the new law.

On the other hand, qualified rehabilitation consultant interns may in fact not have had more than a brief experience in their role as an intern. A newly registered intern may in fact not have had experience in working with the new workers' compensation law. If they had achieved sufficient experience as an intern, they could have applied for full-fledge QRC status prior to the effective date of this law. Then if they met the status of a QRC under the old law, they would indeed also be deemed full-fledged QRC's after the effective date of this rule. It is necessary for administrative consistency to have a uniform standard that can be applied to applicants seeking to become full-fledged QRC's after the date of these rules becoming effective. Therefore, it is still possible for any QRC intern to gain the additional academic training necessary if in fact they do not already have it, and complete the time of their internship and be granted full-fledged QRC status. The time already spent by a QRC intern will count towards their eventual one year of experience in rehabilitation necessary for full-fledged QRC status. Therefore, the rule is needed because it maintains a consistent standard for all future applicants for QRC status having similar academic background. It also requires that all such future applicants have similar practical experience. The QRC interns have an advantage over future applicants for full-fledge QRC status by virtue of the fact that they have part of their year experience necessary under R.S. 14 A. already completed. This requirement is reasonable in view of the fact that a QRC intern operating under the old rule could apply based upon whatever their academic training would be and seek full-fledged status prior to the effective date of this rule. Furthermore, the uniform academic backgrounds to practice in this field is

a reasonable requirement because of the complex area and the unique needs in rehabilitation to have knowledge of a broad body of expertise. An individual who may currently function as a QRC intern may not have either sufficient experience or education to offer that broad knowledge necessary to function as a QRC without either additional experience or academic training. There is a strong public policy interest in maintaining minimum academic experiential requirements to practice in this field of rehabilitation. The injured workers deserve the best trained and experienced rehabilitation providers possible.

R.S. 15 A.
1-6

The changes in this section are merely format changes recommended by the Revisor to more appropriately set forth these categories.

R.S. 15 A. 7.

The annual registration fee for both the individual consultant and the firms is required by the new statute, Minnesota Laws, 1983, Chapter 176, Section 165. The fee of \$100 for a firm and \$50 for an individual QRC or QRC intern is a reasonable amount of money for purposes of the fees charged and the type of services offered by these professionals. The hourly rate of many rehabilitation providers may vary between \$30-75 an hour. The statute set forth above requires that fees may be levied by the commissioner, to pay for the registration and monitoring rehabilitation provides. Therefore, the fee is needed based upon the statutory authority set forth above. The rule is reasonable in that the fee and amount charged has a rational relationship to the amount of money and fees which an individual in this field may charge. Furthermore, the fees charged are in no way onerous or burdensome on these rehabilitation providers.

R.S. 15 A. 7.
Lines 5-8

The change in the number of days from 45 to 60 days is an administrative change based upon the actual time it takes for an introductory training session to occur subsequent to the initial approval of the application. Since the introductory training session is required for licensure, this change in the number of days allows an individual slightly more time to complete such a course. Furthermore, the introductory training session is needed and reasonable to give individuals who may have need for feedback and questions concerning the current

status of rehabilitation and to have the opportunity to be informed of their rights and responsibilities as a QRC by the Division of Rehabilitation Services. Therefore, the introductory training session is an essential part of Rehabilitation Services' role in educating and training the newly-approved applicants for QRC status.

R.S. 15 B.

The changes in this section are merely typographical or grammatical changes.

R.S. 15 D.
Lines 29-36

The additional language added to this section requires an individual formerly licensed as a QRC who does not have direct case service on worker compensation recipients for over a year to lose their license. He or she must reapply after meeting all the existing standards in place at that time. This rule is needed to prevent individuals who may be only marginally practicing in the field of rehabilitation from losing touch with the needed expertise from re-entering the field and offering services to an injured worker without truly being aware of the current status of the law and rehabilitation field. This requirement is reasonable in view of the fact that individuals who have the responsibility of providing professional services in rehabilitation, who haven't in fact practiced for a period of time, should be required to justify that their credentials and experience are sufficient to be entrusted with care of injured workers. Therefore, if they wish to be granted the status of QRC again after a lapse of a year, they should be required, to gain the experience and educational background essential to provide the services set forth by the statute. There is one small exception set forth in the rule which is also needed and reasonable. An individual who is in a supervisory role of QRC's providing direct case services is deemed to have continuing knowledge of the rights and responsibilities and complexities of the field by virtue of their supervisory role. Therefore, this rule is reasonable because an individual working closely with QRC's, who provide current updated services, is deemed to have knowledge of such skills and services. Finally, this rule is needed and reasonable because it maintains a consistent administrative standard necessary for all practitioners in this field to fulfill prior to

licensure. Without either the current practical experience of those individuals who are in the field, or obtaining the sufficient academic and experiential background needed to be granted licensure, an individual should not be allowed to practice in the field of workers compensation rehabilitation given its complexities and unique expertise necessary.

R.S. 15 E.
Lines 8-17

The deletion of the language in this section is needed and reasonable because the language which follows sets forth a fairly detailed procedure on how the rights and responsibilities of a practicing QRC or QRC intern may be evaluated and appropriately disciplined by the department or the Rehabilitation Review Panel. Prior to the new rule, the entire section dealing with discipline of a QRC who had violated the rules is contained in these few lines. The deletion of this procedure and power by the commissioner to revoke is based upon it being needed and reasonable to have a more detailed procedure guaranteeing the rights of due process and notice necessary and required in dealing with QRC's and QRC interns.

R.S. 15 E.
Lines 18-20

This section is needed and reasonable because it continues the commissioner's role of reviewing the activities of rehabilitation providers in determining if they are in compliance with these rules and the statute that he is charged with enforcing. It is appropriate for the commissioner to be the individual to enforce these rules and the statute because of the legislative intent and statutory language in this area. Furthermore, it is reasonable and needed for the commissioner's review to be discretionary in view of the fact that he does not have the resources to constantly monitor every act taken by currently licensed rehabilitation providers. He must use his discretion for purposes of allocating enforcement resources to determine when it is appropriate to look with greater scrutiny at individual rehabilitation provider activities which may be in violation of the rules.

R.S. 15 E. 1.
Lines 21-35

The procedure set forth in this section is needed and reasonable because it allows for an informal resolution of frivolous complaints as well as sufficient due process protection for a rehabilitation provider accused of wrongdoing under the rules. If a frivolous complaint has

been tendered regarding a rehabilitation provider's actions, the commissioner under this rule and language may informally resolve the dispute without having to order an administrative conference on the issue. However, if the accused party requests an administrative conference, such a conference will be granted under this rule. The commissioner is given necessary discretion to evaluate the evidence which would come before him through his review and through evidence presented at an administrative conference. Based upon that information, the commissioner may then in turn determine what is the appropriate action to be taken. The commissioner, however, is under an obligation to specifically set forth the rationale for his decision whether or not to discipline an individual so that the parties involved will know why and how the commissioner has acted. This procedure for investigating and resolving disputed actions by QRC and QRC interns is appropriate and needed and reasonable to avoid allocating inappropriate amounts of time and resources into an overly formalized review process of each allegation of inappropriate conduct.

R.S. 15 E. 1.
a. through d.

The specific types of discipline that the commissioner may apply to an appropriate circumstance are set forth in this section. All of them are needed and reasonable given the types of violations and problems frequently seen by Rehabilitation Services under the existing rules. The types of discipline specifically set forth range from a written reprimand requesting an individual cease offending actions up to including full restitution of improperly charged fees, extension of intern status up to six months, and a restriction on accepting new cases for up to six months. Clearly, a written reprimand is an appropriate, needed and reasonable type of disciplinary power the commissioner should have in dealing with violators of his rules or the statute. The full restitution power is essential to protect the integrity of the rehabilitation process by being able to assure employers and insurance carriers that the commissioner has authority and power to deal with improperly charged fees by rehabilitation providers. This authority is needed and reasonable because it also helps the commissioner implement his legislative charge in regulating the licensure and actions of rehabilitation providers. The extension of intern

status for up to six months is appropriate in the instance of an intern who has had violations of the rules. Instead of categorizing their earlier time spent as being for naught, additional time of up to six months fulfilling requirements prior to letting them apply for QRC status is appropriate. The restriction on accepting new cases for up to six months goes to the heart of many of the problems that Rehabilitation Services currently comes in contact with under the existing rules. Often times an individual has too many cases and is not able to give them appropriate service. Because of their inability to give appropriate service, often circumstances result in violations of the rules. Restriction on accepting new cases would allow the rehabilitation provider to resolve the problems with their existing files before adding further burdens to themselves by having new clients during this period of time.

R.S. 15 E.
Page 7
Lines 9-12

This language is needed and reasonable to allow an orderly sequence of procedures to be followed when an offending party has been disciplined, twice by the commissioner. Instead of trying to apply one of the enumerated types of discipline or others the commissioner may feel is appropriate, the commissioner shall refer the individual for review to the Rehabilitation Review Panel. This is needed so that the commissioner will not have to make decisions concerning a repeat "offender." The opportunity for the Review Panel to consider a third offense by a rehabilitation provider enables them to more fully consider any and all factors in a case. This procedure also in theory gives the more serious offenses to the panel to review, whereas the less serious offenses may be resolved by the commissioner in the first or second instance.

R.S. 15 E. 2.

Even in the instance where the commissioner disciplines an individual through one of the procedures outlined in R.S. 15 E. 1. a.-d., an individual still has the right of appeal to the Rehabilitation Review Panel. This section sets forth that that right exists and may occur within 30 days of the determination. This is needed and reasonable to insure in a very specific manner that the disciplined party knows that they have a right to appeal an adverse determination against them to the Rehabilitation Review Panel.

R.S. 15 E. 3.

If, as referred to above, there has been a third apparent violation of the rules or statute, the commissioner is charged with referring it to the Rehabilitation Review Panel. If this occurs, the rule specifies that written notice shall be given to the individual and the notice shall set forth the reasons for the referral. This language is needed and reasonable because it functions in part as notice to the individual of the referral to the review panel and also guarantees the offending individual of reviewing in detail the commissioner's rationale for why he feels referral is necessary. This notice further insures the individual of due process protection and therefore is needed and reasonable given the purpose of the rule.

R.S. 15 E. 4.

The statute sets forth a fairly detailed hearing procedure for the Rehabilitation Review Panel in considering appeals to it. This section is needed and reasonable because it sets forth some specific types of actions that the panel may take in dealing with rehabilitation provider discipline. The panel is given, through the statute, authority to revoke rehabilitation providers. The detailed list of the types of discipline up and to including revocation is necessary concerning what actions are appropriate in a disciplinary review. Since all of the actions the panel may take as enumerated in the rule lead up to and do not exceed revocation, they are within the power given the panel by the statute. Therefore such discipline is reasonable and within the authority of the panel. The specific categories of actions they may take are needed because they give notice to offending parties of some of the types of disciplinary actions the panel may or may not take. Also, it provides a reference for the alleged offending party to know the framework within which the panel may act.

R.S. 15 E. 5.

This section deals with the appropriate appeal provisions an individual should follow if they receive an adverse decision by the review panel. The requirements of the panel's actions to be in writing is a necessary portion to protect the due process rights of the individual appearing before the panel. The right to appeal to the Workers' Compensation Court of Appeals flows from the policy set forth in the statute to give

jurisdiction to the Court of Appeals regarding decisions by the commissioner.

In R.S. 15 E. 5. b. the rule specifies an individual must wait a year if they are revoked before they reapply for registered status. This was part of the prior rule and is needed and reasonable because it prevents an individual who has suffered the most severe discipline possible under the statute and under these rules from immediately practicing the profession again. Making an individual who has been revoked from rehabilitation provider status to wait a year is needed and reasonable to allow them time to reflect upon the error of their ways. Also, it insures that they will avoid any future or similar violations.

R.S. 17 A. 1.-3. The changes in this section are merely for form and grammatical purposes.

R.S. 17 A. 4. The annual registration fee of \$100 for each registered vendor is parallel to the requirement for qualified rehabilitation consultant firms and is required under the new statute found at Minnesota Laws, 1983, Chapter 176, Section 165. This fee is needed and reasonable because in part it fulfills the statutory obligation of the commissioner to promulgate such fees and it is not a burdensome requirement given the charges for services usually required by vendors in the rehabilitation field. Furthermore, this fee is needed to pay for the costs of monitoring and registering the vendors.

R.S. 17 B.-D. The changes in this section are form changes recommended by the Revisor of Statutes to reference the appeal, renewal and revocation processes to the same procedures used governing QRC's.

R.S. 18 A. The policies set forth in this section are basically to provide a context for rehabilitation providers in interpreting the thrust of the rules set forth in this section. These policies provide an appropriate framework for rehabilitation providers to review and use in evaluating their own delivery of services on a daily basis. These objectives and policies are essential in providing the context to educate and encourage those professionals practicing in this field.

R.S. 18 A.
1.-8.

1. The whole purpose of rehabilitation, as set forth in the statute, is to focus all care and consideration on getting the injured worker back to work as soon as possible. Unless the rehabilitation provider focuses in that manner, the directive of the statute is not being followed. Therefore, this rule is needed and reasonable because it stresses the importance and purpose of rehabilitation for the rehabilitation provider.

2. It is essential that the rehabilitation provider be reminded that they are in a neutral role in dealing with the parties involved in rehabilitation. It is very important that the rehabilitation provider not become overly concerned about any one party to the point that they do not effectively serve the overall goals of rehabilitation. Therefore, this rule is needed and reasonable because it further sets forth the responsibilities of rehabilitation providers in avoiding unfair emphasis on one party's concern at the expense of the other party's interest in rehabilitation.

3. It is essential that a rehabilitation provider make a special effort to communicate with all parties. This effort goes beyond a fair and objective position. It requires time by the rehabilitation provider to constantly keep informed all participants in the rehabilitation process. This is needed and reasonable to guarantee all participants their equal right to comment on the rehabilitation process.

4. The rule requiring withdrawal on the case if rehabilitation is not being fulfilled is essential to the implementation of the purposes of the statute and these rules. The rule is needed and reasonable because it requires an individual who is involved in trying to provide rehabilitation services from withdrawing from that process if in fact it is not occurring because in part of their failures. Because of the overriding concern for the success of rehabilitation to get the injured worker back to full employment, this rule is both needed and reasonable if the rehabilitation provider is standing in the way of such a result.

5. To appropriately provide professional services in the area of rehabilitation and workers' compensation, it is essential that an individual stay aware of changes in the law and in the field of rehabilitation. Continuing education programs have traditionally been the best way of keeping abreast of such changes. Such a rule is needed and reasonable because it insures that the overall goal of providing professional rehabilitation services will be continually met because of additional knowledge gained by attendance at such programs.

6. If in fact there are allegations of inappropriate professional advice and service by a rehabilitation provider, it is necessary for that individual to have a source of funds that can compensate those who have been injured by his or her actions. It is needed and reasonable that such a source of compensation be a professional liability insurance policy. Therefore, such coverage is necessary to further protect those participants in the rehabilitation process by knowing that in case the provider does not act appropriately, there is a source of recovery for them.

7. There are statutes and rules on the federal, state and local level that prevent an individual from discriminating on the basis of race, color and creed. These statutes and rules also apply to participants in rehabilitation. Their awareness of this fact only assists in furthering the providing of appropriately professional services to injured workers. Therefore, it is needed and reasonable that in dealing with rehabilitation no concerns about possible discrimination be present in the mind of the injured employee when he seeks such counseling.

8. To avoid the unprofessional behavior of dealing with the faults or alleged faults of colleagues and peers in one's profession, it is appropriate and necessary that comments be positive about any shortcomings that may be apparent. Furthermore, if violations do occur, there is another section of these rules which require an individual aware of such violation to refer that violation to Rehabilitation Services. This rule is needed and reasonable because it will

upgrade the profession by avoiding inappropriate discussions with participants in rehabilitation on individual shortcomings rather than on their strengths.

R.S. 18 B.

This section provides introductory language prefacing the impact and affectiveness of the succeeding sections. It further references the statute and these and other rules as the operative body of law governing professional rehabilitation providers services.

R.S. 18 C. 1.

This rule was needed and reasonable because it restricts the rehabilitation services that can be offered an employee to only those which are in agreement to the parties to the rehabilitation process. This rule is needed because in some instances in the past, services are offered and given which are not part of the plan and therefore have not been approved by Rehabilitation Services. Furthermore, it is needed because some of these services which may be offered have not been approved by the employer/insurer and therefore represent an additional cost to the system of rehabilitation that is unnecessary. This rule is reasonable because it makes the plans which are going to be used to implement rehabilitation an important part of the overall process. It allows each of the parties an opportunity to participate in constructing that plan. It reflects their interests and the interest of the employee in returning to gainful employment. Therefore, the rule is needed and reasonable because it avoids unnecessary duplication of expensive services.

R.S. 18 C. 2.

This language is very important to continue to provide integrity to the rehabilitation process as supervised by a QRC. The entire function of a QRC is to be the manager of rehabilitation. It is necessary that there be only one manager to effectively assist in implementing rehabilitation. This rule would prevent, except in certain exceptions, more than one QRC working on an employee's case. This ultimately benefits the employee because there are not conflicting signals as to what the appropriate course of rehabilitation is. Further, it benefits the employer/insurer because the cost of rehabilitation is lowered by not having to pay more than one QRC to manage the rehabilitation process. Also, the rule is needed because it sets a deadline for the

time in which a plan determining what rehabilitation is appropriate must be submitted to Rehabilitation Services. It is needed because it sets a deadline for when progress reports on how that rehabilitation is proceeding must also be delivered to Rehabilitation Services. Both the requirement for one QRC case and deadlines for when reports must be filed with Rehabilitation Services are reasonable because they allow enforcement which keep costs down and rehabilitation provided more expeditiously for the employee.

R.S. 18 C. 3. This provision specifically forbids the continuing billing of services after there has been a change from one QRC to another QRC. There are some exceptions set forth that will be explained in further sections, however the purpose behind this is that in the past, the previous QRC has continued to bill additional hours when it is totally unnecessary. Therefore, it is reasonable and needed to reduce cost and to provide for a clean transition to not allow an additional QRC to continue to work on a case after a transition has occurred.

R.S. 18 C. 4. This rule is needed and reasonable because it mandates a deadline during the transition period from one QRC to another QRC of 15 days within which all materials must be transferred to the new QRC. This allows a minimal amount of two QRC's on a case during that 15 day period of time. However, it does set a deadline from which the previous QRC may be involved capacity or another. It is reasonable because the time it takes to transfer the records on a case is minimal, probably no more than a day or two. Therefore, the 15 days is a rather liberal amount of time to effectuate the transference of a case from one QRC to another. This is a needed and reasonable exception to the absolute prohibition against having more than one QRC on a case because it recognizes the natural need for transition when a case goes from one QRC to another.

R.S. 18 C. 5. This rules provides another exception to having more than one QRC on a case. It indicates that when a case is involved in litigation that another QRC may participate in the case by providing evaluation, if requested, by one of the parties. Therefore, it allows the existing

practice of QRC's acting as expert witnesses in worker compensation litigation involving rehabilitation issues. It does, however, require that notification be given to Rehabilitation Services when such testimony is going to be given. This is needed and reasonable because it allows for Rehabilitation Services to monitor when such expert testimony is being given, and to insure that there is not more than one QRC on a case at any given time.

R.S. 18 C. 6. Because of the adversarial roles in litigation, an individual who is a QRC that testifies may not be the on-going QRC because of the bad feelings which can result. This rule is needed and reasonable because all parties must agree on an expert witness QRC actually performing the function of a QRC on a case. If in fact the employee and the other parties do not mind that a QRC testified and wants that individual to function as the QRC on the case, such permission will theoretically avoid any hard feelings among the parties. Therefore, the requirement that permission is granted is needed and reasonable because it will assist in implementing the overall intent of protecting the employee's interest in the rehabilitation process.

R.S. 18 C. 7. This rule is needed and reasonable because it allows the rehabilitation provider to make appropriate recommendations to the correct resource for the employee's needs. It is needed because it allows sufficient discretion to the rehabilitation provider in making such a determination. It is reasonable because it is impossible to specifically require the consultant or the vendor to act in any specific way because of the nature of rehabilitation.

R.S. 18 C. 8. It is essential for the integrity of the rehabilitation process that rehabilitation providers not function in an adversarial role of claims agent. This role directly contradicts their job as provider of services to benefit the employee.

Also, if such claims functions are offered leading to litigation, it gives rehabilitation providers' future evaluations credibility problems. A rehabilitation professional must choose either to exclusively offer rehabilitation

services as governed by these rules or to function solely as a claims agent or adjustor for parties to rehabilitation. This rule is needed and reasonable because it preserves that distinction which is essential to protect the employee's interest in gaining effective and non-biased rehabilitation services and advice. Furthermore, another rule specifically requires all rehabilitation providers to be exclusively self-employed or employed by only one employer.

R.S. 18 D. 1. This rule is needed and reasonable because it sets forth basic requirements of reports filed with the Division of Rehabilitation Services. It is needed because it sets forth basic information necessary to identify not only the file but the individual on the case. It is reasonable because the requirements are neither onerous or burdensome in any way whatsoever. These requirements logically flow from the need to organize various information submitted to Rehabilitation Services.

R.S. 18 D. 2. The reports are required to be submitted in the format in accordance with the forms prescribed by the commissioner. The commissioner was given authority in Minnesota Laws, 1983, Chapter 178, Section 165 to prescribe forms for rehabilitation services. Therefore it is needed and reasonable to reference such forms to one which are prescribed by the commissioner.

R.S. 18 D. 3. It is needed and reasonable that the employer, who in fact is the payor for the entire rehabilitation process, to have documents corroborating all the aspects of rehabilitation. It is reasonable that those forms go to the employer so that they can be kept informed of what is going on in getting the employee back to work. This rule is needed because many times the employer has been frozen out of the rehabilitation process. He has not been able to comment on the rehabilitation plan because they have known little or nothing about what is going on.

R.S. 18 D. 4. This rule is needed and reasonable because often times the vendors have not submitted reports directly to the QRC, but instead have submitted them to the insurer or sometimes even to the employee. It is needed to have these reports go to the QRC because they in fact are the managers of rehabilitation. They need this information to

determine the progress of the employee who is going through rehabilitation. It is reasonable to have this requirement because these reports must be sent to parties involved in rehabilitation. Requiring this process to include the QRC is only really one more form which has already been created.

R.S. 18 D. 5. Of course, QRC's and vendors have responsibilities under the Data Privacy Law to not reveal any information which there are not appropriate releases for. This rule is needed and reasonable because it is a reminder to those rehabilitation providers that they are bound by these provisions and must follow them accordingly.

R.S. 18 D. 6. This rule is needed and reasonable because it references the preceding rule dealing with data privacy by indicating that a rehabilitation provider may not contact and discuss an employee's case without release form from that employee. This is needed to avoid any unauthorized communication occurring between the rehabilitation provider and the physician. It is reasonable because this is standard practice currently in the field. It is not onerous or burdensome in any way.

R.S. 18 D. 7. This rule is needed and reasonable because the rehabilitation provider in dealing with the causes and effects of rehabilitation shall not comment on a largely legal decision of whether or not the employee wishes to or should retire at any particular point in rehabilitation. However, this issue is raised because of the employee's age, interest and the rule provides for referring the employee to appropriate resources to discuss this choice between retirement or returning to work. Since a recommendation on having an employee retire can dramatically affect his workers' compensation benefits, a rehabilitation provider could be abrogating the role of an attorney on the workers' compensation claim. Therefore, it is reasonable that such advice not be rendered by rehabilitation providers. It is reasonable to defer this decision and discussion to the professionals who are competent to discuss it with the employee.

R.S. 18 D. 8.

This rule is needed because in certain instances, rehabilitation providers in the past have recommended legal advice to the injured employee. They have rendered opinions on whether or not a settlement of a workers' compensation claim would be appropriate at a given time during rehabilitation. This rule prohibits such advice from being given because it should be rendered by of the employee's attorney. Such a rule is reasonable in that the rehabilitation provider is not competent to render what is clearly legal advice to the injured worker. Therefore, such advice should not be rendered by a rehabilitation provider to an employee.

R.S. 17 D. 9.

This rule is necessary so that the integrity of the rehabilitation profession is not compromised by rehabilitation providers engaging in claims investigations. This rule is needed because if and when a rehabilitation provider actively participates in claims investigation or processing, they lose their professional, objective role as an evaluator of an injured worker's rehabilitation needs. When a rehabilitation provider becomes an advocate or an agent for one party or another in rehabilitation, they are not serving the interests of the injured worker. This rule is reasonable in that the rehabilitation process cannot be compromised by having professionals in the field engage in adversarial roles.

R.S. 18 D. 10.

This rule is needed because Rehabilitation Services must be adequately informed about all aspects of a case involving rehabilitation. Therefore, it is reasonable that all reports relating to the rehabilitation process on that particular case be forwarded to Rehabilitation Services. Rehabilitation Services could not fulfill its role of monitoring and evaluating the overall delivery of rehabilitation without the information contained in these reports.

R.S. 18 D. 11.

This rule is needed because in certain instances when a vendor is trying to provide their professional services, they need related medical and rehabilitation reports on a particular case. Without access to these reports, the vendor is severely limited in evaluating whether the treatment they are offering is appropriate. Therefore, it is needed to have access to reports

from the rehabilitation provider. It is furthermore necessary for the vendor to accomplish their objective of rehabilitation to have knowledge of the background of a particular employee's treatment. It is reasonable because the reports have an important relationship to review of rehabilitation.

R.S. 18 E. 1. The purpose of this section of the rule is to insure that the QRC appropriately informs the employee of his rights and responsibilities under rehabilitation. This is needed because it occurs at the initial interview and allows the employee to act accordingly in view of his rights throughout the rehabilitation process. It is reasonable in that requiring a QRC to review these rights and responsibilities with the employee is a necessary precedent to any future dealings that they may have involving the employee's rights regarding rehabilitation.

R.S. 18 E. 2. This section of the rule is needed and reasonable because it requires basic knowledge concerning the workers' compensation law, rules, policies and procedures that relate to rehabilitation services. This is necessary knowledge for a rehabilitation provider to have to appropriately offer professional services to injured workers. If a rehabilitation provider gives out inaccurate information, putting into jeopardy the rights of an injured worker, he or she will be subject to discipline. This is needed to protect the rights of the employee so that he or she does not erroneously rely on inaccurate information supplied by a rehabilitation provider. It is reasonable because the information disseminated by the rehabilitation provider should be accurate to maintain professional services throughout the rehabilitation process.

R.S. 18 E. 3. The purpose of this rule is to mandate that if an issue or problem arises that is unclear to a rehabilitation provider, that they will contact Rehabilitation Services to clarify it. This is needed to insure that Rehabilitation Services is involved in issues which need clarification. It is reasonable that in that rehabilitation providers should not attempt to resolve issues or problems on their own if they are not absolutely certain of the rights and responsibilities of the parties involved. Since Rehabilitation Services

monitors and governs this area, it should in turn act as the arbiter of disputes involving rehabilitation for injured workers.

R.S. 18 E. 4. This section of the rule refers back to the possible ramifications of unprofessional behavior, services or failure to comply with rules under the law. It reaffirms that rehabilitation providers will be subject to discipline if they act in violation of the rules and the law governing rehabilitation. This is needed and reasonable because it reiterates the authority of Rehabilitation Services to regulate this area. It is reasonable in that it further informs rehabilitation providers that they are subject to discipline if they fail to comply with these rules.

R.S. 18 F. 1. This rule is needed to insure that all newly registered rehabilitation providers have minimum information necessary to appropriately provide rehabilitation services. It is reasonable in that it gives a sufficiently lengthy period of time in which the applicant can comply with attending the introductory training session. Therefore, this rule protects the injured worker and the rehabilitation providers by guaranteeing that certain minimum information is communicated early on in their career as a rehabilitation provider.

R.S. 18 F. 2. This rule is needed and reasonable in that it further insures that at least once a year there will be a session that all rehabilitation providers must attend to be informed about trends and changes in the law that impact rehabilitation. This update session requirement protects the rights of the employees in that it further guarantees that their rehabilitation provider has attended at least yearly sessions containing vital rehabilitation information. This rule is reasonable in that annual sessions on the state of the law is clearly reasonable in light of requirements of other professions. This attendance requirement is neither burdensome or onerous to practitioners in the field given the complexity of the area and their need to have current information at all times.

R.S. 18 G.
Lines 11-14 This language is needed and reasonable because it provides introductory preface to the following specific rules set forth.

R.S. 18 G. 1. This rule is needed and reasonable because it reaffirms the obligations of the rehabilitation provider to follow all applicable laws and is reasonable in that this burden is already upon the rehabilitation providers. Therefore it is not onerous in any way, shape or form. Furthermore, it reasserts that there is no exemption from any of the applicable federal, state or local laws regulating a rehabilitation provider's business.

R.S. 18 G. 2. This entire section deals with misrepresentation by a rehabilitation provider. It prohibits any misrepresentation of a person's credentials or their duties involved in rehabilitation. It specifically is needed and reasonable in part because it will insure truth in advertising of an individual or as to a firm's skills and credentials. Also, it will insure prospective employees that false promises of benefits, employment advancement or salaries will be punished with disciplinary action. This rule is needed in that it insures a level of truthfulness involving the public and members of the rehabilitation profession. It will force those who may be tempted to occasionally misrepresent themselves to follow these rules accordingly. Furthermore, it is reasonable in that it requires nothing more than honest dealings in regard to the public, an injured employee or prospective employee.

R.S. 18 G. 3. This rule is needed in that it insures that fellow professionals, when they become aware of a violation of these rules, must refer it to Rehabilitation Services. This rule is reasonable in that the burden upon an individual rehabilitation provider is such that it is their own discretion in determining if they believe a violation has occurred. Therefore, at a later date, if an individual could be shown to have had information about a violation but did not report it, they too would be subject to discipline.

R.S. 18 G. 4. This rule is needed and reasonable because it will specifically prohibit any additional profit which could be gained by dealing with particular rehabilitation providers because of indirect money or gifts. Gifts which would be allowed are those that have a fair market value of less than \$25. This is needed and reasonable because of instances such as business meetings where one individual may

pay for the other person's lunch or gifts given at Christmas time that would be under the \$25 listed here.

R.S. 18 G. 5. This rule is needed because it prevents any surprises for the payor of rehabilitation fees. It is also needed because it mandates specific and detailed reports as to what services were rendered and the amount of time spent on the case. This is helpful in preventing any unnecessary services or overcharging for services by rehabilitation providers. It insures that the fees charged and the services listed as being performed are accurate and have been discussed in advance with the payor of fees. This is reasonable because it is similar practice to many other professions which also are required to discuss fees and report upon services rendered in a prompt and detailed fashion.

R.S. 18 G. 6. This rule is needed because it prevents any employee from being treated as a standardized case. It is wrong to standardize the rehabilitation services for an injured employee. It is essential that an employee receive services tailored uniquely to their needs in any given rehabilitation context. Without individual review and assessment, services could be rendered which are either unnecessary or redundant. It is essential that neither too many nor too little services are provided for an injured worker. This rule seeks to protect the rights of the employee by insuring that they will be evaluated on an individual basis. This rule is reasonable in that the rehabilitation provider dealing with an employee may have contractual agreements setting forth what various services will cost. However, no rehabilitation provider can assume in advance what services are needed for an employee until assessment has occurred.

R.S. 18 G. 7. This rule is specifically needed to prevent a conflict of interest which may benefit a rehabilitation provider, but will detrimentally affect the services rendered an injured worker. If a rehabilitation provider can refer business back and forth between businesses that they have ownership interest in such a referral is clearly not in the best interest of the injured worker. The entire role of the rehabilitation provider is to be objective in determining what services are

needed. Additional financial inducements as to where and to whom referrals should occur attacks the heart of rehabilitation's credibility. This rule specifically deals with the types of arrangements which can destroy the objectivity and credibility of rehabilitation in the eyes of the injured worker, the employer and the insurer.

R.S. 18 G. 8. The reason this rule is needed and reasonable is similar to the immediately preceding rule. Just as QRC's shall not have ownership interest in vendor firms, also neither should QRC's have ownership interest or split fees with health care providers as defined by the new statute. This is reasonable because it will prevent a conflict of interest between the QRC in objectively managing rehabilitation and the inducement to refer business to a health care provider. Therefore, it is reasonable in that it protects the rights of the injured worker, the employer and the insurer to avoid any conflict of interest in referrals.

R.S. 18 G. 9. This rule is needed to clarify that married couples or family members may practice in the rehabilitation or health care area. Their familial relationship shall not be construed as preventing them from being in the same profession. Nevertheless, should married couples or family members have ownership interest or split fees or incur profit in more than their own firm, they will be subject to these rules. This rule is reasonable in that an individual who happens to be married to another rehabilitation provider shall not be assumed to be incurring profit or having ownership interest in another provider purely because of the marriage or family relationship.

R.S. 19 A. 1. This rule is needed because it sets forth in more detail the role of Rehabilitation Services in supervising rehabilitation in the State of Minnesota. It is reasonable in that it is an extension of authority already given by statute as cited in the rule.

R.S. 19 A. 2. This rule is needed in that it asserts the role of the employer/insurer in monitoring paying for rehabilitation. Often employers and insurers have not been aware of the rehabilitation being provided and have objected to the fees for rehabilitation. This rule gives the responsibility for monitoring, as well as paying

for, rehabilitation to employers/insurers. If, because of their involvement in monitoring rehabilitation, they are unhappy about costs or delivery of services, they have the right to request a determination by Rehabilitation Services. This is needed because it provides an objective source to evaluate whether fees are indeed reasonable under these rules. Furthermore, the rule is reasonable in that it provides a informal manner of resolving disputes short of a lawsuit between the parties of rehabilitation. This type of dispute resolution is cheaper and more effective in the long run for participants in rehabilitation. Therefore, such a process and an assignment of responsibility is both needed and reasonable based upon the intent and direction of these rules.

R.S. 19 A. 3.

This rule is needed because it mandates that Rehabilitation Services must conduct audits of rehabilitation providers costs and services. This is needed to determine that costs and services are not being delivered in an erroneous or excessively costly manner. The remainder of the rule requires cooperation by the parties regarding costs and services and authorizes an administrative conference to resolve any differences among the parties. Again, this process is an informal dispute resolution procedure that is cheaper and more effective than litigating disputes among the parties. It is needed because it is quicker and more cost effective than litigation. It is reasonable because it involves an equal sharing of information to determine the facts of a particular case.

R.S. 19 B.
Line 7-15

This rule is needed because it delegates to the commissioner the authority to review services and fees to determine if they are reasonable and necessary. It requires that the review must include particular factors, but because of unique factors involved, it may include more than these factors in his eventual decision. This is reasonable because the commissioner, by the force of the statute, must have discretion in making eventual determinations as to what is reasonable in regard to rehabilitation services and fees. The following factors given in the succeeding rules provide a framework for determining what is reasonable and necessary in any particular rehabilitation case.

- R.S. 19 B. 1. This rule requires that the facts of a particular case, as well as the overall rehabilitation plan, are taken into consideration to determine whether the rehabilitation services were necessary.
- R.S. 19 B. 2. This rule is needed and reasonable because it addresses basically the facts of the case to be considered by the Rehabilitation Services division. It would be difficult to determine whether services and fees were appropriate if you did not have the actual amount of time and expense incurred in providing the services. That is why this rule is appropriate. It assists the person evaluating the services and fees to get the basic information regarding the case.
- R.S. 19 B. 3. Because each rehabilitation provider must file a fee schedule with Rehabilitation Services, the schedule may be used to determine if fees are charged above and beyond those in a particular case. This rule is needed because it provides a frame of reference as to what are appropriate fees for any given provider. It is reasonable because it does not provide any additional burden on the provider because the fee schedules are already on file with Rehabilitation Services. Therefore, this rule is needed and reasonable because it assists Rehabilitation Services in determining all the facts involved in a particular rehabilitation case.
- R.S. 19 B. 4. Clearly, any services which are duplications or could be obtained free elsewhere or are unnecessarily sophisticated are not reasonable or necessary services. Again, this rule is needed and reasonable because it insures that the Rehabilitation Services division obtains all the facts regarding whether or not services and fees were reasonable and necessary. By definition, a service which duplicates a previously performed service is not reasonable or necessary.
- R.S. 19 B. 5. If a service is rendered which is not expressly authorized by the party paying for rehabilitation, it is arguably not a reasonable or necessary service. Since the entire framework of rehabilitation demands cooperation among the parties, unauthorized services would arguably be unreasonable and unnecessary. This rule is needed and reasonable because it will determine if

services were offered above and beyond the rehabilitation plan without authorization by the paying parties.

R.S. 19 B. 6. This rule is another fundamental fact gathering requirement of Rehabilitation Services. It requires that the rules and the statute be reviewed to determine if they have been complied with in providing of services and fees.

R.S. 19 B.
Page 15
Line 35, 36
Page 16
Line 1-4
R.S. 19 C.
Lines 5-9

This rule is needed because it prohibits charging for fees which are unnecessary. It is reasonable because such fees by definition are inappropriate and unnecessary.

To appropriately maintain the monitoring function of Rehabilitation Services, it is essential to get information regarding employee cases. This section of the rule is needed because it sets forth the specific information which must be turned in to Rehabilitation Services. This information is needed and is specifically outlined because determining whether or not violations have occurred or exist would be impossible without this information being forwarded. It is reasonable because the information required is that which directly reflects the on-going rehabilitation process as administered by a rehabilitation provider.

R.S. 19 C. 1. This section of the rules specifically lists the evaluation reports required by the QRC which would provide summary information in the basic areas dealing with an employee's rehabilitation. This information is needed to provide a case for future evaluations by Rehabilitation Services of the case file. The information is reasonable because it is the basic information which must be obtained by any rehabilitation provider before delivering services.

R.S. 19 C. 2. This rule is needed because it requires QRC's to provide progress reports in brief summary fashion when necessary. This is reasonable because the requirement is not burdensome. Also, such reports need to be forwarded to other parties. Finally, there is a minimal amount of time spent preparing the reports because they are so brief.

R.S. 19 C. 3.

The QRC is charged with coordinating and submitting all reports developed in relation to these progress reports mentioned above. This rule specifically requires such reports be sent in addition to the QRC reports regarding an employee's case. This is needed for Rehabilitation Services to have the full view of an employee's case. It is reasonable because these reports are already generated and are required to be sent to the QRC. For administrative convenience, the QRC has access to all these reports at any time during the case.

R.S. 19 C. 4.

If parties other than a registered vendor prepares a report on request of the QRC, such report shall also be forwarded to Rehabilitation Services as outlined in this rule. This is needed so that the entire range of reports generated on any particular case are provided to Rehabilitation Services. This is reasonable because such reports are in the possession of the QRC and make up part of the case file for purposes of evaluation. Furthermore, if a report is not required by Rehabilitation Services, yet one of the parties wants it created, that party requesting the report must pay for it. This rule is needed so that additional reports which go beyond the bounds of rehabilitation are not additionally required of QRC's, increasing the cost of the rehabilitation process. This rule is reasonable because discretionary reports costs should not be borne by the insurance company or employer if they do not want it and it is not required.

R.S. 19 D.

This rule sets forth the need for the QRC setting the goal date and estimated cost for a rehabilitation plan. This rule is needed because it provides parameters on the cost and timing of any particular rehabilitation plan. It will assist in reducing rehabilitation costs by making the rehabilitation provider justify any costs or services which go beyond the original goal date and costs. This rule provides additional accountability to the rehabilitation providers when they later on provide additional services above and beyond their additional estimates. This is a reasonable request because it also relates to getting additional authorization for providing such services. If such review is not approved by one of the parties, a review of the additional

costs and time required for rehabilitation may be conducted by Rehabilitation Services.

R.S. 19 E.

This rule is for bookkeeping purposes and provides additional facts for purposes of review of a case file. The invoices are needed because they reflect the exact costs. Requiring invoices is reasonable because determining whether services are necessary is not possible unless actual services delivered can be evaluated.

R.S. 19 F.

This rule specifically sets forth types of services which shall not be considered reasonable or necessary unless express consent has been gained by the employer/insurer for offering such services. This listing serves as a guide for all those involved in rehabilitation to determine what is not considered appropriate activities to be charged to the employer/insurer in the rehabilitation process. This also provides a guideline for Rehabilitation Services in determining whether or not services are reasonable and necessary.

R.S. 19 F. 1.

If the rehabilitation provider accompanies the injured worker to the physician or deals with the physician above and beyond those contacts necessary to implement the plan, such visits and calls are unnecessary. This rule is needed because it specifically deals with a service that can be charged for which drives up the cost of rehabilitation. The rule is reasonable because it specifically separates those services rendered in relation to the plan and those which are not. Therefore, if a rehabilitation provider is assisting the employee towards rehabilitation and accompanys the employee to the physician, such costs are reasonable and necessary.

R.S. 19 F. 2.

This rule is needed because it limits the sort of follow-up that can occur by a rehabilitation provider regarding a prospective employer. It is needed because it prevents duplication from having more than one individual involved in job placement at any given time. It is reasonable because such duplication is often unproductive and ends up in creating additional costs for the rehabilitation process.

This rule is needed because it prevents rehabilitation providers from contacting as a

matter of routine each and every employer after an employee has had any contact with a prospective employer. This is not a necessary and productive activity in the majority of employees' job search. In certain cases, this activity may be necessary and productive. For example, it may be important to determine the employee's interviewing skills by discussing such with an employer/interviewer or to ascertain an employee is actually making the employer contacts indicated. This rule does not prevent this but requires a QRC to obtain the insurer's approval.

R.S. 19 F. 3. This rule is needed because general informational questions related to the rules and regulations dealing with rehabilitation should not incur costs to any particular client involved in rehabilitation. Specifically, a rehabilitation provider should not have to have a client pay for their individual education regarding specific rules and regulations of the Department of Labor and Industry. This rule is reasonable because such costs are clearly unnecessary and should not be borne by an injured worker or the insurer/employer.

R.S. 19 F. 4. In attempting to implement parts of the plan, a rehabilitation provider shall not consider attempted phone calls when they are not answered as billable time. Specifically, there is no way to document whether or not such calls took place and therefore it is needed to have such a regulation. Secondly, it is reasonable to not allow such calls to be billed because no actual work toward furthering the plan occurs during such time. Such services can clearly be considered unnecessary.

R.S. 19 F. 5. This rule specifically separates reports which are required under the rules R.S. 18 C. and all other reports. Reports which go beyond the required ones may not be billed to the employer/insurer. This is needed so that superfluous reports do not end up escalating the costs of rehabilitation. There is also a party provision earlier in the rule that if another party requests a specific report not required by the rules, that the requesting party bear the costs of such a report. This rule is reasonable because it prevents additional costs from being

borne by the employer/insurer when such reports cannot be justified as being necessary.

R.S. 19 F. 6.

This rule is needed because QRC's should not continue to bill for services rendered when a vendor is dealing with the specific problem of an injured worker. Except for required reports or specific problems, such billing should not occur. It is needed because in some instances a QRC could bill just because the injured worker is still their client, although they are not actively working on the file. This requirement is reasonable. It basically states that the QRC shall not bill for time that they do not spend on the case.

R.S. 19 F. 7.

This rule is needed because if one QRC is assigned to an employee, the employer/insurer should not have to pay for additional supervisory personnel or observers to accompany that QRC to an administrative conference. This rule also relates to not having more than one QRC providing services on a case at any one time. It is needed to prevent overcharging and duplication of services to the employer/insurer. It is reasonable in that it is not necessary for more than the QRC assigned to the case to accompany an employee to an administrative conference.

R.S. 19 F. 8.

This rule is needed because it prevents charges billed prior to the time an individual is eligible for rehabilitation. It is reasonable because such charges would be speculative and unnecessary since the individual is not truly entitled to rehabilitation until such a determination has been made.

R.S. 19 F. 9.

This rule is needed because it prevents duplication of services and overcharging when a case is transferred from one rehabilitation provider to another within the same firm. It is reasonable because such time spent ends up creating a double charge to the employer/insurer and is an unnecessary service and fee.

R.S. 19 F. 10.

This rule is needed because it prevents the duplication of charges when one QRC is already assigned to a case. It prevents additional billable hours from being added by an individual in either supervisory, or support staff function to the QRC of record. This is reasonable because

it protects the employer/insurer from having to pay for more than one QRC services at any given time on a case.

R.S. 19 F. 11. This rule is needed because job placement activities can often be stretched out without any progress. This rule requires a review to occur after 90 days if such job placement efforts are to continue. This is needed so that job placement activities do not extend indefinitely. It is reasonable because after 90 days, such a review will determine whether or not the job placement efforts are in the correct direction. Therefore, this rule protects the employer/insurer and employee from unnecessary or misdirected activities by the rehabilitation provider.

R.S. 19 F. 12. Time spent by the rehabilitation provider before an actual appointment should not be billed to the employer/insurer. This is needed because an individual could wait an entire day for an appointment to see a doctor and attempt to bill that time to the employer/insurer. This is a reasonable rule because it deals basically with restricting the billable hours to the time actually spent dealing with the injured worker's problem.

R.S. 19 F. 13 This rule is needed because it prevents again more than one QRC serving on a case at any given time. It has a definite beginning and an end to the time a QRC can bill for a case. This is needed to prevent overcharging or duplicate charging on a case. It is reasonable because such services should not be rendered on a case.

R.S. 19 F. 14 It is clear that this rule is needed so that duplication does not occur in offering services. It is reasonable in that these services are clearly unnecessary and unreasonable based upon the rules set forth above.

R.S. 19 F. 15. This rule is needed because it keeps a limit on what can be charged by a rehabilitation provider for rehabilitation services on a given case. It maintains the same fee for that of rehabilitation as it does for testimony at a hearing. This is appropriate so that the time spent at the hearing does not end up being more important than the time spent on rehabilitation.

R.S. 19 F. 16. This rule is needed to prevent additional travel costs above and beyond those for initial meetings or dealings with interested parties to be billed to the employer/insurer.

R.S. 19 F. 17. If a fee is disputed, it is clearly needed that such a service or fee not be billed to a party. The appropriate procedure is that an administrative conference can be called to resolve the dispute. Therefore, any disputed service for fee must have express permission before it can be billed to one of the parties.

Small Business Considerations in Rulemaking

According to Minnesota Laws 1983, Chapter 188, Section 1, all rulemaking commenced after August 1, 1983 must consider the impact of the proposed rules on small business. The Department of Labor and Industry has considered all the various methods set forth in Minnesota Laws 1983, Chapter 188, Section 1, Subd. 2 to reduce the impact of this rule on small business.

The agency determined that it was not possible to reduce or lessen the compliance or reporting requirements for small business. It would be contrary to the basic statutory objectives of the authorizing legislation to use any of the methods suggested to reduce the impact of these rules on small businesses. Therefore, because the persons and businesses are all classified as small businesses, it is not feasible to use any of the methods set forth in Minnesota Laws 1983, Chapter 188, Section 1, Subd. 2 without frustrating the legislative authority for the rules.

DEPARTMENT OF LABOR AND INDUSTRY
Workers' Compensation Rehabilitation Services

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES OF THE STATE
WORKERS' COMPENSATION REHABILITATION
SERVICES GOVERNING QUALIFIED
REHABILITATION CONSULTANTS AND
REHABILITATION VENDORS.

STATEMENT OF NEED
AND REASONABLENESS
OF THE AMENDMENTS TO
THE PROPOSED RULES

Subsequent to publication on August 22, 1983 of the notice of a public hearing scheduled for Friday, September 23, 1983, on the above-entitled rules, several written comments on the proposed rules were received by the Commissioner. In light of these comments, amendments were made to the proposed rules for purposes of clarification and specificity. The amendments should be read together with the proposed rules as published in the State Register, copies of which are available at the September 23rd hearing.

1. R.S. 14 B.

The word "Substantiated" has been added to make it clear that denial of registration as a qualified rehabilitation consultant cannot be grounded on pending or trivial complaints.

The words "policies and procedures" were deleted because it was deemed unreasonable to ground a denial of registration on violations of policies and procedures not enacted by law or validly promulgated by rule.

2. R.S. 15 A. 1.

Deletion of the parentheses around the word "notarized" and the new language is for style and grammatical purposes only.

3. R.S. 15 A. 7.

Provisional acceptance predicated upon completion of an introductory training session was included to prevent the possibility that an otherwise qualified applicant would be prevented from practicing under the act until the Division held an introductory training session.

4. R.S. 15 D.

This sentence was added in order to cross-reference the applicable appeal provision and to confirm the applicability of an automatic revocation.

5. R.S. 15 E. 1.

The word "alleged" is substituted for the word "apparent" to clarify the fact that a violation is not a proven fact at this stage in the process.

The words "notify in writing" were substituted for "write" to clarify the nature of the communication from the commissioner to the qualified rehabilitation consultant or vendor.

6. R.S. 15 E.
1. d.

The word "prohibition" is added to clarify the range of discipline.

7. R.S. 15 E. 1.

The last sentence of the section was amended because it was deemed more reasonable to limit the process of referring violations to the review panel by means of a time restriction. A five-year period relieves an individual of the possibility of panel review on an old violation while it allows the Department to maintain high standards for the profession. The amendment is less restrictive than the rule as originally proposed.

The word "alleged" was substituted for the word "apparent" to clarify that the allegation of a third violation is sufficient to trigger panel review.

The final substitution in this section makes it clear that the next step in the process is a hearing. The amendment prevents confusion over what an individual or firm might expect by way of discipline after acquiring a record of two violations.

8. R.S. 15 E. 3.

Again, for consistency and clarity, the word "alleged" is substituted for "apparent" in reference to the word "violation." See R.S. 15 E. 1. above.

9. R.S. 15 E. 4.

The addition confirms the scope of the panel's discretion, but is primarily for stylistic purposes.

10. R.S. 15 E. 4. a. "Alleged" is substituted for "apparent" for the reason articulated in reference to R.S. 15 E. 1 and R.S. 15 E. 3. above.

The last portion of the sentence was deleted because it was self-evident.

11. R.S. 15 E. 4. d. The second portion of this sentence was deleted as redundant. The panel possesses the power to revoke under R.S. 15 E. 4. e.

12. R.S. 18 C. 2. The references to "R-2" and "R-3" are deleted as a stylistic matter.

The last sentence is added in response to comments submitted to the Department requesting confirmation on the point that R.S. 18 C. 2. does not apply to the reinsurance association.

13. R.S. 18 C. 4. The amendment clarifies the time allotted a qualified rehabilitation consultant to transfer a file to a new qualified rehabilitation consultant.

14. R.S. 18 C. 8. The additions are provided to aid a qualified rehabilitation consultant in interpreting the prohibitions of the rule. The last sentence is added to parallel the clarification of R.S. 18 C. 2.

15. R.S. 18 D. 2. The words "policy, procedure" are deleted to parallel the deletion in R.S. 14 B. The statutory reference is made as a matter of specificity and style.

16. R.S. 18 D. 9. The last sentence is deleted as redundant in view of the prohibition of R.S. 18 C. 8.

17. R.S. 18 D. 10. The amendments to the first sentence are made to clarify the intent that the rule applies only to the assigned qualified rehabilitation consultant.

The last sentence is added to parallel the clarification of R.S. 18 C. 2.

18. R.S. 18 E. 1. The amendments to the rule are made as a stylistic matter and to clarify the requirements of the rule.

19. R.S. 18 E. 2. The deletion is made to parallel the deletions of R.S. 14 B. and R.S. 18 D. 2.
20. R.S. 18 E. 3. "Shall" is amended to "may" to avert the possible interpretation that all issues or problems must be clarified with rehabilitation services.
21. R.S. 18 E. 4. The deletion is made to parallel the deletions of R.S. 14 B., R.S. 18 D. 2. and R.S. 18 E. 2.
22. R.S. 18 F. 1. The amendment is made as a matter of style.
23. R.S. 18 G. 2. The last sentence is deleted as beyond the jurisdiction of the Act.
24. R.S. 18 G. 3. The amendment makes the rule more specific and clarifies that the rehabilitation provider must have actual personal knowledge of a violation before the rule applies.
25. R.S. 18 G. 8. The amendment is made as a stylistic matter to clarify the prohibition of the rule.
26. R.S. 19 B. The deletion is made to parallel the deletions of R.S. 14 B., R.S. 18 D. 2., R.S. 18 E. 2. and R.S. 18 E. 4.
27. R.S. 19 C. The amendment to the first sentence is made to parallel the clarification of R.S. 18 D. 10.

The second sentence is added to parallel the clarifications of R.S. 18 C. 2. and R.S. 18 D. 10.
28. R.S. 19 C. 1. d. The amendment is made as a stylistic matter.
29. R.S. 19 D. The fifth sentence is amended to clarify the circumstances under which a party may request a review by rehabilitation services.
30. R.S. 19 F. 1. The amendment is made as a stylistic matter.
31. R.S. 19 F. 3. The addition is made to parallel the prohibitions of the entire section and to clarify the intent of the section.

32. R.S. 19 F. 5. The amendment clarifies the intent
of the prohibitions of the section.
33. R.S. 19 F. 7. The amendment clarifies the intent
of the prohibitions of the section.
34. R.S. 19 F. 10. The addition parallels the clarification
of R.S. 18 D. 10. and R.S. 19C.
35. R.S. 19 F. 12. The amendment clarifies the intent
of the prohibitions of the section.