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STATE OF MINNESOTA
BOARD OF OPTOMETRY

DRAFT #3

STATEMENT OF NEED AND REASONABLENESS

The Minnesota Board of Optometry is attempting to promugate four rules through the non-controversial process. These four rules relate to continuing education, examination standards, reciprocity requirements and changes in the individual license renewal. Under the non-controversial process, no public hearing would be necessary, if during the thirty days following publication of rules fewer than seven objections were received, the rule would become law.

INTRODUCTION

This statement is submitted and would be duly filed by the Minnesota Board of Optometric Examiners (hereinafter cited as "Board") in accordance with Minn. Stat. 14.23 and 9 MCAR 2.104 and 2.105. Its purpose is to present justification for the Board's adoption of the above subject rule provisions. Included are citations to the Board's pertinent rulemaking authority, statements respecting the underlying need for the provisions, and a section-by-section presentations of the Board's supporting rationale.

I. CONTINUING EDUCATION

A. NEED

The Board's adoption of a rule change regarding continuing education is necessary to implement 6500.0900 to 16500.1700. Further, as it is set forth in greater detail below, the adoption of the particular provisions are considered necessary at this time to update existing mandatory continuing optometric education require-

ments. Moreover, it is the position of the Board that it is obligated to the consumer of optometric health care services to seek and insure the competence of optometrists in this State and that mandated continuing education is an appropriate and reasonable means of achieving this end.

B. SUPPORTING RATIONALE

In considering the requirements to be imposed by this rule, the Board was concerned with the following points:

1. To deliberate the previously referred need to protect the health and welfare of the citizens of the State of Minnesota by insuring that optometrists practicing in this State are qualified not only by initial licensure but that they also maintain their competence by continuing education.
2. To insure that continuing optometric education programs are of satisfactory quality to provide significant learning experience.
3. To provide programs which are cost effective to the provider of optometric services and to avoid adopting a rule which could be counterproductive because its requirements are too demanding.

Specifically, the Board's justification for the promulgation of this proposed rule change 6500.0900 to 6500.1700 is as follows:

1. There now exists a Board rule relative to required continuing education. At present, it addresses twelve hours of continuing education each year. Continuing education is being directed to more in depth study programs, constituting a more meaningful learning experience to the professional. This can result in a greater benefit

to the public. To achieve this end, it is proposed that the portion of 6500.0900 to be amended by changing:

- a. That the optometrist attend, within a three year period, courses totaling at least 45 clock hours of continuing education.

The change from the compliance of 12 clock hours annually of continuing education to 45 clock hours over a three year period would expand the number of hours required for license renewal. The Board feels the expansion of continuing education hours is necessary and consistent with the rapidly changing technology in the profession of optometry. The Board also feels that the practitioner could participate in programs of longer duration which would not add to the inconvenience or expense to the practitioner. Many programs of continuing education exceed the presently required 12 hours for annual license renewal. Therefore, expanding the requirements to 45 clock hours within a three year period would provide the practitioner the opportunity to accumulate more hours of specific continuing education programs.

- b. It is proposed that compliance period begin in January and encompass three calendar years, concluding on December 31 of the third year. This change in the compliance period would provide the practitioner sufficient flexibility of time. It is reasonable to assume that the practitioner

would participate in programs of greater educational depth. This educational experience could result in better health care services to the public.

Additionally, the Board is responsible for the enforcement of optometric standards in this State. The Board is acutely aware of these responsibilities and believe the public would benefit by the proposed rule change to continuing education. Changing philosophies by the schools and colleges of optometry suggest the increasing need for ongoing education in areas such as glaucoma detection, low vision, contact lenses and the diagnosis of visual problems which impede the learning abilities of many children.

The 45 hour figure over a three year compliance period was determined based on the following factor; examination of continuing education requirements of other states indicate that a 45 hour figure over a three year compliance period would fall approximately within the middle to upper range of course hour requirements nationwide.

Although there is question whether optometric continuing education can demonstrate that competence has been maintained or improved, it is the Board's view that more likely than not such continuing education requirement does enhance the quality of service and prevent the erosion of the practitioner's skills. The proposed change is consistent with the requirements mandated by most of the State's health related licensing boards. The State Legislature has clearly registered its belief in the necessity of required health care

related continuing education by the passage of Minnesota Statutes 148. (1972).

C. CREDIT HOURS 6500.1500

Not more than six hours of office management or administration shall be allowed in each three year compliance period. It is the Board's view that this area of continuing education does not contribute as significantly to the enhancement of the professional's knowledge and, therefore, does not have the same benefit to the public as courses that relate to the clinical practice of optometry.

Not more than nine hours of home study courses shall be allowed in each compliance period. Various optometric educational institutions are presenting high quality programs which are relevant to the optometric practitioner. Most programs of home study have a testing mechanism which helps assess the benefits and helps determine the competence of the licensee. The Board would utilize the same program approval criteria as set forth in 6500.1100. It is also necessary to assess the cost effectiveness of programs of continuing education to the practitioner. Half of the optometrists of this State are required to travel in excess of 50 miles to acquire the necessary number of clock hours of continuing education for license renewal each year. If the practitioner could participate in programs of home study, it would result in considerable saving to the optometrist.

D. APPROVED PROGRAMS 6500.1100

This section authorizes advance approval of continuing education programs presented by various organizations. The specified organizations mentioned in this rule have been granted advance approval of continuing education programs since the passage of the law requiring continuing education was passed by the Minnesota State Legislature. The specific organizations names in the part of the rule were selected on the basis of continued maintenance of specific standards. It is also recognized that other organizations presenting programs, in addition to those mentioned in the rule, are granted approval when the same criteria has been met. In the past, such programs have been typically new, only infrequently scheduled, and less well known to the Board. However, in more recent years, the number of programs presented by other organizations other than those mentioned in the rule, have presented programs of significant educational value and have consistently met the standards for approval as set forth by the Board. Programs of continuing education presented by organizations other than those identified in the rules far outnumber those organizations with advance approval.

Therefore, it would be prudent to authorize advance approval of continuing education to other organizations who consistently meet the criteria as set forth by the Board.

Since the programs approved for continuing education number some 60 or more in each compliance period, it may be totally impractical to include each organization in the rule. Therefore, it is proposed that all organizations with authorized advance approval for programs of continuing education be deleted from the rule. The Board would

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therefore require all organizations to apply for evaluation of continuing education programs.

The proposed change in rule 6500.1100, deletion of all organizations, would not constitute a significant additional work load to the Executive Secretary of the Board.

It is the view of the Board that the proposed change is justified and equitable and would not remove the essential purpose of continuing education; namely, the provision of reasonable assurance to the public that the practitioner's skill and knowledge are at least being maintained.

II. RECIPROCITY 6500.2100

The purpose of this proposed rule change is to impart meaning to the boundaries of competence of an applicant seeking to acquire a license by reciprocity to practice optometry in the State of Minnesota. In order to determine some objective measure of competence, it is reasonable that areas of competence should be defined. It is possible to define competency through education, training or experience. These factors are often used to determine if the applicant qualifies. To maintain standards of competency necessary to assure the licensee has proficiency to practice optometry in the State of Minnesota, the Board has set forth specific requirements to determine whether an applicant qualifies for licensure by reciprocity. The Board, in its judgement, does not feel these standards are unreasonable or too stringent. The specified requirements are in essence equal to what is required to acquire and retain a license to practice optometry in the State of Minnesota.

The rule is necessary to clarify and give express notice of requirement to attain a license of reciprocity in the State of Minnesota. It would cover certain currently undefined terms used in the Optometric Practice Act 148.57, Subd. 2.

This rule would determine whether an applicant for licensure by reciprocity shall be required to pass a clinical practical demonstration. The term "good cause" under Minn. Stat. 148.57, Subd. 2, would mean that the applicant:

1. Would have practiced his professional skills three years immediately preceding his application for licensure by reciprocity. This section is needed

to assure the public that the practitioner has maintained his skills by practicing his profession consistently without a lapse in time.

2. Has maintained an equivalent of continuing education required by rule 6500.0900 as other currently licensed optometrists. There is need that he comply with this requirement since continuing education measures a level of competence. It is only reasonable to define continuing education in terms of proficiency gained through education as a factor used to determine whether an applicant meets the requirements for licensure.
3. That an applicant by reciprocity does not suffer from a physical or mental condition which could affect his fitness to practice. There is need to evaluate the fitness of the applicant to determine his ability to provide appropriate health care services to the citizens of the State of Minnesota.
4. That an applicant has previously been denied a license to practice in the State of Minnesota because the applicant did not meet the statutory requirements as set forth by the Board under Minn. Stat. 148.57, Subd. 1 and 2. If applicant has failed to maintain his license, it is reasonable to assume that applicant does not anticipate practicing in this State, since every licensee is given adequate notice for renewal of license.

5. Has demonstrated violations in the respective state where he now retains a license to practice. It is reasonable to assume that the people of the State of Minnesota would not be well served by a practitioner who has violated the statutes of his respective state.
6. Committed a crime reasonably related to the practice of optometry, which could constitute a lack of moral character. There is need to determine the seriousness of the crime which could be reasonable grounds to deny the applicant licensure in the State of Minnesota.

Equivalency of state requirements.

In accordance with Minnesota Statutes, section 148.57, subd. 2, another state's licensure requirements shall be deemed to be equivalent to Minnesota's if the state requires that each applicant:

- A. be of good moral character;
- B. be a graduate of an optometry school which requires at least two academic years of pre-professional training for admittance and which is approved by the Board;
- C. pass a practical clinical demonstration which thoroughly tests the applicant's fitness to practice; and
- D. pass the written competence examination required of new licensees under Minn. Stat. 148.57, subd. 1. This item applies only to licensure granted in the other state after July 31, 1973.

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The purpose of this section of the proposed rule change, licensees by reciprocity, would exempt the applicant from meeting the equivalency of Minn. Stat. 148.57, subd. 2, pertaining to the satisfactory passage of the National Board of Examiners in Optometry. This would apply only if the applicant has completed their educational process prior to July 31, 1983.

This waiver is reasonable since prior to July 31, 1983, passage of the National Board of Examiners in Optometry examination was not a prerequisite for applicants taking the Minnesota Board of Optometry examination.

Use of Topical Ocular Drugs

Subject to the provisions of section 148.57, subd. 3 and 148.574, any applicant by reciprocity desiring to use topical ocular drugs in the State of Minnesota would be required to meet all the prerequisite ~~for~~ drug usage as set forth under 148.573, subd. 1. Should the applicant comply with Minn. Stat. 148.573, subd. 2, having graduated from an accredited school of optometry within two years prior to August 2, 1982, and completed a satisfactory course in pharmacology, he would meet that portion of the requirement. It is therefore reasonable to require the applicant for licensure by reciprocity to meet all of the above requirements to demonstrate his competence to use topical ocular drugs as a safeguard to the public.

Reciprocity Fee

The fee change this rule presents relates to an equalization of fee between the applicant by examination and the applicant by

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reciprocity. The time and cost of processing applicants by examination or reciprocity is essentially the same. Therefore, it is reasonable that the fee charged all applicants be fair and equitable. This proposed fee change would not represent an appreciable financial loss to the Board.

III. INDIVIDUAL ANNUAL LICENSE RENEWAL 6500.2000

It is the position of the Board that the existing rules require updating. Thus, the proposed rule change would merely represent a revision and repeal of the existing Board rule 6500.2000. This would delete several unnecessary clauses pertaining to license renewal, deleting most of paragraph of subpart 1, except the first sentence which specifies the annual renewal date and the license renewal fee. The deletion would no longer be applicable. Since the compliance date for continuing education is proposed to be changed from March 31 of each year to January 1 of each year, it is only reasonable that consistency should prevail and therefore annual license renewal should also occur on or before January 1 of each year. The executive secretary would assume the responsibility for notification of licensees at least 90 days prior to January 1 of each respective year.

IV. CLINICAL PRACTICAL DEMONSTRATION 6500.2300

The proposed change in licensing, Minnesota Statutes §148.57 states the requirements for licensure, but does not specify the subject matter nor does it state the criteria for passing the Board's examination. The Board feels this should be clearly defined to the applicant seeking licensure by examination or reciprocity. The proposed change in examination under Minn. Stat. 148.57, subd. 1, Examination, is fully in compliance with Minn. Stat. 148.47, which states the requirements for licensure in the State of Minnesota. In regards to the practical clinical demonstration, the Board prepares, administers and grades the demonstration presented to the candidate. The proposed change would give notice to the applicants of standards and establish consistency and avoid arbitrary action by the Board. This change would identify the areas in which the candidate would be tested. Most of the provisions are a restatement of existing explicit requirements. The board may prepare, administer and grade the examination itself or may recognize and approve in whole or in part a similar examination prepared, administered and graded by the National Board of Examiners in Optometry or may administer a recognized and approved examination prepared and graded by or under the direction of the National Board of Examiners in Optometry. The proposed change in 6500.2300, clinical practical demonstration, would identify the areas in which the candidate would be tested. In addition, the limits placed on the number of sections to be tested provides the applicant and clear and precise understanding of requirements as set forth by the Board. It is reasonable to assume this change in procedure would thoroughly evaluate the

the candidate's competency since each section would be equally weighted in value. In fact, the rationale for education requirements for licensure in the law is assurance that a person engaging in the practice of his or her profession is competent to do so. It is reasonable to require the applicant for licensure to achieve a minimum passing score on the total of all sections of the examination.. Also, it is reasonable to assume that the applicant who has not demonstrated competence should therefore be required to repeat the entire examination. At the time the applicant applies to the Board for examination, he or she would be so informed of the passing score to be achieved. Also, the applicant would be informed of what constitutes failure of the examination. At the conclusion and evaluation of the examining process, the candidate for licensure would be provided a report with grade scores on the result of the examination.

Clinical Practical Demonstration - Score

A score of less than 75% on the total number of section points would constitute failure of the entire clinical practical demonstration. The score of 75% on the clinical practical demonstration would be equally weighted as the written examination presented by the National Board of Examiners in Optometry.

This statement is reasonable because it provides some guarantee that the applicant for licensure has shown proficiency in all requirements as set forth by the Board.

V. JURISPRUDENCE TEST 6500.2400

A test on jurisprudence shall be given and must be passed by a grade of 65% or better. The Board feels this is an important element of the evaluation of the candidate seeking licensure in the State of Minnesota, since this test would determine how well the applicant understands his responsibility as a health care provider in this State.

Since a candidate can acquire a passing score of 65% on a single section of the clinical practical demonstration and pass the demonstration, it is, therefore, reasonable that consistency should prevail in all sections of the applicant's evaluation to attain a license to practice in the State of Minnesota.