

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA BOARD OF UNLICENSED
MENTAL HEALTH SERVICE
PROVIDERS

In the Matter of the Proposed
Adoption of Rules Relating to
the Requirement of Filing of
Unlicensed Mental Health
Service Providers

STATEMENT OF NEED AND
REASONABLENESS

I. Introduction

The Minnesota Board of Unlicensed Mental Health Service Providers (Board) is proposing rules relating to the filing of unlicensed mental health service providers, (Minnesota Rules pt. 9050.0050 to 9050.0190 [1989]).

Minnesota Statutes 148B.40 - 148B.47 established the Minnesota Board of Unlicensed Mental Health Service Providers. The Legislature required that mental health service providers file with the Board and authorized the Board to "adopt rules necessary to implement, administer or enforce sections 148B.40 to 148B.47 under chapter 14 and section 214.001, subdivisions 2 and 3." (Minn. Stat. 148B.41, Subd. 4 [1988])

The Board is hereby in compliance with the direction of the Legislature and under the authority of statute proposing such rules as necessary to implement, administer and enforce the law pursuant to the requirement of filing, procedures for filing, acknowledgement of filing, and other matters relating to filing.

II. Small Business Considerations

Minn. Stat. section 14.115 requires administrative agencies, when proposing a rule or an amendment to an existing rule, to consider various methods for reducing the impact of the proposed rule or amendment on small businesses and to provide opportunity for small businesses to participate in the rulemaking process. It is the Board's position that the rules will not affect small businesses.

The rules will establish filing procedures for unlicensed mental health service providers; define "mental health services"; and give examples of providers who are required to file with the Board under M.S. 148B.40 to 148B.47. The filing is for individual providers, and not businesses. The filing authorizes providers to perform various professional mental health services independent of whether or not the services are performed as part of a small business.

However, should the rules in some way be construed as affecting small business, the Board reviewed the suggested methods for reducing the impact of the rules on small businesses and noted that those methods basically relate to compliance and reporting requirements and performance standards. The proposed rules do not address these matters but instead define terms, clarify ambiguities in the law, and establish procedures for filing. Furthermore, reducing the impact of the rules on small businesses would be contrary to the statutory objectives that are the basis for requiring the Board to register mental health

service providers and to enforce a statutory code of conduct. See Minn. Stat. sections 148B.42 and 148B.44. It would also result in placing a greater burden on those persons not considered "small businesses" when the work of the board applies equally to all filers without regard to their small business classification. Such a distinction, if reflected in renewal fees, would be without justification.

Filers, regardless of whether they are considered as individuals or small businesses, will have an opportunity to participate in the rulemaking process. A notice of the proposed rulemaking will be mailed to all individuals and organizations who have given notice to the Board of their wish to receive notice of proposed rulemaking.

III. Need and Reasonableness: General Statement

The Legislature has established by statute a framework for regulation and supervision of various professional and occupational fields of endeavor including those within the health and mental health care professions. In Minn. Stat. 148B.01 to 148B.48 (1988) a particular scheme for the regulation of social workers, marriage and family therapists and unlicensed mental health service providers was enacted. This program provided for the licensing of social workers and marriage and family therapists. The Legislature also found a need to recognize that there were a number of service providers who would not be classified as social workers or as marriage and family therapists under the new licensing boards and would not properly be subject

to the regulation or overview of pre-existing boards or agencies such as the Minnesota Board of Psychology. These service providers were subject to a requirement of filing which would not be as stringent as, nor as involved as, a requirement for licensing under the boards of social work or marriage and family therapy.

Where the Board of Social Work would license social workers (Minn. Stat. 148B.210 [1988]) and the Board of Marriage and Family Therapy would license those who provided marriage and family therapy (Minn. Stat. 148B.31 [1988]), the Board of Unlicensed Mental Health Service Providers would provide for the filing of such unlicensed service providers who were not otherwise subject to license or regulation.

The Board, having been duly appointed and organized under Minn Stat. 148B.40 - 148B.47 and having adopted emergency or temporary rules, now proposes such permanent rules as it has determined to be necessary to fulfill the direction of the Legislature.

IV. Need and Reasonableness: Specific Provisions

Part 9050.00500 is necessary to relate the purpose filled by the following proposed rules.

Part 9050.0100 proposes those definitions which are necessary to understand the proposed rules and to establish an intellectual consistency of thought and application for further actions under the rules. Subpart 2 "Applicant" and Subpart 3 "Board" are self-explanatory and stand without need for further

rationale.

Subpart 4 "Mental Health Services" relates to the Board's understanding of what fields of endeavor are comprised in the scope of the Board's filing and regulatory authority. The definition is subsumed within the definition provided by statute but delineated further so as to better guide the Board and its staff in its regulatory efforts and provide sufficient notice to providers.

The proposed definition of "Mental Health Services" is fully consistent with the definitions found in Minn. Stat. 148B.40, Subd. 4 which itself follows the standard definition of psychotherapy found in The International Encyclopedia of Psychology, and Psychoanalysis and the definition of psychotherapy used by Benjamin Wolman in the Dictionary of Behavioral Science.

The Board holds that the definition reasonably defines the field and clarifies as to whom is subject to the rules.

Subpart 5 "Provider" is further clarified from the definition by Statutes (148B.40, Subd. 3) so as to identify which specific occupations are mental health service providers and it is necessary to distinguish these providers from those engaged in voluntary helpful expressions of caregiving or befriending. The clarifications in definition were arrived at after two informal hearings before the Board, and represent a reasonable way of delineating who is required to file as a mental health service provider under the intent of the law which is to register and

regulate providers who are not otherwise licensed (see 148B.40, Subd. 3 and 148B.42, Subd. 1).

Subpart 6 "Remuneration" elaborates on these definitions by clarifying what is intended by payment or fee. It is designed to avoid the various "loopholes" which might be occasioned by a loose or careless understanding of what is encompassed by the term "remuneration".

Part 9050.0110 is necessary to explicate what is required to effect a filing under the law. Providers subject to filing need a clear statement of the requirement and the Board needs an expression of policy to guide future efforts. The part simply states who must file, who is excluded from filing and the consequences of failure to file. It is a reasonable approach to the statutory requirement and may be the only approach possible.

Part 9050.0120 details the specific procedures involved in the filing. If this is not provided, potential filing applicants would not have an understanding of what needed to be done in order to be in compliance with the law.

The Legislature in Minn. Stat. 148B.42 identified what information will be required of filing applicants and the Board in its proposed rules only provides a necessary explication so as to render compliance easier. Where the statute has stated what is required, the Board here states how that requirement may be met. This part is pro forma and provides a reasonable method to effect the statutory requirements.

The Board delineates the statutory requirements by stating

that applicants have an obligation to keep such information current. It is reasonable to make this requirement since the alternative may jeopardize the entire scheme of public protection and public disclosure of regulation as envisioned by the Legislature, by required reporting of such matters as malpractice; violation of law; and of inability to practice safely as a result of mental illness, habitual use of drugs or other factors likely to endanger public safety.

Part 9050.0130 reiterates what is already provided by statute in Minn. Stat. 148B.42, Subd. 2. Reiteration is necessary so as to provide a comprehensive statement of regulatory requirements to potential filing applicants.

Part 9050.0140 provides for an explanation of those conditions under which a filing would be denied. Since the mandate of the Legislature provides for filing and prescribes what is accomplished in a filing, it is inherent within this framework for the Board to state when a filing would be denied. Essential to a proper filing is adequate and truthful recording of information and to that extent a failure to report required information would invalidate a filing. Such a provision is a reasonable concomitant of the filing obligation.

Part 9050.0150 limits the effective term of the filing to one year. This is consistent with the approach taken by other professional and occupational regulatory boards and is necessary to assure the Board and the public that information remains current and may be relied upon for accuracy.

Part 9050.0160 indicates the proper procedure for the renewal of filing. The practice of mental health services is expected to involve providers in an on-going activity which occasions the need to continually inform the regulatory board as to the status of practice and conformance with statutory requirements. The enabling statute expressly directs the Board to adopt rules governing renewals at Minn. Stat. 148B.41 [1987].

It is necessary to prescribe those procedures which a filer will use to maintain the filing and the recognized status under the Board's jurisdiction. It is reasonable to require that filers follow the prescribed procedure and no other procedure presents itself as a less burdensome method to effect the Board's renewal of filing.

As a matter of fairness to all filers, it is reasonable to offer a prorated reduction in fees upon renewal for providers who filed prior to 12/5/89. It was originally interpreted that the deadline for filing was 8/6/89. The later deadline for mandatory filing was determined as 120 days (under part 9000.0110, Subpart 3 [Emergency]) from the effective date of permanent rules establishing fees (9000.0100 to 9000.0190) or 7/6/89. Thus, providers who file prior to 12/6/89 would be subject to renewal and renewal fees disproportionately sooner than providers who wait until 12/6/89 to file, since all filings are for a calendar year under 9000.0150 [Emergency].

Part 9050.0170 requires that providers must provide clients with the mental health Bill of Rights. This is a reiteration of

statutory requirement found at Minn. Stat. 148B.46. Redundancy in this case is necessary to fully explicate the regulatory scheme of the Board's jurisdiction. The Bill of Rights itself is found in statute.

Part 9050.0190 establishes the method by which a filer or applicant may seek a variance to the requirements of rule. The Legislature created the Board to avail itself of the administrative convenience and professional expertise to be found in administrative regulation.

Throughout the enabling statute, the Legislature repeatedly uses terms and phrases indicative of a delegation of discretion to the Board:

"The board may reject a filing if there is evidence of a violation or failure to comply with this chapter." (Minn. Stat. 148B.42, Subd. 1)

"Notwithstanding any law to the contrary, the board may reject a filing or application, or may impose adverse action..." (Minn. Stat. 148B.44, Subd.1)

"When the board finds that a mental health service provider has violated a provision or provisions of this chapter, it may do one or more of the following..." (Minn. Stat. 148B.45 Subd. 1)

This foregoing language suggests that discretion rests with the Board and, where discretion exists, the rationale for describing a process to be used for variances is necessary. Furthermore, the procedure for petitioning for variance will allow the Board to adjust its procedures and adopt a less onerous approach where the dictates of public policy, equity and common

sense prevail. It is reasonable to use this approach to provide for the requisite flexibility in the regulatory framework.

The Board does not propose to grant variances to any requirement imposed by statute only to those provisions established by rule and which may be appropriately supplanted by alternative practices equivalent or superior to those found within the rules. This is a reasonable method to assure that the Board responds flexibly to individual cases and circumstances.

V. Conclusion

The Board submits that the proposed rules are authorized by statute, are demonstrably necessary as determined by statute or logical argument, and are reasonably related in order to address the problem for which they are intended. And although other alternatives may be proposed, no other alternative is more reasonable or less burdensome while maintaining statutory consistency and adhering to the internal logic of the regulatory framework.