

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF MEDICAL EXAMINERS

In the Matter of Proposed
Rules Relating to Physical Therapy

STATEMENT OF NEED
AND REASONABLENESS

Pursuant to Minnesota Statute 14.23 (1984), the Minnesota Board of Medical Examiners (hereinafter "Board") hereby affirmatively presents the need for and facts establishing the reasonableness of proposed rules and amendments Parts 5600.2500, 5601.0300, 5601.0400, 5601.0700, 5601.0800, 5601.1200, and 5601.1700 through 5601.2900, relating to physical therapy.

In order to adopt the proposed rules, the Board must show that it has complied with all procedural and substantive requirements for rulemaking. These requirements are as follows: 1) there is statutory authority to adopt the rules; 2) the rules are needed; 3) the rules are reasonable; 4) all necessary procedural steps have been taken; and 5) any additional requirements imposed by law have been satisfied. This Statement demonstrates that the Board has met these requirements.

1. STATUTORY AUTHORITY

The statutory authority of the Board to adopt these rules is as follows:

Minnesota Statutes, sections 148.71, subd. 2 (Supp. 1988), 148.72, subd. 1. (1984) and 148.74 (Supp. 1988) authorize the Board to set physical therapy temporary permit and examination fees and promulgate other rules as may be necessary to carry out the purposes of Minnesota Statutes, sections 148.65 to 148.78.

Minnesota Statutes, section 16A. 128 (Supp. 1985) and 214.06 (1984), require the Board to adjust any fee which the Board is empowered to assess in a sufficient amount so the total fees collected will as closely as possible equal anticipated expenditures, including support costs and indirect costs attributable to the fee function.

2. STATEMENT OF NEED

There are nine reasons why these proposed rules and amendments on physical therapy are needed. They are:

1. To adjust the physical therapy examination fee upward to cover the increased examination cost passed on to the Board by the American Physical Therapy Association.
2. To establish the physical therapist temporary permit application requirements and a temporary permit fee (to cover the cost of the Board processing such permits) as mandated by Minnesota Statute 148.71, subdivision 2. (1988)
3. To inform physical therapy applicants seeking registration by examination or without examination of all necessary information to complete their application forms;
4. To establish the circumstances and time period under which physical therapists may initiate limited treatment of a patient without order of or referral to a licensed health care professional as allowed under Minnesota Statutes, section 148.75 and 148.76 (1988);
5. To establish physical therapist continuing education requirements and standards for compliance with Minnesota Statutes, sections 148.70 and 148.73 (1988);
6. To allow for adequate preparation time for the Board's licensing staff to send the required documentation to the Professional Examination Service for applicants to take the physical therapy examination by having the deadline for receipt of applications 15 days earlier than previously required;
7. To clarify the wording describing the Test of English as a Foreign Language examination and remove the provision on the Minnesota Battery test since the test is no longer used by the Board for judging English language proficiency of foreign-trained applicants;

8. To provide an appeal process for applicants denied reregistration based on non-compliance with application and/or continuing education requirements, similar to the appeal process accorded applicants found to be ineligible to take the physical therapy examination; and
9. To accommodate technical wording changes for the purpose of making the rules easier to read and understand.

The basis for raising the physical therapy examination fee is economic and administrative necessity. The American Physical Therapy Association and the Professional Examination Service notified the Board of a \$15.00 increase in their physical therapy examination fee from \$75.00 to \$90.00, effective in January 1990. Minnesota Statute, section 148.74 requires the Board to charge fees sufficient to cover its administrative costs. In light of the \$15.00 increase mandated by the American Physical Therapy Association/Professional Examination Service and increased expenses involved in administering the physical therapy examination, the Board determined a \$20.00 increase in the physical therapy examination fee from \$90.00 to \$110.00 was necessary to recover its administrative costs.

Minnesota Statute, section 148.71, subdivision 2 (1988) established a temporary permit for physical therapists to allow them to practice in the application time period just prior to their becoming registered. It also granted the Board the authority to set a fee to recover its cost in processing temporary permits. Here the rules are needed to describe what information applicants for a temporary permit must provide to the Board in order to have a complete application and to establish the fee for a temporary permit so the Board may recover its processing expenses as required by Minnesota Statute, section 148.74 (1988).

The purpose of amending Minnesota Rules Part 5601.0300 and 5601.0700 is to more clearly describe to physical therapists seeking registration by examination or without examination, the information necessary to have a complete application. It is necessary to ask applicants to provide the Board with a completed application with sufficient information to allow fair

determination of the applicant's qualifications by the Board as required by Minnesota Statute, section 148.70. Applicants must be evaluated. Without proper evaluation, registration would be meaningless and there would be no protection of the public.

Minnesota Statutes, sections 148.75 and 148.76 (1988) contain language which allows physical therapist to initiate treatment of a patient for 30 days, for a condition not previously diagnosed, without referral to a properly licensed chiropractor, podiatrist, physician, osteopath, or dentist. The statutes further allowed physical therapists to treat previously diagnosed conditions subject to limitations set forth by Board rule. The rules are necessary here to define the practice parameters authorized by the statutes; to differentiate between the initiation of treatment for conditions previously diagnosed and conditions not previously diagnosed; to clarify the expanded referral relationships to licensed health care providers/professionals other than physicians; and to establish the experience requirements that will allow physical therapists to initiate treatment without referral or approval of a physician or other licensed health care professional.

Minnesota Statutes, sections 148.70 and 148.73 (1988) set forth the requirement that physical therapists must complete continuing education as part of their requirements for reregistration. Rules are necessary here to effectuate the purpose of continuing education by establishing course standards, types of credits to be earned, methods of verifying course attendance, number of credit hours to be taken, and the manner of submission of continuing education information to the Board to permit reregistration of the physical therapist by the Board.

The amending of Minnesota Rules Part 5601.0400 to require an application for the physical therapy examination be received 45 days before the date of the examination (previously it was 30 days before the exam) is necessary to allow the Board's licensing staff two weeks to prepare and send all the documentation necessary for applicants to take the physical therapy examination. The Professional Examination Service now requires that all application materials be received by their office 30 days prior to the examination.

The amending of Minnesota Rule Part 5601.0800 is necessary to correct the wording used to describe the Test of English as a Foreign Language (hereafter TOEFL) Examination and make it technically correct. It was also necessary to amend this provision to delete the Minnesota Battery Test as a test accepted by the Board as a measure of English language proficiency for foreign-trained physical therapy applicants. The TOEFL Examination is now universally accepted and no applicants have submitted passing Minnesota Battery test scores to the Board for over the past ten years.

The Minnesota Statute 148.70 and 148.73 (1988) require physical therapists to satisfactorily comply with continuing education requirements and make such compliance a condition of renewal of registration. In the event of noncompliance, rules are necessary to allow applicants a due process mechanism to resolve the situation before sanctions are imposed. This is similar to the due process mechanism used for physical therapy examination ineligibility established under the authority of Minnesota Statutes, section 148.70 and found under Minnesota Rules Part 5601.0600. By having sanctions for noncompliance to insure rules are obeyed, due process is required as a matter of fairness and to preclude any arbitrary decisions.

The definitions added to Minnesota Rules Part 5601.0100 were necessary to clarify the terms (licensed health care professional or licensed health care provider, initiation of treatment, previously diagnosed condition, and clinical experience) found in Minnesota Statutes 148.75 and 148.76 and/or proposed rules Parts 5601.1200, 5601.1800, 5601.1900, and 5601.2000. Similarly, the term "Contact hour" needed to be defined as it is an important component of proposed rule Part 5601.2100 and describes the type of participation acceptable for continuing education credit.

The minor technical wording changes made as the beginning amendments of Minnesota Rules Parts 5601.0300 and 5601.0700 (the reference to 5600.2500 regarding payment of required fees when an application is submitted) are necessary to insure applicants know that a complete application includes the payment of all required fees. Likewise, the amendment to Minnesota Rule Part 5601.1700 regarding late fees further addresses the issue of having a timely and complete application submitted.

3. STATEMENT OF REASONABLENESS

Because of the 1988 amendments to Minnesota Statutes, sections 148.70, 148.71, 148.73, 148.74, 148.75 and 148.76, the Board decided that the Physical Therapy Rules should be revised to meet the legislative requirements mandated and be made current with all other administrative, economic and other changes which have occurred since the last changes to the Physical Therapy Rules.

On July 9, 1988, the Board passed a resolution authorizing the drafting of the Physical Therapy Rules. A drafting committee was established composed of a physician Board member, Chairperson of the Physical Therapy Advisory Council, and a Board staff person. The drafting committee submitted proposed drafts of the rules to the Physical Therapy Advisory Council and to the Board for comment during the late summer and fall of 1988. On January 19, 1989, the Board approved the proposed rules subject to revisions required by the Office of the Revisor. A Notice of Intent to Adopt Rules Without a Public Hearing was published in the State Register on July 10. At that time, due to procedural problems, the Statement of Needs and Reasonableness was not completed. After reviewing the comments, the Board decided to seek adoption of the rules after a public hearing.

The comments received by the Board on the proposed rules published on July 10, 1989 are discussed in the section, Response to Public Comments, found later on in this document.

The following are the proposed amendments and new provisions of the Physical Therapy Rules:

PHYSICAL THERAPY RULES

5600.2500 ANNUAL FEES.

The fees charged by the Board are fixed at the following rates:

- A. physician examination fee, full exam, \$425;
- B. physician examination fee, part I only, \$250;
- C. physician examination fee, part II only, \$300;
- D. physician application fee, \$200;
- E. physician annual registration, \$115;

- F. physician certification to other states, \$10;
- G. physician verification to institutions, \$5;
- H. physician endorsement to other states, \$40;
- I. physician emeritus license, \$50;
- J. physician temporary licenses, \$60;
- K. physician late fee, \$60;
- L. physical therapist application fee, \$40;
- M. physical therapist examination fee, \$90 \$110;
- N. physical therapist annual registration, \$20;
- O. physical therapist late fee, \$10;
- P. physical therapist certification to other states, \$10;
- Q. physical therapist verification to institutions, \$5; and
- R. physical therapist temporary permit, \$10.

It is reasonable and necessary that the Board increase and/or establish fees sufficient to cover its-cost in administering the Physical Therapy Rules. Minnesota Statute, section 148.74 (1988), requires that the Board set fees sufficient to cover the costs of administering Minnesota Statutes, section 148.65 to 148.78.

On January 12, 1989, the Board was notified by the American Physical Therapy Association (hereafter APTA) of a \$15 increase in the physical therapy examination fee, effective in January, 1990. The \$15 increase raised the examination fee from \$75 to \$90. The Board's current physical therapy examination processing fee is \$90. The \$15 portion above the \$75 APTA fee is used to cover the Board's expenses in administering the exam and with the processing of documents prior to and after the exam. The last fee increase by APTA Professional Examination Service, raising the exam fee to \$75, occurred in 1984.

In light of the \$15 increase by the APTA, the Board proposes to raise its physical therapy examination fee by \$20, increasing the fee from \$90 to \$110. The \$20 increase provides the Board \$20 per applicant to cover its cost related to exam administration and document processing. The previous exam administration/processing portion of the fee was \$15. The \$5 increase represents an adjustment for inflation and to completely compensate the Board for its costs as shown below.

Based on an anticipated 150 applicants per year, the \$20 fee increase would generate \$3,000 to cover Board exam costs. The following represents an analysis of expenses and revenues:

150 applicants x \$110	= \$16,500 (fees received by BME)
150 applicants x \$ 90 (APTA fee)	= <u>\$13,500</u> (fee portion going to APTA)
	\$ 3,000 (revenue to cover exam costs)

Estimated Examination Administration/Processing Costs:

Staff Costs for Processing Applications/Scores	\$1,400
Exam Proctor Costs	\$1,150
Lodging (Outstate Exam)	\$ 220
Travel	\$ 120
Food	\$ 110
	<hr/>
	\$3,000

Minnesota Statute, section 148.71, Subdivision 2. (1988) established a physical therapy temporary permit and granted the Board the authority to set a temporary permit fee. It is necessary, therefore, the Board, by rule, set a temporary permit fee. A fee of \$10.00 was considered reasonable and sufficient to cover administrative expenses related to licensing staff processing temporary permits. It is estimated there will be about 30 temporary permits requested per year with about 12 being issued. A \$10.00 fee would produce about \$120.00 to cover staff time in processing the permits and for mailing expenses. This is comparable to other physical therapy verifications and/or certifications performed by Board licensing staff.

5601.0100 DEFINITIONS

Subparts 1. to 4. [Unchanged]

Subpart 5. Licensed health care professional or licensed health care provider. "Licensed health care professional or licensed health care provider" means a person licensed in good standing in Minnesota to practice medicine, osteopathy, chiropractic, podiatry or dentistry.

The definition of "licensed health care professional or licensed health care provider" is necessary to the understanding of Minnesota Statute, sections 148.75 and 148.76 (1988) and proposed Minnesota rules Parts 5601.1800 and 5601.1900. It is also needed to provide consistency of interpretation between the various provisions of the statutes and the rules.

Minnesota Statute, section 148.75, subsection (j) uses the word, "health care provider" in describing the person a physical therapist must contact when they modify patient treatment from an original order. Minnesota Statute, section 148.75, subsection (r) uses the word, "licensed health care professional" in describing the person a physical therapist must contact if the physical therapist determines the patient's condition is beyond the scope of practice of the physical therapist. Minnesota Statute, sections 148.75 (h) and 148.76, subdivision 2 (a) describe the licensed practitioners a physical therapist must refer patients to after a 30-day period in which treatment was initiated. These practitioners are persons licensed in good standing in Minnesota to practice medicine, osteopathy, chiropractic, podiatry, and dentistry.

Proposed Minnesota rule, Part 5601.0100, subpart 5. uses the definition of practitioners found in Minnesota Statutes, sections 148.75 (h) and 148.76, subdivision 2 (a) and makes that definition of practitioners the same definition for the terms health care professional and health care provider. By having one definition of practitioner, the referral relationship between physical therapists and licensed physicians, osteopaths, chiropractors, podiatrists, and dentists is specifically indicated. Since the terms, licensed health care professional and licensed health care provider are used in other regulations (MN Statute 144.335) or have a generic application such as for nurses, it is necessary that the terms be given specific meaning here to properly address which persons have referral relationships with physical therapists. With such clarification, the proposed rules discussing "initiation of treatment" can be more easily understood and complied with.

Subpart 6. Initiation of treatment. "Initiation of treatment" means the initiation by a physical therapist of physical measures, therapeutic exercises,

and rehabilitation procedures, as defined by Minnesota Statutes, section 148.65, without the express direction or supervision of a health care professional.

It is essential to the understanding of Minnesota Statute, sections 148.75 (h) (1988) and 148.76 subdivision 2 (a) (1988) and proposed rules, Parts 5601.1800 and 5601.1900, that "initiation of treatment" be defined. The definition serves to reemphasize the statutory parameters of Minnesota Statute 148.65 regarding treatment which physical therapists must follow but describes it in the context of a situation in which direct access to a patient (no direction or supervision by a health care professional) by a physical therapist is permitted. This helps simplify the language which later appears in proposed rules, Parts 5601.1800 and 5601.1900 where the words, "initiation of treatment" are used.

By creating a definitional cross-reference, the term "initiation of treatment" is clarified regarding its statutory meaning and this, in turn, is reflected in proposed rules, Parts 5601.1800 and 5601.1900. With this definitional cross-reference, physical therapists can more easily understand and thus comply with the statute and rules.

Subpart 7. Previously diagnosed condition. "Previously diagnosed condition" means a condition diagnosed by a health care professional within the 24-month period preceding the date the physical therapist initiates treatment for the condition.

This definition is necessary for the understanding of proposed rule Part 5601.1900 and effectuation of Minnesota Statutes, sections 148.75 (h) (1988) and 148.76 subdivision 2 (a) (1988). The definition describes the time period in which a diagnosis is considered a previous diagnosis. The two-year time period of acceptability was considered reasonable because it allows sufficient time for a patient's condition to manifest itself (over a year) but still recognizes a condition may deteriorate and change and thus a deadline must be set in which reevaluation of the condition must occur. By presuming a condition (not reevaluated for over two years) to be like a condition not previously diagnosed, the physical therapist will be required to treat it as described under Minnesota Rule Part 5601.1800 and refer it

to a health care professional or provider more quickly (within 30 days) than a condition (within the two-year time period) which is treated as a previously diagnosed condition and falls under Minnesota Rule Part 5601.1900 and its 60-day period of treatment.

Because physical therapists may initially rely only on the patient's description of their previously diagnosed condition, a condition diagnosed within the two years preceding the treatment by the physical therapist is more likely to be better described by the patient and subject to fewer changes than a condition in which the last diagnosis was two or more years old. Thus, any treatment utilized by the physical therapist would correspondingly be more responsive to the more accurately described previously diagnosed condition.

By clearly specifying what a "previously diagnosed condition" is, the Board makes it easy for physical therapists to determine if they must follow the requirements of Part 5601.1800 or Part 5601.1900 and thus insures better compliance with the rules regarding patient referral to or condition documentation follow-up with health care professionals and the time frame for such contact to occur.

Subpart 8. Clinical experience. "Clinical experience" means practice under a physician's direction or supervision as verified by the Board's records.

This definition serves to reemphasize the "experience" under physician supervision or direction requirement contained in Minnesota Statutes sections 148.75 (i) and 148.76, subdivision 2(b) (1988). By defining "clinical experience", the term can be incorporated into the language of proposed Minnesota Rule Parts 5601.1800 and 5601.1900 and provide for a more concise and positive wording of those rules.

The "Board's records" referred to in Subpart 8 are the registration renewal documents which must be submitted by a physical therapist to continue their registration as a physical therapist in Minnesota. The registration renewal documents require that registrants provide lists of locations or institutions where the registrant has practiced during the previous five

years pursuant to Minnesota Rule Part 5601.1700. Acknowledgement of the "experience under physician direction or supervision" would be cross-referenced to the location of practice at which it occurred. Once recorded (dates of practice and location), the registrant need only list practice experience during the preceding five years on future renewals.

Subpart 9. Contact hour. "Contact hour" means an instructional session of 60 minutes excluding coffee breaks, registration, meals with a speaker or without a speaker, and other social activities.

This definition is necessary to clarify for physical therapists what is an acceptable hour of continuing education instruction under proposed Minnesota Rule Part 5601.2100. The definition is closely modeled after the continuing education definition for contact hour found in the Physician Assistant Rules (Part 5600.2500 Subp. 7). It is a reasonable standard which has been accepted by the Board as well as the American Medical Association and many continuing education program providers. The language also emphasizes the classroom/seminar atmosphere rather than social quality of the instruction session, thus providing a measure of academic quality control.

PHYSICAL THERAPY REGISTRATION APPLICATION

It is reasonable for the Board to specify the type of information on the application for registration to insure that the type of information provided will correspond to the information needed by the Board to make a decision regarding the applicant's qualifications, and therefore, fulfill the requirements of Minnesota Statute 148.70 (1988). Specifying the types of information needed will avoid having to make additional inquiries to the applicant in order to obtain the proper and necessary information and will make the public aware of the minimum standards required by the Board for physical therapists to become registered in Minnesota.

5601.0300 CONTENTS OF APPLICATION

The application must be submitted on forms prepared by the board, together with the fees described under Part 5600.2500, Items L and M. To be complete,

the application must include the following:

A. [Unchanged]

(B., C. - see amended sections which follow)

The amendment to part 5601.0300 concerning the accompaniment of fees described in Part 5600.2500 with the application form was written to provide greater accuracy regarding what constitutes a complete application. By stating that fees must accompany an application, it is clear to the applicant the application will not be considered by the Board unless all required fees are paid. It also provides the basis for the late fee penalty provision found in proposed Minnesota Rule Part 5601.1700.

B. a recommendation of the applicant's ethical and moral character by ~~by one physician~~ duly-licensed to practice medicine in the United States or Canada and one physical therapist two physical therapists duly registered to practice physical therapy in the United States or Canada.

It is reasonable that the Board be able to contact two physical therapists who can serve as references for the applicant in order to verify the applicant's background and ethical and moral character and thus protect the public's best interests. Asking for two references does not place any unusual burden on the applicant.

The change from recommendations from one physician and one physical therapist to two physical therapists was done as a matter of convenience for new graduates not having much contact with physicians. It was thought that physical therapists would have a longer period of interaction with an applicant than a physician and thus know more of their ethical and moral background.

C. a recent full-faced notarized photograph of the applicant attached to the application with the affidavit on the form completed and notarized; and

It is reasonable and necessary for the Board to protect the public interest by taking reasonable precautions to insure that the applicant seeking to take the physical therapy examination to become registered as a physical therapist is in fact the individual making the application. By requiring a current picture of the applicant with a signed affidavit, the Board has the ability to stop or deter fraudulent examination taking by visually screening each applicant prior to or at an examination.

- D. An accounting of the applicant's high school, college and board-approved physical therapy school education, listing the names, locations, dates of attendance, and diplomas, degrees or certificates awarded;

It is reasonable and necessary for the Board to request information on an applicant's educational training in order to verify if the applicant has successfully completed all the coursework required to be considered for registration as a physical therapist. By the accounting of education, the Board can obtain independent verification from appropriate educational agencies as to the applicant's attendance, grades and conduct. This information may also help reflect on the applicant's moral and ethical character if questionable conduct arose, and may be especially pertinent if the events transpired in a physical therapy training program or school. With an accounting of the applicant's educational credentials, the Board can insure only appropriately trained applicants are granted registration and are allowed to practice physical therapy in Minnesota.

- E. an accounting of the applicant's postgraduate work and military service;

It is reasonable for the Board to request an accounting of the applicant's postgraduate work and military service to assess if other academic or career situations affected or postponed the applicant's use of their physical therapy training. This information may influence whether retraining by the applicant is required by the Board for registration purposes.

- F. a listing of the states or countries in which the applicant is currently licensed or registered including the applicant's license or registration certificate number, the date the license or registration was obtained, and the method by which the license or registration was received.

Information regarding the applicant's current license or registration status in other states or countries is necessary for the Board to determine if any applicant may be eligible for registration as a physical therapist without examination. The information on the license or registration numbers, date of licensure or registration, and method of licensure or registration is needed in order to expedite the Board's verification of licensure or registration by another state or country. Most registration or licensure systems are based on license or registration numbers. The date and the method of licensure or registration information are necessary cross-checks regarding the applicant's identity.

- G. an accounting of the applicant's current and previous physical therapy practice experience listing two references from each place of service;

It is reasonable and necessary to request an accounting of the applicant's current and previous physical therapy practice experience so that the Board can determine if the applicant is and has performed in a competent manner and has not acted in a way which may endanger the public. By requesting two references from each place of services, the Board has two perspectives on the applicant's performance and reasons for changing locations of service if that occurred. Such a request does not place an undue burden on the applicant and normally most individuals obtain references for employment purposes.

- H. an accounting of any disciplinary complaints, refusal of licensure or registration, or denial of examination eligibility by another state board or physical therapy society against the applicant;

It is essential for the Board to be aware of any disciplinary complaints, refusal of licensure or registration, or denial of examination eligibility by another state Board or physical therapy society against the applicant to protect the public against incompetent, impaired and/or unprofessional physical therapists. By having this information, the Board, if it wishes to grant registration, may do so with appropriate restriction and monitoring of the physical therapist's activities sufficient to safeguard the citizens of Minnesota.

- I. an accounting of the applicant's use of drugs that are subject to abuse and treatment for alcohol or drug abuse;

This information is necessary to protect the Minnesota public from physical therapists who may be impaired by reason of chemical dependency. By requiring this information, the Board may condition the physical therapist's registration in such a manner that the individual is receiving proper chemical dependency treatment and/or monitoring to insure they do not pose a risk to the public or themselves.

- J. an accounting by the applicant of any current disabling condition, illness, or disease that impairs the applicant's ability to practice physical therapy;

It is essential that the Board require an accounting by an applicant of any current disabling condition, illness or disease that impairs the applicant's ability to practice physical therapy. This is to safeguard Minnesota citizens from physical and/or mentally impaired physical therapists. With this information, the Board can work with the physical therapist, if it is possible, to receive treatment, care and supervision which may enable them to practice as a registered physical therapist.

- K. an accounting of any violation of federal, state, or local regulations or statutes by the applicant;

An accounting of violations of law by an applicant is reasonable and necessary so that the Board can attempt to prevent any future harm to the public by such individuals. Based on the information received, the Board, if it grants registration, can condition the registration of the applicant to insure appropriate monitoring exists to prevent reoccurrence of the violation of law. This information also reflects on the moral and ethical character of the applicant and it is essential to the integrity of the registration review process that such individuals be carefully screened as a matter of fairness to the individual and as a reflection of the quality of physical therapists registered by the Board.

L. a listing of any memberships in a physical therapy society;

It is reasonable and necessary to request a listing of any memberships in a physical therapy society to determine if the applicant has been disciplined by the society. Such disciplinary action would reflect on the applicant's moral and ethical character and thus must be carefully screened to insure that the public is adequately protected if the Board decides to permit registration of the applicant. It also provides another source for verification of the applicant's activities and credentials as a physical therapist and thus can assist the Board in obtaining necessary information regarding the applicant.

M. the applicant's name and address;

It is reasonable and necessary the Board be able to identify and locate the applicant so that the applicant may receive Board correspondence. Such correspondence may be necessary to assist the applicant in completing the registration process. Later this same information is necessary for the applicant to receive registration and renewal documents from the Board.

N. the applicant's social security number, if the applicant chooses to voluntarily provide the number to the board for identification purposes, or the applicant's alien registration card number, whichever is applicable, or notification to the board if no social security number or alien registration card number is assigned to or available from the applicant.

It is necessary that the Board obtain the applicant's social security number or alien registration card number or be notified by the applicant that the applicant does not have a social security number or alien registration card number assigned to them or that the applicant is choosing not to provide the Board with a social security number as is allowed by law. The notification to the Board is essential so that the Board can assign the applicant an alternative identification number for registration purposes.

With the social security number or alien registration card number, or alternative identification number, the Board can more easily process registration information with an individual numerical identifier. This will become even more important as the Board fully computerizes its registration system. The numerical identifiers are also necessary in the arranging and administering of the physical therapy examination by the Board. Examination security and confidentiality is based on the use of numerical, rather than name identification. Most states require physical therapists, as part of licensing or registration, to provide a social security number or alien registration card number. Thus, for interstate identification of physical therapists, having such numbers is extremely important for verification purposes.

O. completed copies of credentials verification forms provided by the board; and

With application materials provided to the applicant are verification forms which the applicant sends to educational institutions, employers and/or other state physical therapy licensing organizations or boards. The forms are used to verify academic attendance/completion of education (certified academic transcript), an applicant's work history (employer work reference), and/or licensure or registration by another state or agency. It is the obligation of the applicant to be sure the verifying party has submitted correct and complete forms to the Board. With the use of verification forms, the Board receives information certified by the appropriate agency or signed documents attesting to the applicant's experience. Such forms insure the accuracy of the data received and evaluated by the Board, and thus preserves the integrity of the Board's evaluation system for registering physical therapists.

P. any other information judged necessary by the board to evaluate the applicant.

This provision provides the Board the ability to obtain other information on an applicant which may not be available through recognized agencies or institutions. It provides an applicant a means, with the consent of the Board, to overcome informational deficiencies which preclude the Board from fully considering the applicant's materials.

5601.0400 APPLICATION DEADLINE

All applications for examination must be fully completed in accordance with Part 5601.0300 and forwarded to the Secretary of the Board. An application must be postmarked not later than ~~30~~ 45 days before the date of the examination.

It is reasonable and necessary the Board have appropriate time to prepare for the administration of the physical therapy examination. Because exam applications are handled by Board licensing staff and such information must now be received by the Professional Examination Service 30 days prior to the date of examination, the Board is building in a two-week preparation time period to insure all applicants with properly submitted applications are able to take the test. The extra 15 days created by the application deadline date of 45 days prior to the examination will allow Board licensing staff time to complete the verification work necessary and have the materials to the Professional Examination Service by the assigned deadline.

5601.0700 REGISTRATION WITHOUT EXAMINATION

The board may register a person as a physical therapist in this state without examination if that person completes or presents evidence satisfactory to the board of having passed an examination in accordance with Minnesota Statutes, section 148.70 administered by a state licensing agency. An applicant for registration without examination shall submit an application on forms provided by the board together with the fees described in part 5600.2500. The form must include the following information:

A. and B. [Unchanged.]

C. ~~a list of the applicant's physical therapy employment during the past five years-~~ the information required by part 5601.0300, items B to P.

The amendments to this provision were necessary to provide greater clarification regarding what information is required to be submitted for a registration without examination. The first portion of the amended language, which indicates that the application form must have the fees listed in 5600.2500 accompany it, was written to insure applicants were specifically informed the application was not complete without the application fee and/or late fee. This clarification will assist in reducing the number of cases where an incomplete application delays processing by the licensing staff.

The amended section of proposed Minnesota rule Part 5601.0700, item C., provides that the applicant submit the information "required by Part 5601.0300 items B to P" was written to clarify what information must be provided by an applicant for registration without examination to have a completed application document. By using the reference to Part 5601.0300 items B. to P., Part 5601.0700 is kept simple. Since both 5601.0300 and 5601.0700 contain nearly identical application requirements, the use of the cross-reference to 5601.300 items B. to P. is clearly logical and consistent here and avoids unnecessary repetition of application information language in the rule.

By making the rule simple and concise, it reduces the chance applicants will have to be recontacted about incomplete applications. It also serves to indicate to the public what criteria the Board uses to evaluate applicants seeking registration without examination.

5601.0800 REQUIREMENTS FOR FOREIGN-TRAINED APPLICANTS.

Subpart 1. and 2. [Unchanged.]

Subpart 3. English test. The applicant must achieve a score of at least 550 on the ~~test of English as a foreign language~~ TOEFL (Test of English as a Foreign Language) examination administered by the Educational Testing Service, Inc., Princeton, New Jersey, or a passing score of at least 85 percent on the ~~Minnesota battery test~~ on a comparable nationally recognized examination approved by the Board.

Subpart 4. and 5. [Unchanged.]

The amended language of this provision was necessary to clarify which tests foreign-trained applicants must take and receive a score of 550. The previous language was confusing and did not specify the agency administering the Test of English as a Foreign Language. The amended wording clearly identifies the examination (TOEFL) and the agency which administers the examination (Education Testing Service), thus insuring foreign-trained applicants take the correct test.

The amended section which replaced "a passing score of at least 85 percent on the Minnesota battery test" with "a passing score on a comparable nationally recognized examination" accepted by the Board was necessary to recognize the fact that the Minnesota battery test was no longer accepted by the Board. The Test of English as a Foreign Language test or any other comparable nationally recognized examination accepted by the Board is now the standard the Board uses regarding the testing of language abilities of applicants.

A passing score on the Test of English as a Foreign Language is used by most higher education institutions as a criteria of admission and has effectively replaced the Minnesota Battery Test as the means of assessing language abilities.

5601.1200 REPORTS.

The physical therapist shall submit written reports to the prescribing physician referring licensed health care provider at intervals determined by the prescribing physician health care provider concerning the condition

and progress of the patient in therapy. Reports should include, but are not limited to, an initial evaluation, progress notes, and a discharge note. Reports by the physical therapist must be made more frequently than designated by the prescribing physician health care provider if the patient's condition warrants.

The amendments to this provision were necessary to reflect the 1988 statutory changes which occurred with Minnesota Statute, sections 148.75 (h) and 148.76, subdivision 2 (a) that allowed other health care providers and professionals in addition to physicians to give orders or referrals to physical therapists. Proposed Minnesota Rule, Part 5601.0100 subpart 5. consolidates the definitional language of Minnesota Statute, sections 148.75 (h) (j) (1988) and (r) and 148.76 subdivision 2 (a) (1988), regarding health care professionals and providers and persons authorized to order or refer treatment to physical therapists. The use of the word health care provider, as defined by Part 5601.0100 subpart 5, in this proposed rule, acknowledges without repeating each category of licensed practitioner found in Minnesota Statute 148.75 (h) and 148.76, subdivision 2 (a) that physical therapists must submit reports to appropriate referring practitioners when required by the practitioner or more frequently if a patient's condition warrants.

By amending this provision, the same reporting requirements that previously only involved physicians are now applicable to the licensed health care providers defined in part 5601.0100, subpart 5. Thus, the same standard of reporting by physical therapists to physicians is made applicable to chiropractors, podiatrists and dentists, insuring the same level of protection is accorded to the public with these new referral relationships.

5601.1700 RENEWAL OF REGISTRATION.

When they renew their registrations each year in compliance with Minnesota Statutes, section 148.73, physical therapists must submit lists of locations or institutions where they have practiced during the past five years. Applicants for reregistration who have not practiced the equivalent of eight full weeks during the past five years are required to achieve a passing score on retaking the registration examination or complete no less than eight weeks of council-approved clinical experience with a broad base of treatment

modalities and patient diagnoses. In addition, every two years, the applicant must submit verification of compliance with the continuing education requirements of parts 5601.2100 to 5601.2500. An application submitted after the reregistration deadline date must be accompanied by the late fee described in part 5600.2500.

Minnesota Statute, section 148.73 amended in 1988 required that for the Board to continue extension of a physical therapist's registration that the physical therapist must demonstrate that continuing education requirements had been met. The first sentence amending the above provision makes the continuing education requirements part of the process for renewal of registration and sets the stage for the new rules governing continuing education for physical therapists. Thus, physical therapists are informed of the continuing education component of reregistration and are provided a reference to the rules governing continuing education. The second sentence amending this provision requires that a late fee described in 5600.2500 accompany an application submitted after the registration deadline. This amendment was written to clarify that a late fee must be included with a registration renewal if the renewal was beyond the required deadline of January 1. By having this language in the rules, it is clear to applicants what their responsibilities are and thus may avoid the problem of an improperly submitted late renewal of registration by an applicant.

5601.1800 INITIATION OF TREATMENT FOR A CONDITION NOT PREVIOUSLY DIAGNOSED

A. A physical therapist who has had more than one year of clinical experience may initiate treatment of a patient for a condition not previously diagnosed for up to 30 days once within a four-month period. Subsequent treatments for a condition not previously diagnosed of up to 30 days within a four-month period beginning with the start of the initial treatment may only be made if the patient's complaint and symptoms are unrelated to the complaint and symptoms of the original treatment.

B. A physical therapist with less than one year of clinical experience may not initiate treatment of a previously diagnosed condition.

C. Items A and B do not apply to patients who have been referred for physical therapy treatment by order or referral of a licensed health care professional.

There are currently 41 states which permit physical therapists to evaluate patients without physician referral. There are 22 states which allow physical therapists to both evaluate and treat patients without a physician referral. Recognizing that patient evaluation and/or treatment by a physical therapist without a physician referral is becoming accepted as an additional avenue of consumer access to health care, the legislature created a limited direct access by patients to physical therapists through the 1988 amendments to Minnesota Statute, sections 148.75 (h) and 148.76, subdivision 2.(a).

Minnesota Statutes, sections 148.75 (h) and 148.76, subdivision 2.(a) (1988) also represents an expansion of health care professionals who now can work with physical therapists. In addition to physicians and osteopaths, physical therapists can now work in referral relationships with chiropractors, podiatrists and dentists.

It is reasonable and necessary that the Board explain to physical therapists the parameters of treatment and conditions allowing for limited direct access to patients (without referral and/or direction of a physician) by a physical therapist. It is also necessary to define how conditions previously diagnosed and conditions not previously diagnosed will be handled since Minnesota Statute 148.75 (h.) and 148.76, subdivision 2. (a) (1988) contains language differentiating the treatment of each condition.

Proposed Minnesota Rule, Part 5601.1800, Item A., reemphasizes the 30-day time period in which a physical therapist is allowed to treat a patient with a condition not previously diagnosed, as well as listing the one year of clinical experience requirement necessary to be permitted to treat patients unsupervised. Because patients may present new conditions unrelated to any previous problem, the rule provides a four-month waiting period before a new condition can be treated by the physical therapist unsupervised by a health care professional or provider. By providing a four-month waiting period, the rule allows physical therapists to treat new patient conditions after a period of time rather than having one treatment per patient only.

To limit access to physical therapists by patients with conditions not previously diagnosed to one 30-day time period would be unduly restrictive and not provide for reasonable direct access to physical therapists by patients.

By allowing patients to be seen by physical therapists for a new condition only once every four months, the rule permits consumer access to physical therapists in a manner that insures the patient does not avoid referral to health care professionals or providers if required. A patient will have had to have been referred to a health care professional or provider after 30 days from the time of initial admission by the physical therapist. This means three months will pass before the physical therapist can again treat the patient, presuming a new condition arises and is not related to a previous diagnosis by a health care professional or provider. Thus, the wording of the proposed rule preserves consumer access to physical therapists for new patient conditions after a reasonable time period has passed and presumably intervention by a health care professional or provider has occurred with the original condition brought to the physical therapist. As written, only three new conditions per year could be treated by a physical therapist without a referral. It is unlikely a patient who has been evaluated and treated three times by a physical therapist and presumably referred, evaluated, and treated by up to three licensed health care professionals or providers or one professional or provider three times, would present a new health condition unrelated to the previous situations.

Proposed Minnesota Rule, Part 5601.1800, Items (A) and (B) also protects consumer interests by clarifying which physical therapists may initiate treatment. Minnesota Statute, section 148.75 (i) (1988) prohibits physical therapists from treating human ailments without referral, without first having practiced one year under a physician's order as verified by the Board's records. This above qualification is incorporated into proposed Minnesota Rule, Part 5601.1800 Items (A) and (B).

The language of Part 5601.1800, Item B., is also necessary to indicate that a condition not previously diagnosed and a condition previously diagnosed are separate situations and cannot be made to overlap for the purpose of extending unsupervised treatment by a physical therapist.

Proposed rule 5601.1800, Item C. is necessary to clarify for physical therapists that they may receive referrals from other licensed health care professionals defined in proposed rule 5601.0100, subpart 5. and not just physicians, and that the privileges granted by Minnesota Statute 148.75 (h) and 148.76, subdivision 2.(a) (1988) are not impliedly involved when the referral comes from the health care professional to the physical therapist.

5601.1900 INITIATION OF TREATMENT FOR A PREVIOUSLY DIAGNOSED CONDITION.

A. A physical therapist who has had more than one year of clinical experience may initiate treatment of a patient for a previously diagnosed condition for up to 60 days.

B. A physical therapist with less than one year of clinical experience may not initiate treatment of a previously diagnosed condition.

C. Documentation of the diagnosis under item A or B must be obtained from the licensed health care professional by the physical therapist within 30 days of the initial admission.

This rule is necessary to define how physical therapists can comply with the provisions of Minnesota Statutes, sections 148.75 (h) and 148.76, subdivision 2. (a), amended in 1985. The statute stated that physical therapists may initiate treatment of a patient for a previously diagnosed condition warranting physical therapy subject to periodic review as defined by Board of Medical Examiners rule. Because this statutory language became effective in 1985 and the statute regarding the 30-day access to patients by physical therapists (without order or referral) became effective in 1988, rules concerning conditions previously diagnosed by health care professionals/providers needed to be written to accommodate both changes.

This rule provides a 60-day time period in which a physical therapist can initiate treatment for a condition that is previously diagnosed (as defined in Part 5601.0100 subpart 5.) with a built-in confirmation of diagnosis requirement that must be met within 30 days of the initial admission. The

rule serves to protect patients by insuring only a limited period of time passes (30 days) in which a physical therapist can treat a patient without order or referral without being certain of the patient's previously diagnosed condition. Only after the documentation of the previous diagnosis is received, can the physical therapist continue to act without referral or order to a licensed health professional. It is not mandated that the health care professional or provider intervene in the patient's care but just confirm the existence of the previous diagnosis. However, if intervention is required, such action would occur in 30 days or less, thus safeguarding the patient.

Because a previously diagnosed condition presents a situation in which an on-going relationship between a physical therapist and a licensed health care provider would best serve the interests of the patient regarding their treatment, the single 60-day limit on initiation of treatment is imposed. Here the purpose of the rule is to encourage interaction between physical therapists and licensed health care professionals/providers for the benefit of the patient by having the patient's condition come to the attention of the licensed health care professional/provider through an additional referral, that being the physical therapist.

By having health care professionals/providers become aware of patients' conditions through physical therapists (as another referral source), patients may receive health care they may not have otherwise sought or had delayed getting because of uncertainty about their condition.

The language of proposed Minnesota Rule 5601.1900, Items A and B, regarding qualifications of physical therapists to initiate treatment for previously diagnosed conditions (one year of clinical experience) is necessary to insure physical therapists have had a working relationship with a physician and thus understands how to appropriately approach and work with patients. This will assist them in working with other licensed health care professionals.

Proposed Rule, part 5601.1900, Item C is necessary to achieve a proper balance between patient protection and unsupervised treatment of patients by physical therapists. By requiring physical therapists to obtain documentation of a patient's previously diagnosed condition as a prerequisite

to having unsupervised patient treatment continue up to 60 days (from the time of patient admittance), the rule safeguards the patient by insuring there be a referral to a licensed health care professional if confirmation of the previous diagnosis is not received within the first 30 days. If confirmation of the previously diagnosed condition is received within the 30-day time period, the physical therapist is acting in a situation where a medical judgement has been made by a licensed health care professional and they are acting on that judgement. It also opens the door for intervention by the licensed health care professional or provider if the patient is in need of such intervention. This intervention would possibly be done by the physical therapist in conjunction with the health care professional or provider.

The 30-day time period provides a reasonable amount of time for physical therapists to treat a patient (without supervision); to obtain confirmation of a previously diagnosed condition; and to refer the patient to a licensed health care professional or provider if documentation of the previously diagnosed condition is not received. It effectively treats an undocumented previously diagnosed condition situation like a situation where the condition has not been previously diagnosed. Thus, Parts 5601.1800 and 5601.1900 act in concert with each other without having overlapping restrictions.

5601.2000 LIMITATIONS ON PRACTICE

If a patient's medical condition is determined by the physical therapist to be beyond the scope of practice of that physical therapist, the physical therapist must refer the patient to a licensed health care professional. A physical therapist shall modify or terminate treatment of a patient that is not beneficial to the patient or that is not tolerated by the patient and shall notify the patient's health care provider of the modification or termination of treatment.

In order to protect the public, it is reasonable and necessary to clarify for physical therapists their obligation to refer a patient to a licensed health care professional when the patient's medical condition is determined by the physical therapist to be beyond the scope of practice of that physical therapist. This language serves to reinforce the statutory prohibitions of Minnesota Statute 148.75 (r) against physical therapists acting beyond

the scope of their practice. The language further emphasizes the obligation of physical therapists to protect patients by modifying or terminating treatment which is not beneficial or tolerated by the patient and then reporting such modification or termination of treatment to the patient's health care provider for further evaluation and treatment.

The location of this provision after proposed rules Parts 5601.1800 and 5601.1900 was intended to reflect on the point that treatment provided to patients under Parts 5601.1800 and 5601.1900 still must conform to the general standards of practice of physical therapy and may be subject to greater scrutiny because a physical therapist is acting without direct supervision of a licensed health care provider or professional for a period of time.

5601.2100 CONTINUING EDUCATION REQUIREMENT

Every two years, each physical therapist registered by the board shall obtain 20 contact hours of continuing education credit as required by Parts 5601.2200 to 5601.2600.

Minnesota Statutes, sections 148.70 and 148.73 (1988) require that a physical therapist must complete continuing education in order to renew their registration. The Board finds it reasonable and necessary that continuing education standards be promulgated in order to assure continued competence of physical therapists. With continuing education, physical therapists are regularly exposed to new developments in their field and have the opportunity to discuss with experts and peers questions they may have concerning their practice. By having both written and interpersonal information resources through continuing education, physical therapists can better serve the public by providing the most current methods of treatment and/or knowing where to find answers to questions on patient care.

The change in medical and physical therapy care is on-going and increasing so the need for continuing education to keep current with such developments is an on-going and continuous matter. These rules will require each physical therapist make an effort through continuing education to remain technically skilled and aware of issues affecting their profession.

The multi-year reporting period provides flexibility to the registrant in completing continuing education activities and allows for potential difficulties when the location of the offerings, the travel time during unpredictable weather, extended illness, or the frequency of appropriate offerings make it difficult to obtain the needed continuing education activities in one year. The two-year reporting cycle for continuing education was the most commonly accepted time period used by states which register or license physical therapists.

The 20 contact hours of continuing education requirement within a two-year reporting cycle can be obtained without much difficulty and does not impose a significant financial imposition on physical therapists. In reviewing other states with continuing education requirements for physical therapists, it was found that the amount of contact hours required was as low as four (4) contact hours in Georgia to a high of 40 contact hours in a reporting cycle in Iowa and Kansas. The average is about 25 credit hours in a reporting cycle.

The 20 contact hour requirement (averaging 10 contact hours per year) takes into account the concerns of physical therapists in rural Minnesota regarding the frequency of course offerings, travel time and possibility of poor weather, which can make obtaining credits more difficult. To obtain about 10 credit hours of continuing education, most physical therapists need only attend about three courses. With credits given for in-service programs and for lecturing, the number of courses attended may even be less than three.

The rule by its 20 contact hours per two-year reporting cycle provides flexibility for rural physical therapists to complete its requirements and still insures that all physical therapists obtain continuing education such that they remain current with the on-going changes in their profession.

5601.2200 TWO-YEAR CONTINUING EDUCATION CYCLE.

Subpart 1. Initial registration on or after January 1, 1991. For physical therapists initially registered on or after January 1, 1991, the first two-year continuing education cycle begins on the January 1 following the date of initial licensure. Future cycles will run consecutively from that point. Continuing education courses taken between the date of initial registration and January 1 of the following year may be credited toward the first cycle.

Subpart 2. Initial registration before January 1, 1991. For physical therapists renewing their registrations on or after January 1, 1991, but who were initially registered before that date, the first two-year continuing education cycle begins as described in item A or B and runs consecutively from that date.

A. If the physical therapist's month of birth occurs in the months of January to June, the cycle begins on January 1, 1992.

B. If the physical therapist's month of birth occurs in the months of July to December, the cycle begins on January 1, 1993. In the first cycle, ending December 31, 1994, a physical therapist in this group shall submit 30 hours of credit.

For purposes of this subpart, continuing education courses taken between January 1, 1991, and January 1 of the physical therapist's first two-year continuing education cycle may be credited toward the first cycle.

It is reasonable and necessary that the Board explain the continuing education reporting cycle and the timetables that must be followed for compliance purposes for physical therapists newly registered in 1991, and for physical therapists registered prior to January, 1991.

Proposed Minnesota Rule, Part 5601.2200, Subpart 1. describes the first two-year continuing education cycle for physical therapists registered on or after January 1, 1991. The rule provides that newly registered physical therapists will begin their first two-year continuing education cycle in

the January following date of initial registration. This was done to prevent registrants from having less than two full years to complete continuing education requirements and have all physical therapists on a two-year cycle which coincides with a registration renewal. Since Minnesota Statute 148.73 (1988) indicates that completion of continuing education is a condition of registration renewal, having the continuing education reporting cycle occur during a registration renewal would fulfill the intent of the statute.

Proposed Minnesota Rule, Part 5601.2200, Subpart 2 (B.) requiring physical therapists in the group with the reporting cycle beginning on January 1, 1993, and ending on December 31, 1994, to obtain 30 hours of credit is necessary for the purposes of continuity and consistency. Since the continuing education rules are effective at the same time for all physical therapists, the 30 hours of credit requirement is necessary to insure the rule does not discriminate by virtue of the different reporting cycle arrangements. With reporting date effectively three years from the time the continuing education reporting provisions become effective (January 1, 1992 to December 31, 1994), consistency demands that the reporting requirements be comparable. Thus, the number of credits was prorated using a 10 credit per year standard to have 30 credits over a three-year time period, which is comparable to the 20 credits per two-year time period for those beginning the continuing education reporting cycle on January 1, 1992, and finishing on December 31, 1993.

Proposed Minnesota Rule, Part 5601.2200, Subpart 2 (B.) is a conversion provision which will occur only once, and therefore, all future reporting cycles will be two years and 20 contact hours. By dividing the continuing education reporting cycles for physical therapists registered prior to 1991 into alternating years for about half the registrants (those with a birth month found from January to June, starting in January 1992), and (those with a birth month found from July to December, starting in 1993), there will be a consistent cycle for all physical therapists such that about half of all registrants will be reporting at one time. If the reporting cycles were not divided as proposed, there would be reporting by a small number of new applicants in one cycle, and the remainder of registrants in the other cycle.

Since both registration renewal and continuing education information will be submitted in the future together, having half the number of registrants submitting continuing education information in alternating years provides a way to keep the information flow the same from year to year. Were more than half the registrants to report, the processing of registration renewals is subject to more review and thus delay.

For the purpose of administering the rule and to allow for continuity of reporting cycles, the provision allowing credit to be accepted for courses taken between the date of initial registration and the January 1st of the first two-year reporting cycle is needed. By providing that such credit may be applied to the first two-year reporting cycle, it allows the continuing education provisions to be immediately effective for all registrants, and encourages physical therapists to participate in continuing education.

Proposed Minnesota Rule, Part 5601.2200, Subpart 2. is reasonable and necessary for the monitoring and management of information received by the Board in the administering of the physical therapy continuing education rules. By having different starting dates for physical therapists registered prior to January, 1991, for continuing education reporting purposes, the Board will have a manageable number of registrants being reviewed for both registration renewal and for reporting of continuing education credits.

Lastly, proposed Minnesota Rule, Part 5601.2200, Subpart 2, accommodates those physical therapists with a two-year reporting cycle which runs from January 1, 1993 to December 31, 1994, by allowing them to receive credit for courses taken after January 1, 1992, but before January 1, 1993. Here again, the rule is needed to insure physical therapists are not denied the opportunity to receive credit once continuing education requirements are in effect and thus preserves the consistency of application of the rule even with the differences in reporting cycles for physical therapists.

5601.2300 CATEGORIES OF CREDITED ACTIVITIES

Continuing education credit may be obtained from the following activities:

A. Category 1: No less than ten hours of credit must be obtained in a cycle by attendance at educational activities recognized by the board under Part 5601.2400. Physical therapists who must submit 30 hours of credit under part 5601.2200, subpart 2, item B, must obtain no less than 15 hours of credit under this item.

B. Category 2. No more than ten hours of credit may be obtained in a cycle through in-service educational activities sponsored by organizations or individuals not designated in category 1. Physical therapists who must submit 30 hours of credit under part 5601.2200, subpart 2, item B, must obtain no more than 15 hours of credit under this item.

C. Category 3: No more than four hours of credit may be obtained in a cycle through teaching, lecturing, or similar presentation programs. Physical therapists who must submit 30 hours of credit under part 5601.2200, subpart 2, item B, must obtain no more than six hours of credit under this item.

It is reasonable that the Board approve the amount and type of continuing education activities which will meet the requirements of these rules. Proposed Minnesota Rule, Part 5601.2300 will assist physical therapists in evaluating which activities to participate in.

A review of states with physical therapy continuing education requirements (Delaware, Georgia, Iowa, Kansas, New Mexico and Nevada) indicated that classroom attendance at seminars/symposiums/workshops sponsored by recognized medical and physical therapy organizations was the primary manner physical therapist were to obtain continuing education credits. On a more limited basis were "in-service" programs and credits for teaching/lecturing/publishing recognized for continuing education purposes.

Following the standards used by these other six states, the Board incorporated the concept of giving more credit for classroom attendance at Board approved courses sponsored by recognized medical and physical therapy organizations, going so far as to allow participants to obtain all continuing education credits in that manner. The Board also endorsed the idea of limited recognition of credits obtained by "in-service" programs and for teaching/publishing by providing a limit on the number of credits which can be obtained with "in-service" programs and by teaching/publishing.

The Board recognizes that participation in such activities as teaching and lecturing provide a unique and beneficial learning experience and that credit should be given for preparation and participation in such activities. However, these activities should not be the sole source of continuing education as it is reasonable to assume that the registrant is already proficient in the subject area presented. Because the intent of continuing education is to increase one's proficiency, it is necessary to limit activities that a physical therapist would participate in irrespective of the registration requirements. Thus, the imposition of the four hour credit limit for teaching/lecturing/or publishing is a reasonable and necessary limit to assist in developing greater proficiency by physical therapists outside their subject area.

The Board also recognized that "in-service educational activities" can provide a beneficial learning experience and encourage information sharing among physical therapists and other health care professionals. However, because of the inherent difficulties in monitoring the quality of such programs, the Board decided a limit was necessary on the number of credits which could be obtained from "in-service" programs. By only allowing a maximum of half the required credits to be obtained from "in-service" programs, the Board reasonably permits utilization of the courses but still requires at least an equal amount of formal, accredited courses be taken. Like the credit hour restrictions imposed for teaching/lecturing, the limit is intended to assist physical therapists in developing greater proficiency outside their subject area by obtaining a variety of quality continuing education credits.

Recognition of "in-service educational activities" also addresses concerns of physical therapists located in rural Minnesota. With such programs, the

amount of travel costs necessary to fulfill continuing education requirements may be reduced for rural physical therapists.

It is recognized that formal classroom, seminar situations provide the greatest level of quality control for instruction. Therefore, it was necessary and reasonable the Board require a minimum number of credit hours of such continuing education. Category 1 Credit represents courses recognized as being provided by national or state medical or physical therapy organizations, accredited academic institutions, and national or state health organizations recognized by the Board as providing such courses. By requiring physical therapists to take at least half of their continuing education as Category 1 Credit, the Board is insuring at least half the coursework is of the highest academic quality available and conducted by agencies or associations with a history of providing continuing education programs.

The provisions of proposed Minnesota Rule, Part 5601.2300, items A, B, and C, regarding the number of credits required or allowed for physical therapists reporting under Part 5601.2200, Subpart 2, item B were necessary to accommodate to the different initial reporting cycle created under 5601.2200, Subpart 2, item B which is three years. Because this initial reporting cycle is three years, the number of hours of credit was prorated and adjusted to be 30 hours of credit over three years. The provisions of Part 5601.2300, items A, B, and C reflect this proration by providing that 15 hours of Category 1 credit must be obtained; no more than ten hours of Category 2 credit; and no more than six hours of Category 3 credit. Upon completion of this initial three-year cycle, all physical therapists will be on two-year continuing education reporting cycles.

5601.2400 CATEGORY 1 CREDIT

The Board shall grant Category 1 continuing education credits for the following educational activities in Items A to D:

- A. any course planned, sponsored, or cosponsored by an accredited university or college, medical school, state or national medical

or osteopathic association, or a national medical speciality society;

- B. any course planned, sponsored or cosponsored by the American Physical Therapy Association or other national or state physical therapy association meeting the standards of Part 5601.2500 and receiving board approval;
- C. any course planned, sponsored, or cosponsored by the Arthritis Foundation, American Heart Association, or other state or national health organizations meeting the standards of Part 5601.2500 and receiving board approval; and
- D. any educational activity meeting the standards of Part 5601.2500 submitted for continuing education credit by a registered physical therapist in advance of the presentation of the activity and receiving approval by the Board.

An individual or organization seeking board approval of an educational activity for Category 1 continuing education credit shall provide to the board documents describing the name and address of the organization sponsoring the activity, the name and address of the facility at which the activity will be presented, the name and credentials of each instructor or person making a presentation, and the course content in detail, including a time schedule for the activity.

It is reasonable and necessary the Board specify which educational activities it recognizes as satisfying its continuing educational requirements so that physical therapists may know which activities to participate in. This is especially true for Category 1 Credit in which the Board has set a minimum number of credits to be obtained by physical therapists.

The educational activities in this rule, with the exception of D., represent courses which are provided by accredited academic, medical, and physical therapy organizations or institutions, or courses provided by

national or state organizations recognized by the Board as providing such courses (Arthritis Foundation and American Heart Association). The Board recognizes such organizations have established programs for producing high quality instruction and that these organizations have the resources to maintain such programs. The State of Georgia has also given recognition to such programs (see Georgia State Board of Physical Therapy Rules, Chapter 490-4.02 Continuing Education Requirements).

The language of the rule is modeled after a similar provision in the continuing education rules for physicians (Minnesota Rules, Part 5605.0300). By creating the Category 1 Credit of educational activities, the Board is establishing a core of recognized educational activities. With this established core of educational activities, the quality of continuing education is kept on the highest level and serves the public interest by having physical therapists knowledgeable of the most recent theories and practices of their profession through instruction offered by the most established and recognized organizations and institutions involved in the field of physical therapy and/or medicine.

The provision under Item D. which allows registered physical therapists to submit an educational activity for Category 1 continuing education credit approval by the Board in advance of the presentation of the educational activity, is necessary to accommodate an educational activity not described under Items A., B., or C. which may meet with Board approval for continuing education purposes. By requiring any approval be in advance of the actual presentation of the educational activity, the Board avoids having physical therapists submit an insufficient number of continuing education credits at the time of registration renewal by listing courses not accepted by the Board. Since courses must be taken within the reporting period, advanced approval of courses will preclude denying registration renewal for insufficient continuing education credits. This process thus avoids having the registration renewal process delayed by the Board having to review the acceptability of courses at the time of renewal.

The purpose of requiring that the courses be approved in advance of the presentation is to allow registrants the opportunity, as is possible, to withdraw from courses found not acceptable by the Board and to save them from the cost of taking an unaccepted course.

With the petitioning for credit restricted to registered physical therapists, the Board avoids a general credentialing of courses and reviews courses on a case by case basis. Such a review insures a closer scrutiny of course offerings and the assurance the Board's qualitative standards have been met if the course is approved for credit. This provision also allows the Board to recognize new programs which comply with Part 5601.2500 without the necessity of a rule change.

The paragraph which follows Item D. is intended to clarify what information must be submitted to the Board by an individual or organization if they wish to have the Board consider their educational activity as eligible for Category 1 continuing education credit. By making the appropriate information available to the Board, requests for continuing education credit approval can be handled in a more expedited manner and there is less need for follow-up contact because of insufficient information being provided by the requesting physical therapist.

5601.2500 CREDIT STANDARDS.

The board shall grant continuing education credit for any educational activity that meets the standards in items A to E.

A. The educational activities must have significant intellectual or practical content dealing primarily with matters directly related to the practice of physical therapy or to the professional responsibility or ethical obligations of the participants.

B. Each person making a presentation shall be qualified by practical or academic experience to teach the subject the person covers.

C. Participants shall attend educational activities in a classroom or other setting suitable for the activity. Video, motion picture, or sound presentations may be used.

D. One hour of credit shall be given for each 60 minutes actually spent on educational activities.

E. Credit shall not be given for entertainment or recreational activities or programs, employment orientation sessions, holding an office or serving as an organizational delegate, individual self-directed study programs, management seminars not directly concerning physical therapy operations, meetings for the purpose of making policy, or noneducational association meetings.

It is reasonable and necessary the Board describe the criteria upon which the acceptability of a course to receive continuing education credit is based.

The criteria found in this proposed rule touch upon the relevancy of the subject matter, qualifications of the person presenting the materials, the setting which a course is presented and the duration of the educational activity for the purpose of assessing credit hours. It also specifies the type of programs involving social, employment, and self-study situations not acceptable as credit. This again assists physical therapists in determining what course offerings to use to satisfy continuing education requirements and if preapproval of a course is necessary.

These standards have been recognized by the Board in its rules regarding physician continuing education (Minnesota Rules Part 5605.0500) and are generally accepted criteria used by agencies administering and monitoring continuing education.

5601.2600 VERIFICATION OF COMPLIANCE

At the January license renewal immediately following their two-year continuing education cycle, registrants shall, provide a signed statement to the board on a form provided by the Board indicating compliance with Parts 5601.2100 to 5601.2500. The board may in its discretion, require additional evidence necessary to verify compliance with Parts 5601.2100 to 5601.2500. The board may also accept certification of other state or national health

or medical organizations whose continuing education requirements are equal to or greater than those in Parts 5601.2100 to 5601.2500.

Periodically, the board shall select a sample of the registered physical therapists and request evidence of the continuing education to which they attested. Documentation may come directly from the registrant or from state or national organizations that maintain those types of records.

A registrant failing to submit a statement or who submits a statement that, on its face, indicates noncompliance with Parts 5601.2100 to 5601.2500 may be subject to the disciplinary provisions in Part 5601.2700.

This rule is needed to assure that physical therapists have participated in the continuing education activity, not just paid a course fee. By requiring registrants to describe the continuing education courses taken in a form submitted with their reregistration materials, the Board has the ability to check with program sponsors to verify the registrant's claim of having participated in continuing education classes.

The rule also grants the Board the authority to accept courses offered by other state or national health or medical organizations for credit in Minnesota and thus fulfills the requirements of Minnesota Statute, section 148.70 by establishing a review process for approval of continuing education requirements necessary for reregistration. This grant of authority is necessary to allow the Board to approve courses found in the future to be equivalent to or greater than those required in Minnesota without having to draft additional rule provisions.

It is reasonable and necessary that the Board have the ability to verify continuing education course attendance. To this end, the rule permits the Board to conduct periodic audits of registrants to obtain evidence of compliance with the continuing education requirements. By conducting periodic audits, the Board can obtain the necessary documentation to verify courses are being attended. With proof of attendance, the Board can be assured the intended purpose of continuing education (increasing physical therapists' knowledge of physical therapy theories and practices) is being achieved.

Lastly, the rule provides for the possibility of sanctions against physical therapists failing to comply with the continuing education requirements. It is reasonable and necessary that the Board have the capacity to insure compliance with its regulations. Otherwise, the regulations regarding continuing education would be at best voluntary and subject to the personal preference of the individual physical therapist. By providing sanctions for failure to comply with continuing educational requirements, the Board is insuring physical therapists seek to maintain the knowledge and skills necessary to perform in a competent and professional manner.

5601.2700 PENALTIES FOR NONCOMPLIANCE

The board shall refuse to renew or grant, or shall suspend, condition, limit, or qualify the registration of any person who the board determines has failed to comply with Parts 5601.2100 to 5601.2600.

To insure that physical therapy continuing education requirements are met, physical therapists must understand the penalties for noncompliance. This rule specifies the manner of penalties the Board may impose. It also describes the review process used in determining when sanctions are necessary; this being a review of the circumstances by the Physical Therapy Advisory and then the Board. The penalties described involve restriction or nonrenewal of registration. Under Minnesota Statute, sections 148.73, (1988) the extension of registration is contingent upon the demonstration of satisfactory completion of continuing education requirements. Thus, the rule is necessary to effectuate the purpose of Minnesota Statute, section 148.73 by having applicants complete their continuing education in the required time period and in the manner indicated by proposed Minnesota Rule, Part 5601.2600.

5601.2800 HEARING UPON REFUSAL TO RENEW.

A registrant whose registration renewal materials fail to comply with the requirements of Part 5601.1700 as determined by the board shall be notified of this determination and the grounds for it and may be granted a

hearing under Part 5615.0300 by filing a statement of issues with the board within 20 days after receipt of notice from the board. After the hearing, the board shall notify the applicant in writing of its decision.

It is reasonable and necessary the Board have available an appeal process to physical therapists that have been denied registration because of failure to comply with application requirements set forth in Part 5601.1700 which include continuing education verification information. The language contained in this rule provides the same appeal mechanism granted to applicants found to be ineligible for the physical therapy examination (Part 5601.0600). Since Minnesota Statute 148.70 governs both the physical therapy examination and the continuing education requirements, it is reasonable that the due process requirements applicable to denial of eligibility for the physical therapy examination and the denial or restriction of reregistration (based on continuing education requirements not being met), be the same.

5601.2900 TEMPORARY PERMIT.

Subpart 1. Who may apply. Applicants who have complied completely with the informational requirements in Part 5601.0300, items A to P, or 5601.0700, items A to C, may apply for a temporary permit to practice physical therapy under supervision. Foreign-trained applicants must comply completely with Part 5601.0800 in addition to the information requirements of Part 5601.0300, items A to P, or 5601.0700, items A to C.

Subpart 2. Application. The application for a temporary permit to practice physical therapy under supervision must be submitted on forms prepared by the board together with the fee described in Part 5600.2500.

Subpart 3. Contents of application. To be complete, an application for a temporary permit to practice physical therapy under supervision must include the following information:

A. an original or certified copy of a diploma, degree, or certificate: or evidence satisfactory to the board indicating that the applicant has

satisfactorily completed an approved curriculum in physical therapy as provided in Minnesota Statutes, section 148.70, and has been graduated from a school of physical therapy approved by the board;

B. if the applicant is providing evidence of compliance of the informational requirements of Part 5601.0700, a notarized or certified copy of a current license or certificate to practice physical therapy issued by the duly accredited examining agency of the state or foreign country in which the applicant has been licensed or certified; and

C. the information required by Part 5601.0300, items B to P.

Minnesota Statute, section 148.71 Subdivision 2 (1988), grants the Board the authority to issue a temporary permit to practice physical therapy under supervision and charge a fee for issuance of the permit. It is therefore reasonable and necessary the Board adopt a rule explaining the requirements for a temporary permit to be granted.

The provisions of proposed Minnesota Rule, Part 5601.2900 describe which applicants are eligible to obtain a temporary permit; explain the additional requirements affecting foreign trained physical therapy applicants; state that the temporary permit fee must be submitted with the temporary permit application; and detail the information necessary to have a complete application. With this above information, applicants for a temporary permit are clearly informed of the necessary steps to obtain a temporary permit and thus will be less likely to supply an incomplete or inaccurate application requiring recontact by Board licensing staff for the purpose of correcting deficiencies.

Since a temporary permit is a prelude to actual registration by a physical therapist, the credentialing information required for a temporary permit must comport closely to the requirements for registration by examination or without examination. Referencing the application requirements found in Parts 5601.0300 and 5601.0700 makes the rule easier to read and reemphasizes the necessary qualifications to obtain a permit.

REPEALER. Minnesota Rules, Parts 5601.1000 and 5601.1100, are repealed.

It is reasonable and necessary that Minnesota Rules, Parts 5601.1000 and 5601.1100 be repealed because of the 1988 changes required under Minnesota Statutes sections 148.75 (h) and 148.76, subdivision 2 (a) which permit, on a limited basis, physical therapists to initiate treatment of patients without supervision or direction of a physician. As they were written, Minnesota Rules, Part 5601.1000 and 5601.1100 mandated a relationship between physicians and physical therapists in order for physical therapists to initiate treatment or set up a long term treatment plan. With the changes in Minnesota Statutes, section 148.75 (h) and section 148.76, subdivision 2 (a), licensed health care professionals (chiropractors, dentists, podiatrists) in addition to physicians are now allowed to provide orders to or accept referral from physical therapists. The changes also require physical therapists, to have one year of clinical experience under a physician, in order to initiate treatment without referral to or order of a physician. Thus, to retain Minnesota Rules, Parts 5601.1000 and 5601.1100 unchanged would create confusion regarding the interpretation of Minnesota Statutes, section 148.75 (h) and 148.76, subdivision 2.(a). By repealing Minnesota Rules, Part 5601.1000 and 5601.1100 and replacing them with proposed Minnesota Rules, Parts 5601.1800, and 5601.1900, the changes mandated by Minnesota Statute, sections 148.75 (h) and 148.76, subdivision 2.(a) are put into effect and the outdated rule language removed. By repealing, rather than amending Parts 5601.1000 and 5601.1100, it is made clear the replacement provisions are new rules, not a variation of previous language.

4. RESPONSE TO PUBLIC COMMENTS

On July 10, 1989, a proposed version of the Physical Therapy Rules was published in the State Register. Because of problems regarding the readiness of the State of Need and Reasonableness, the publication of the proposed rules was not a formal publication of the rules as provided under Minnesota Statute 14.23. Rather than attempting to withdraw publication of the rules, it was decided that having the rules publicly presented would provide the Board with valuable input from comments received from interested persons in the medical and physical therapy communities on the proposed rules. A mailing of the rules to all registered physical therapists by the Board was done on July 14 and July 17, 1989.

The Board received 50 letters commenting on the proposed rules.

The comments received by the Board fell into seven main categories. They were:

- A. Comments regarding the obtaining of references by physical therapists in order to complete the physical therapy registration application found under Part 5601.0300 (Item H.).
- B. Comments concerning the definition "clinical experience" found in Part 5601.0100, Subpart 8.
- C. Comments questioning the changing of Part 5601.0300 (Item B.) to allow recommendations from two physical therapists rather than a physician and physical therapist.
- D. Comments questioning the definition "licensed health care professional or licensed health care provider" found in Part 5601.0100, Subpart 5.
- E. Comments requesting a two-year, rather than annual continuing education reporting cycle, with a twenty credit hour requirement instead of a ten credit hour requirement.

- F. Comments questioning whether Parts 5601.1800 and 5601.1900 require physical therapists to make a diagnosis and thus are outside the scope of practice of physical therapy.
- G. Comments indicating the time limit provisions found in Parts 5601.1800 and 5601.1900 were too liberal or restrictive.

(A.)

The comments regarding the obtaining of references required by Part 5601.0300 (Item H.) indicated that securing references from each place of service would be difficult and should be limited to the time period existing three to five years prior to the time of application.

It appears the commentators interpreted this rule provision to require they provide references from each practice site and that such references may no longer be available to provide letters of reference. Their recommendation was to limit the requiring of references to the three to five years previous to the time of application because references are likely to be more accessible.

Part 5601.0300 (Item H.) requires applicant's to list two references from each place of service. No letters of reference are required. By having two references listed from each place of service, the Board can verify the correctness of the applicant's information by contacting the reference person if required.

Most individuals obtain references when graduating from school or changing jobs. The request to list two references does not impose an unreasonable burden on the applicant.

If the Board were to accept the idea of limiting references to the three to five years previous to the time of application, the Board may not discover if the applicant had been involved in a situation which may have posed a risk of harm to the public. The requesting of references provides the necessary means in which the Board can verify the applicant's work history and discover if any problems exist with the applicant.

(B.)

The comments concerning the definition of "clinical experience" under Part 5601.0100, subpart 8. requested that the word, "referral" be added to the definition between the words, "direction" and "supervision".

Part 5601.0100, subpart 8. reads:

Subpart 8. Clinical experience". "Clinical experience" means practice under a physician's direction or supervision as verified by the Board's records.

The purpose of Part 5601.0100, subpart 8. was to incorporate the one year of practice under a physician's order requirement of Minnesota Statute 148.75(i)(1988), and make it applicable to Parts 5601.1800 and 5601.1900. The language of the definition was intended to reflect that physical therapists should have a working relationship with a physician involving direction and supervision to become acquainted with the assessment and aftercare of patients. By allowing referrals, a physical therapist may only get "evaluate and treat" orders and not interact with a physician as intended by Minnesota Statute, section 148.75(i) and 148.76, subdivision 2.(b). Keeping Part 5601.0100, subpart 8. unchanged, the Board avoids having the "one year of practice under a physician's orders" requirement become a token requirement.

(C.)

The comments questioning the changing of Part 5601.0300(Item B.) to require recommendations be provided from two physical therapists rather than a physician and physical therapist appear to be based on the idea that allowing direct access to physical therapists by patients means physical therapists will be less monitored by physicians. They see having a recommendation by a physician, as part of the application process, will keep some measure of physician screening of physical therapists intact.

The Board changed the previous rule, which required a physician's recommendation, because of the difficulty new physical therapy graduates had in obtaining recommendations from physicians. Because the Board is concerned about knowing about the applicant, it was felt that two physical therapists could better evaluate an applicant since the applicant is more likely to have worked with physical therapists than a physician.

The concern of less physician monitoring of physical therapists is a marginal issue since neither the law or proposed rules allow a physical therapist to act without a referral for more than 30 days without some contact by the physical therapist with a licensed health care professional.

(D.)

The comments questioning the definition of "licensed health care professional or licensed health care provider" found in Part 5601.0100, subpart 5. were based on the concern that physical therapists and nurses were not included in the definition and that chiropractors were in the definition and should be excluded.

The Board is constrained from changing the professions or individuals listed under Part 5601.0100, subpart 5. because of Minnesota Statute, Sections 148.75(h.) and 148.76, Subdivision (2)(a.)(1988). Under these statutory provisions, persons licensed to practice medicine under Minnesota Statute, Section 147.10; persons licensed to practice chiropractic under Minnesota Statute 148.01; persons licensed to practice podiatry under Minnesota Statute 153.01; and persons licensed to practice dentistry under Minnesota Statute 150A.05 are recognized as the only licensed individuals from whom physical therapists make or receive referrals.

Part 5601.0100, subpart 5. was intended to specify the persons listed under Minnesota Statute 148.75(h.) and 148.76, subdivision (2)(a)(1988) and clarify the terms, "health care professional and health care provider" as described in Minnesota Statute, sections 148.75(j) and (r).

(E.)

The comments requesting a two-year continuing education reporting cycle with a 20 credit hour requirement were considered and accepted by the Board. The annual continuing education reporting cycle was changed to a two-year reporting cycle. The 10 credit hour requirement per year was modified to require 20 credit hours over a two-year reporting cycle.

With the change to the two-year cycle, the Board also decided to have half of the physical therapists report in alternating years. By having alternate year continuing education reporting, the license renewal process is not strained by having continuing education reporting and registration renewal occur for all registrants at the same time.

(F.)

The comments questioning whether Parts 5601.1800 and 5601.1900 require physical therapists to make a diagnosis or differential diagnosis and thus are outside the scope of practice for physical therapy, appear to be based on the premise that during the "direct access to physical therapists by patients time period (30 or 60 days)", physical therapists will have to "diagnose" the patient to determine a course of treatment or "diagnose" the patient if the patient comes in presenting a condition unrelated to the one originally treated by the physical therapist.

The issue of a physical therapist making a diagnosis is governed by Minnesota Statute Section 148.65, subdivision 1.(1985) and Minnesota Statute, Section 148.75(n.)(1988).

Minnesota Statute, Section 148.75(n.)(1988) prohibits physical therapists from "practicing as a physical therapist performing medical diagnosis, the practice of medicine as defined in section 147.081, or the practice of chiropractic as defined in Section 148.01."

Minnesota Statute, Section 148.65, Subdivision 1.(1985) defines the practice of physical therapy. It states in part, "physical therapy means the evaluation or treatment or both of any person by the employment of

physical measures and the use of therapeutic exercises and rehabilitation procedures with or without assistive devices, the the purpose of preventing, correcting, or alleviating a physical or mental disability."

Thus, physical therapists are allowed to evaluate or treat a patient or to do both so long as they do not employ means or make determinations which exceed the statutory parameters of Minnesota Statute, Section 148.65, Subdivision 1.(1985) or come under the specific medical diagnosis prohibitions of Minnesota Statute 148.75(n.)(1988).

Proposed rule, Part 5601.2000 further reinforces these above statutory parameters by clearly reminding and requiring physical therapists to refer a case to a licensed health care professional when they discover it to be beyond their scope of practice.

(G.)

The comments received concerning the liberalness or restrictiveness of the time periods of "direct access" allowed under Parts 5601.1800 and 5601.1900 appear to be based on the commentator's perception of what was intended by Minnesota Statute, Section 148.75(h.) and 148.76, Subdivision 2(a.). The term "direct access" means patient access to physical therapy treatment without a referral from a physician or other licensed health care provider or professional.

The commentators advocating a restrictive approach recommended that physical therapists be limited to one 30-day treatment period per patient whether the condition was previously diagnosed or not. Other commentators would permit two conditions per patient to be treated with a 30-day time limit for each condition.

Proposed Rule, Part 5601.1800 does establish an initial 30-day time period of "direct access" pursuant to Minnesota Statute, Section 148.75(h.) and 148.76, Subdivision (2.)(a). The rule also permitted a physical therapist to evaluate and treat a new unrelated condition presented by a patient if four months have passed since the time of initial admittance of the patient for physical therapy.

The Board determined for "direct access" to be a meaningful concept to be utilized by patient consumers that there be some consideration given to patients who present new conditions unrelated to their condition of original admittance. By allowing physical therapists to treat new conditions once in a four-month time period, the Board prevents the overlapping of unreferral care by physical therapists, yet still allows for a reasonable number of chances that new conditions may arise (up to three times per year) requiring care. The idea of limiting "direct access" to only one or two opportunities per patient does not really make a difference here since only three opportunities may exist under the rule. The "waiting period" (once every four months) allows the patient to have been treated by a licensed health professional. Thus a physical therapist will be in a better position to know about the patient's condition and therefore better able to assess an unrelated condition and determine if unreferral treatment would be appropriate.

The purpose of proposed Rule Part 5601.1800 is not to insure physical therapists treat patients without referral as many times as possible. The purpose of the proposed rule is to insure patients have access to health care through physical therapists and to require referral to a licensed health care professional when the patient's condition warrants such action. Referral to licensed health care professionals will in many cases, have the patient referred back to the physical therapist to continue the same treatment started by the physical therapist such as currently exists with "evaluate and treat" orders.

The Board determined that the one time 60-day treatment period for previously diagnosed conditions was appropriate because it created a set standard similar to the time period for the "condition not previously diagnosed" but with more flexibility (60 rather than 30 days of access without referral). If the Board had "previously diagnosed conditions" reviewed by health care professionals at set intervals, but still allowed physical therapists to retain access of the patient, there would be increased costs to the patients and would make confusing at what point intervention by a health care professional would occur. Having a set 60-day period provides a workable standard physical therapists, patients and health care professionals can follow.

The objective of the law allowing "direct access" was to provide patients another way to access health care. The law and proposed rules allow initiation of treatment by physical therapists and did not contemplate that physical therapists replace licensed health care professionals. The 30 and 60-day time limits of patient access provide the opportunity for patients to seek health care. The time limits can also be used to educate patients on the health care they may need and how the physical therapists can work in conjunction with licensed health care professionals to better serve the patient.

G.

The commentators indicating the time periods used in Parts 5601.1800 and 5601.1900 were either too liberal or too restrictive, expressed their concerns in three different ways. They were:

1. Previously diagnosed conditions should be treated for at least 90 days or have no time restriction requiring referral to a licensed health care professional.
2. Conditions not previously diagnosed should not have the four-month "waiting period" restriction which requires physical therapists to wait before treating new conditions. New conditions should be treated as they occur.
3. The defining of "previously diagnosed condition" to mean a condition diagnosed within the twenty-four months preceding the patient's initial admittance by the physical therapist, has the effect of excluding long term care patients.

The commentators, requesting a minimum 90-day period of "direct access" by patients for treatment of previously diagnosed conditions or those seeking no time limit restriction whatsoever, based their comments on the premise that these conditions may require more than 60 days of physical therapy treatment. While this comment may be true, the purpose of having a 60-day treatment period was to insure the case was referred to a licensed health

care professional for evaluation after a period of time. Because such a referral is made does not necessarily mean a patient will stop receiving treatment. In many instances, the referral to the licensed health care professional may result in an order requesting the physical therapy treatment to continue. Thus, the commentators are seeking to have more "unreferred" time with patients but do not explain how this benefits the patient except to the extent the patient does not have to pay for a consultation with a licensed health care professional. While this economic argument has some merit, it is not supported by evidence which shows it to be in the best interest of the patient's health.

The commentators, questioning the four-month "waiting period" which must pass before unreferred treatment can be done on new patient conditions (unrelated to conditions previously treated by the physical therapist), base their concern on the premise that patients should be treated at the time a new condition presents itself and not have to wait possibly up to four months to receive treatment by their physical therapist without a referral required. The Board under part 5601.1800 determined a "waiting period" was reasonable to avoid having physical therapists overlap conditions for the purpose of extending time of treatment without referral.

Recognizing that new conditions could arise prior to the expiration of the "waiting period", the Board preferred to have physical therapists bring such new conditions to the licensed health care professional evaluating the patient since a new condition might impact on how the existing condition is treated. The four month "waiting period" (actually it will be less in most cases because a new condition will not arrive just after presentation of the original condition of admittance but later after treatment has begun) is intended to insure a patient has been evaluated by a licensed health care professional and that a physical therapist does not attempt to evaluate two or more patient conditions without a referral. With two or more conditions being treated for a period of time without referral to a licensed health care professional, the risk of complication of the conditions is greater. Even if the time period has passed and the option to treat a new condition exists, physical therapists will still have to judge if physical therapy treatment or referral to the licensed health care professional is the preferred action.

The commentators questioning the definition of "previously diagnosed condition" as used in Part 5601.1900 base their concern on the belief that the rule will impose unnecessary paperwork requirements on physical therapists and cause additional expense to be incurred by patients. Others contend the rule itself excludes patients with chronic conditions (diagnosed more than two years prior to the time of initial patient admittance for physical therapy from receiving "direct access" care by a physical therapist.

It appears the commentators are reading the rule narrowly and not in context with Part 5601.1800.

Part 5601.1900 allows physical therapists to treat patients without referral for up to 60 days for a previously diagnosed condition so long as they have documentation of the condition within 30 days of the date of patient admittance for treatment. Previously diagnosed condition is specifically defined as a condition diagnosed within the 24 months preceding the date of admittance of the patient for physical therapy under Part 5601.0100, subpart 7. Thus, for purposes of the rule, a diagnosis made less than two years prior to the date of admittance for physical therapy qualifies the condition to be treated as a previously diagnosed condition. As presented, the rule allows direct access for 60 days with the qualifier that a previously diagnosed condition (less than 2 years old) exist and be documented. Any diagnosis not within the two-year restriction defined in Part 5601.0100, subpart 7, is a condition not previously diagnosed for purposes of the rules. Thus a condition with a diagnosis older than two years is treated under Part 5601.1800 and will be allowed to be treated for 30 days without a referral. There is no requirement that physical therapists must have the patient obtain a new diagnosis if it is over two years old and have the patient bear this additional expense.

It is hoped this Response to the Public Comments section of the Statement of Need and Reasonableness will be of assistance in further educating interested parties about the purpose and scope of the proposed rules on physical therapy.

5. ADDITIONAL REQUIREMENTS

Approval of the Commissioner of Finance

Pursuant to Minnesota Statutes, section 16A.128 subdivision 1., if a fee adjustment is required to be fixed by rule, the Commissioner of Finance must approve the adjustment and the Commissioner's approval must be in the Statement of Need and Reasonableness. The Commissioner's approval of the proposed amendments to part 5600.2500 is contained in the attached documents.

Small Business Considerations.

It is the position of the Board of Medical Examiners that Minnesota Statute, section 14.115 (1988), relating to small business considerations in rulemaking does not apply to the rules it promulgates. Minnesota Statute, section 14.115, subdivision 7.(b)(1988), states that section 14.115 does not apply to "agency rules that do not affect small business directly". The Board's authority relates only to physical therapists and not to the businesses they operate.

The Board is also exempt from the provisions of section 14.115, pursuant to its subdivision 7(c) which states that section 14.115 does not apply to "service businesses regulated by government bodies, for standards and cost, such as...providers of medical care". Physical therapists provide medical care under the direction and/or order of physicians, osteopaths, podiatrists, chiropractors and dentists and are regulated for standards and cost. The Board regulates physical therapists for standards. The Minnesota Department of Human Services regulates physical therapists for costs with respect to the Medicaid systems by virtue of their relationship with the above named health care professionals.

However, should these proposed rules be construed as being subject to Minnesota Statute, section 14.115, the Board notes below how the five suggested methods listed in section 14.115 subdivision 2, for reducing the impact of the rules on small businesses should be applied to the proposed amendments. The five suggested methods enumerated in subdivision 2 are as follows:

- (a) the establishment of less stringent compliance or reporting requirements for small business;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule;
- (e) the exemption of small businesses from any or all requirements of the rule.

The feasibility of implementing each of the five suggested methods and whether implementing any of the five methods would be consistent with the statutory objectives that are the basis for this rulemaking are considered below:

1. It would not be feasible to incorporate any of the five suggested methods into these proposed rules.

Methods (a) to (c) of subdivision 2 relate to lessening compliance or reporting requirements for small businesses either by (a) establishing less stringent requirements, (b) establishing less stringent schedules or deadlines for compliance with the requirements, or (c) consolidating or simplifying the requirements. Since the Board is not proposing any compliance or reporting requirements for either small or large businesses, it follows that there are no such requirements for the Board to lessen with respect to small businesses. If, however, these proposed rule amendments are viewed as compliance or reporting requirements for businesses, then the Board finds that it would be unworkable to lessen the requirements for those physical therapists who practice in a solo or clinic setting of fewer than 50 employees, since that would include at a minimum the vast majority of

registrants and probably all of them. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Board's rules do not propose design or operational standards for small businesses as a replacement for design or operation standards that do not exist. Finally, method (e) suggests exempting small businesses from any or all requirements of the rules. The application of this provision would exempt virtually all registrants from the purview of the rules, a result which would be absurd.

Reducing the impact of the proposed rules on small businesses would undermine the objectives of the Minnesota registration law for physical therapists.

Pursuant to Minnesota Statute sections 148.65 et seq., the Board was designated as the agency for establishing requirements for registration and adopting standards for disciplinary action to govern the practices or behavior of all physical therapists. Pursuant to Minnesota Statute, section 148.74, the Board is specifically mandated to promulgate rules as may be necessary to carry out the purposes of the Minnesota Statutes, sections 148.65 to 148.78. Given these statutory mandates, it is the Board's duty to establish registration qualifications and disciplinary standards which apply to and govern all applicants and registrants regardless of the nature of their practice. As it has been stated above, it is the Board's position that the proposed rules will not affect small businesses and certainly do not have the potential for imposing a greater impact on physical therapists in a solo or small practice than those practices large enough to remove them from the definition of small business. It has also been explained above that the Board considers it infeasible to implement any of the five suggested methods enumerated in subdivision 2 of the small business statute. Nonetheless, to the extent that the proposed rules may affect the business operation of a physical therapist or group of physical therapists and to the extent it may be feasible to implement any of the suggested methods for lessening the impact on small businesses, the Board believes it would be unwise and contrary to the purposes to be served by these rules for the Board to exempt one group of physical therapists, indeed possibly the vast majority of physical therapists, from the requirement of these rules.

Similarly, the Board believes it would be unwise and contrary to its statutory mandate for the Board to adopt one set of standards for those physical therapists (which may consist of a nonexistent class) who work in a large business setting and adopt another, less stringent set of standards to be applied to those physical therapists who practice in a solo or small clinic type of setting. It is the Board's view that these rules must apply equally to all physical therapists if the public whom they serve is to be adequately protected.

Registrants, regardless of whether they are considered as individuals or small businesses, have had and will continue to have an opportunity to participate in the rulemaking process for the proposed amendments. The Board has used a very open process to draft these rules. The Board has kept the various associations well informed of the proposed rules as they were developed through the Board's newsletter. The Board also did a mailing on July 14, 1989 and July 17, 1989 to all physical therapists of a draft of the proposed rules and will conduct a public hearing on the rules for all interested parties.

LIST OF ATTACHMENTS

1. A copy of the Proposed Permanent Rules Relating to Physical Therapy.
2. Chris Herlihy memo of January 12, 1989 announcing the increase of the physical therapy examination fee by the APTA.
3. Jeanne Hoffman memo of July 25, 1989 requesting that the Board of Medical Examiners' physical therapy examination fee be increased from \$90 to \$110.
4. Bruce J. Reddemann, Director of Budget Operations and Support, memo of August 3, 1989, approving the Board of Medical Examiners' request to increase the physical therapy examination fee from \$90 to \$110.
5. Jeanne Hoffman memo of July 20, 1988 to Bruce Reddemann, Director of Budget Operations and Support, requesting approval of a \$10 temporary physical therapy registration permit fee. This memo of July 20, 1988 also has Mr. Reddemann's stamped approval of the request dated August 16, 1988.
6. Richard Auld, Assistant Executive Director of the Board of Medical Examiners, memo of August 11, 1988 to Bruce Reddemann, providing supplementary information on the temporary physical therapy registration permit fee.
7. State of Delaware Physical Therapy Rules and Statutes.
8. Rules and Statutes of the Georgia State Board of Physical Therapy.
9. Rules of the Iowa State Board of Physical and Occupational Therapy Examiners.
10. Rules and Statutes relating to the practice of physical therapy in the State of Kansas.
11. Physical Therapy Act of the State of New Mexico, Regulation and Licensing Department, Board and Commissions Division.
12. Rules and Statutes of the Nevada State Board of Physical Therapy Examiners (Chapter 640 of the Nevada Administrative Code).
13. 1989 American Physical Therapy Association State Licensure Reference Guide, pages 15 and 16, outlining which states permit direct access by patients to physical therapy services.
14. Fifty-one letters received by the Board of Medical Examiners commenting on the draft of the proposed physical therapy rules as published on July 10, 1989.
15. Original draft of Proposed Rules Relating to Physical Therapy as published in the State Register on July 10, 1989.