

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Board of Medical Examiners
Relating to Examinations

STATEMENT OF NEED
AND REASONABLENESS

Pursuant to Minn. Stat. § 14.23 (1988), the Minnesota Board of Medical Examiners (hereinafter "Board") hereby affirmatively presents the need for and facts establishing the reasonableness of proposed rule amendments, Minn. Rules pts. 5600.0400 and 5600.0600, subps. 1 and 3 relating to examination of physicians.

In order to adopt the proposed rules and amendments, 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: Minn. Stat. § 147.02, subd. 1(c)(1988) authorizes the Board to determine what constitutes a passing score for the Federation of State Medical Boards' examination. Minn. Stat. § 147.03(c) (1988) authorizes the Board to establish passing grade levels higher than those determined by another state's examining Board or agency for licensure by endorsement or reciprocity. Minn. Stat. § 147.01, subd. 3 (1988) authorizes the Board to adopt rules as may be necessary to carry out the purposes of Minn. Stat. §§ 147.01 to 147.33.

2. STATEMENT OF NEED

There are five basic reasons for the amendments to Minn. Rules pts. 5600.0400 and 5600.0600, subp. 1 and repeal of Minnesota Rules pt. 5600.0600, subp. 3. They are:

1. To incorporate the change made in the passing score for the Federation Licensing Examination (hereinafter "FLEX Examination") by the Federation of State Medical Boards in June 1985 which makes the minimum passing score 75 on each component of the examination rather than a minimum FLEX weighted average score of 75;

2. To establish specific standards for the retaking of and number of sittings permitted with the FLEX Examination in light of the changes made by the Federation of State Medical Boards involving passing scores for the FLEX Examination;

3. To correct an inconsistency between Minn. Rules, pts. 5600.0400 and 5600.0600, subp. 3 (5600.0400 permits retaking portions of the FLEX Examination and 5600.0600, subp. 3 requires the entire examination be repeated if any part is failed) which has the effect of denying eligibility to applicants who had obtained passing scores of 75 on each component of the examination in two but not more than five separate sittings after June 1, 1985;

4. To repeal Minn. Rules pt. 5600.0600, subp. 3, in order to prevent a conflict of interpretation between part 5600.0600, subpart 3 and the amended version of proposed part 5600.0400 regarding the standards for passing scores, examination retaking and examination sittings for the FLEX Examination.

5. To establish under Minn. Rules pt. 5600.0600, subp. 1 clear eligibility standards for applicants seeking licensure by reciprocity regarding passing scores on the FLEX exam or exams of other states agencies or boards.

The Federation of State Medical Boards changed their policy and procedures in June 1985 on the FLEX Examination from a three component exam (one component per day) requiring a minimum weighted average score of 75 to a two component examination (one component per one and a half days) with a minimum score of 75 on each component. It is necessary that Minn. Rules pts. 5600.0400 and 5600.0600, subps. 1 and 3, be changed to accommodate the new scoring required by the Federation of State Medical Boards.

The FLEX Examination is a nationally recognized examination used to measure the skills necessary for a physician to operate in contemporary society. The Board believes the continued use of the FLEX Examination will serve the Minnesota public by assuring the Board has a means to measure the competency of physicians prior to licensure and that the physicians will be versed in modern medical techniques and advances as reflected in the continually revised content of the examination.

Because Minn. Rules pts. 5600.0400 and 5600.0600, subp. 3 both contain references to a FLEX weighted average score, it is necessary the rules be revised and/or repealed in order to adjust to the change in scoring (minimum component scores of 75) as directed by the Federation of State Medical Boards.

It is also necessary to revise Minn. Rules pts. 5600.0400 and 5600.0600, subp. 3 in order to remove the inconsistent language of the rules. Part 5600.0400 reads "If an applicant falls below a weighted average grade of 75, it shall constitute a failure. In order to be eligible for licensure, the applicant may repeat those parts of the examination on which he received a grade of less than 75 or may repeat the entire examination." Part 5600.0600, subpart 3 reads in part: "If the applicant fails the examination, he or she shall repeat the entire examination."

Because of the confusion concerning the retaking of portions of the FLEX Examination, coupled with the Board's policy of requiring the FLEX Examination be taken in one sitting (examination administration), applicants are being denied eligibility for licensure based on the failure to take the exam in one sitting rather than having failing scores. The Board seeks to change the rule to remove the inconsistent language and to correct the restrictive and negative impact the rules and policy have caused on applicants receiving passing scores in separate examination sittings after 1985.

The Board also sees the need to provide clear and consistent standards for applicants to follow in order to assure compliance with the rules. The specific standards regarding passing examination scores, test retaking and number of examination sittings permitted found in proposed Minn. Rules pt. 5600.0400 would address this informational need and insure applications for licensure are properly completed. The repeal of Minn. Rules pt. 5600.0600, subp. 3 removes redundant language which is outdated and in conflict with proposed part 5600.0400. The amendments to part 5600.0600, subpart 1. clarifies what passing scores are required for applicants seeking licensure by reciprocity and effectively replaces Minn. Rules pt. 5600.0600, subp. 3.

3. STATEMENT OF REASONABLENESS

On January 21, 1989, the Board approved a resolution authorizing the Executive Director of the Board, H. Leonard Boche, to sign and give the Notice of the Board's Intent to Adopt a Rule Amendment Without a Public Hearing governing the FLEX Examination and Licensing Registration and Renewal and approved a draft of the proposed rule subject to changes required by the Revisor's Office. On November 13, 1989, the Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules

Relating to Licensing and Examinations was published in the State Register.

The following are the Proposed Permanent Rules Relating to Examinations.

5600.0400 GRADES EXAMINATION RETAKING, PASSING SCORES, AND SITTINGS.

~~A--weighted-average-grade-of-75-shall-be-the-passing-grade-on-all examinations-prepared-and-graded-by-the-Federation-of-State-Medical-Board of-the-United--States,---If-an-applicant-falls-below-a--weighted--average grade-of--75,--it-shall-constitute-a-failure,---In-order-to-be-eligible-for licensure,--the--applicant-may-repeat-these-parts-of-the--examination--on which-he--received--a--grade--less--than-75---or--may--repeat--the--entire examination,---The-latest-grade-received-shall-be-the-only-one-considered by-the-Board.~~

Subpart 1. Federation licensing examination passing scores. For examinations taken before June 1, 1985, a Federation Licensing Examination weighted average score of 75.0 shall be the passing score on examinations prepared and graded by the Federation of State Medical Boards of the United States. The latest weighted average score shall be the only weighted average score considered by the Board. For examinations taken after June 1, 1985, the passing score on examinations prepared and graded by the Federation of State Medical Boards of the United States shall be a score of 75.0 on each component of the examination. The latest score for each component shall be the only one considered by the Board except as provided in a subpart 4.

The practice of medicine is dynamic and subject to constant advances. In order to adequately measure the competency of physicians, the Federation of State Medical Boards developed a new FLEX examination

which was first used in June 1985. With the new examination came a new scoring requirement. The FLEX Examination prior to June of 1985 required there be a minimum FLEX weighted average score of 75.0. The new FLEX Examination requires there be a minimum score of 75.0 for each component of the examination.

The FLEX Examination has broad acceptance across the United States. The Board recognizes the continued use of the FLEX Examination, in its new format, serves the interests of the Minnesota public by providing the Board a means to evaluate the competence of a physician before licensure. Since the examination is regularly updated, advances in medical science would be reflected in the examination and thus necessarily part of an applicant's educational background.

It is reasonable and necessary that the Board amend Minn. Rules pt. 5600.0400 to accommodate the changes made in the scoring of the FLEX Examination made by the Federation of State Medical Boards. The passing score of 75.0 on each component of the FLEX Examination is a requirement that is reasonably attainable and sufficiently high to assure only competent individuals will pass the examination and are licensed to practice medicine in Minnesota. The use of the passing score of 75.0 on each component of the FLEX Examination provides Minnesota with medical standards equivalent to most other states and thus will assist in processing reciprocity applications.

The language of Minn. Rules pt. 5600.0400, subpart 1 is also necessary for the understanding of Minn. Rules pt. 5600.0400, subp. 4. Because subpart 4. provides for licensure eligibility when passing component scores were received in separate sittings, it is necessary the component scores be clearly defined so subpart 4. is properly interpreted and applied.

With Minn. Rules pt. 5600.0400, subp. 1, applicants for licensure in Minnesota are made clearly aware of the examination scoring standards used by Minnesota for licensure. This will prevent unintended submission of unacceptable credentials materials by applicants which had occurred after June 1, 1985.

The last sentence of Minn. Rules pt. 5600.0400, subp. 1 makes the Board's rules consistent with the Federation of State Medical Board's policy of accepting only the latest FLEX score for evaluation purposes.

Subpart 2. Examination sittings. Except as provided in subpart 4., each administration of the Federation Licensing Examination constitutes a sitting by the applicant whether the applicant takes one or more examination components in the examination administration. An applicant may take the number of sittings allowed in items A and B.

A. After June 1, 1985, an applicant who has not received a passing score on one or both components of the Federation Licensing Examination, may complete up to five sittings of the examination before January 1, 1991, to obtain a passing score on both components of the examination. No additional sittings for the Federation Licensing Examination are permitted by the Board after January 1, 1991, if the applicant has had three or more sittings as of January 1, 1991. After January 1, 1991 an applicant may take the Federation Licensing Examination components in separate sittings subject to the provisions of subpart 3.

B. After January 1, 1991, an applicant not receiving a passing score on each component of the Federation Licensing Examination within three sittings shall not be eligible for licensure by the Board nor permitted additional examination sittings.

Minn. Rules pt. 5600.0400, subp. 2 is necessary to establish standards for the number of examination sittings allowed for an applicant

to obtain a passing score or scores on the FLEX Examination. Such standards are necessary because the Federation of State Medical Boards does not recommend any set number of sittings and leaves such standards to the state medical Boards.

Under the previous language of Minn. Rules pt. 5600.0400, there was no limit on the number of examination sittings allowed before denial of eligibility for taking the examination or for eligibility for the licensure. The language of Minn. Rules pt. 5600.0600, subp. 3 did specify that a passing FLEX weighted average score of 75.0 had to be obtained in not more than five sittings in licensure by reciprocity cases. Part 5600.0600, subpart 3 also required that the FLEX Examination be retaken in its entirety if a component was failed and therefore precluded any passing scores taken in separate sittings of the examination if one portion of the exam was failed. Further confusion existed between Minn. Rules pts. 5600.0400 and 5600.0600, subp. 3 since part 5600.0400 allowed for the retaking of a part of the examination or the entire examination.

The Board determined that one standard for examination sittings was necessary and that such a standard needed to comport with the change in the passing score for the FLEX Examination. Minn. Rules pt. 5600.0400, subp. 2(A) and (B) makes consistent what has been the standard since June 1985 and sets a new standard starting January 1, 1991.

Subpart 2(A) of part 5600.0400 uses the same standard of examination sittings as was allowed under Minn. Rules pt. 5600.0600, subp. 3, (that being five sittings), but indicates that component scores will be used after 1985 rather than a FLEX weighted average score. This rule provision is necessary to provide a transition between the old and new rules without changing the number of sittings previously accepted by

the Board. Subpart 2(B) of part 5600.0400 sets a new standard of three examination sittings to obtain a passing FLEX Examination score starting on January 1, 1991. By setting a new standard the Board makes clear what is required for licensure and ends the confusion caused in the previous rules.

Because Minn. Rules pt. 5600.0600, subp. 3 stated that failure of any part of the FLEX Examination required the entire exam be repeated, the old standard of five sittings was predicated on the whole examination being taken in one sitting rather than exam components in separate sittings. Minn. Rules pt. 5600.0400, subp. 2(A) still allows the five sittings during the transition period prior to January 1, 1991, but does not require that the entire exam be retaken in order to obtain an acceptable score. Prior to June 1985, the Federation of State Medical Boards issued a FLEX weighted average as the official score on the exam. Thus failure to obtain a FLEX weighted average score of 75 meant failure of the entire exam. After June 1985, the FLEX exam was changed and the test results were issued as component scores not a FLEX weighted average. This resulted in the requirement of a score of at least 75 on each component. Part 5600.0400, subpart 2(A) allows applicants who took the test after June 1985 and failed a component to retake just the component within a five sitting limit prior to January 1, 1991. Individuals who did not receive a passing FLEX weighted average score of 75 in one sitting prior to 1985 are also allowed the retake the entire test within the five sitting limit prior to January 1, 1991.

The Board always advised applicants to complete any remaining examination sittings as soon as possible in order to avoid being caught in any future rule changes. Most inquiries to the Board have been by applicants needing to retake a component rather than the entire FLEX Examination, thus this provision allows such applicants the opportunity

to complete the exam without the cost of retaking the whole examination which has deterred some individuals from proceeding with a licensure application. There will be at least one examination sitting opportunity prior to January 1, 1991.

The Board wished to act as quickly as possible to have the new standard of three examination sittings in place to avoid any further confusion by applicants planning on taking or retaking the FLEX Examination. The new standard is based on applicants being able to retake components of the FLEX Examination rather than the entire examination as required before by Minn. Rules pt. 5600.0600, subp. 3. Because it is more difficult to retake an entire examination than just a component, the Board had allowed more opportunities for applicants to obtain passing scores on the FLEX Examination. The change from five examination sittings permitted to three examination sittings is a matter of comparability. With a greater chance of successfully completing a component of the FLEX Examination, less opportunities for retaking the exam should be provided in order for the standards to be comparable. If the Board were to retain the five examination sitting standard, any passing score may reflect that the applicant has learned how to take the examination rather than proving the applicant is competent to practice medicine. A competent medical graduate will have ample opportunity to prove his or her ability over the course of three examination sittings, especially if only one component is involved. It is reasonable to believe that if an applicant cannot obtain passing component scores in three examination sittings, the applicant should not be permitted to practice medicine.

There are 24 states which allow candidates to sit for the FLEX examination three times without restrictions. Of those states, 21 require at least one year of additional training before additional

retakes are allowed. Three states have just a three sitting limit. There are 10 states with a two sitting limit with a third sitting allowed after a year's training. One state has a four sitting limit if done within two years. There are two states with a five sitting limit. One state allows six sittings within a three year period. There were eight states with no limits on sittings. One state had no limits if done within five years. One state indicated the limit could be set at the discretion of its Board. There were two states that did not provide information. [See in attachments 1989-1990 Federation of State Medical Board of the United States EXCHANGE, Section 1: FLEX and M.D. Licensing requirements. page 21].

The setting of a limit on the number of times a person may take a licensure exam is not unusual. The National Board of Medical Examiners allows applicants to take its examination three times. A fourth opportunity to take the exam is conditioned on approval of a petition requesting such a retaking. Thus the three examination sitting limit is used by a majority of the State Licensing Boards and the National Board of Medical Examiners as a standard for the number of examination sittings applicants are permitted for licensure purposes.

Subpart 3. Retaking of examinations. An applicant who did not receive a passing weighted average score before June 1, 1985, must retake the entire Federation Licensing Examination. An applicant who did not receive a passing score of 75 on a component of the Federation Licensing Examination after June 1, 1985 may either retake the entire examination and obtain passing scores on both components or retake the examination component for which the applicant did not receive a passing score and obtain a passing score on that examination component.

Minn. Rules pt. 5600.0400, subp. 3 is necessary in order to req nize the change from a FLEX weighted average scoring system to the

component scoring system utilized by the Federation of State Medical Boards after June 1, 1985. With the changes in scoring systems, the manner of examination retaking was also effectively changed after June 1, 1985. Subpart 3 makes clear that exam retaking before June 1, 1985 required the entire exam had to be taken over. As noted earlier in subpart 1, only the latest FLEX weighted average score is accepted by the Board. After June 1, 1985, the FLEX exam could be taken in components. This language is necessary to clarify that scores received prior to June 1, 1985 could not be averaged with scores after June 1, 1985 since the whole exam had to be taken or retaken prior to June 1985 and thus was not a component score.

The rule further clarifies that after June 1, 1985 retaking an examination component would be allowable rather than having applicants retake the entire FLEX Examination. This language is necessary to accommodate the exception established in Minn. Rules pt. 5600.0400, sub. 4 in which passing scores were received when applicants retook components in separate sittings rather than the entire examination after June 1, 1985.

The recognition by the Board of the option to take or retake only a component of the FLEX exam will bring it in line with most other states. Only Guam, Arizona, Louisiana and New Hampshire require that the entire examination be retaken each time.

Subpart 4. Licensure eligibility exception. Applicants who were not eligible for licensure after June 1, 1985, because their Federation Licensing Examination passing scores were obtained in two but not more than five separate sittings may apply to the Board after July 1, 1990, for licensure without retaking and passing an additional component or components of the Federation Licensing Examination.

The application shall be on forms prepared by the Board and shall include the information required in part 5600.0200, subp. 2, items A to E, together with the fees described in part 5600.2500.

The Board determined it was necessary and reasonable that licensure applicants be evaluated based on passing scores rather than the manner in which the FLEX Examination was taken after June 1, 1985 when the scoring changed from a FLEX weighted average score to component scoring. Because Minn. Rules pts. 5600.0400 and 5600.0600, subp. 3 did not take into account the changes in the scoring of the FLEX Examination after June 1, 1985, the impact of the existing rules was to deny applicants eligibility for licensure based on improperly taking the exam (taking or retaking exam components rather than the entire exam) even though passing scores were received within the sitting limitations used by the Board (not more than five separate exam sittings).

This rule provision provides that applicants would be judged based on their component passing scores received after June 1, 1985 (so long as no more than five examination sittings occurred) and that further retaking of the FLEX Examination in whole or part would not be required for evaluation for licensure.

Beginning July 1, 1990, applicants fitting the above criteria could submit applications with the component passing scores received in two to five sittings and not be denied eligibility for licensure based on scores received in separate sittings. If the applicant's licensure credentials, in addition to the FLEX scores, are complete, then licensure would take place. The burden of additional testing will not serve any purpose with passing scores already available and would perpetuate the unfairness that occurred.

This rule provision clearly identifies which parties are eligible for the exception and the criteria for qualifications under the

exception. This provision does not impair or confuse any future standards created by the earlier subparts of the rule since it only applies to situations already existing between June 1, 1985 and July 1, 1990. Based on the number of inquires (15) received by the Board as of November 1989 regarding this possible exception, the number of potential applicants receiving scores between June 1, 1985 and July 1, 1990 who may use the rule exception is relatively small and will not present a serious impact on the licensing process by a sudden large influx of applications. Therefore, this provision presents no future administrative problems for the Board in taking such corrective action.

5600.0600 LICENSE BY RECIPROCITY TO PRACTICE MEDICINE AND SURGERY

Subpart 1. Who may apply. An application for a license to practice medicine and surgery by reciprocity without a written examination according to Minnesota Statute section 147.03, may be made by ~~a physician--licensed by an accredited state licensing board or agency~~ an applicant having a valid license to practice issued by the proper agency in another state who has received a passing score from the Federation of State Medical Boards pursuant to part 5600.0400 or who has passed a licensing examination of another state with a grade average score of 75 or higher.

The amending language of Minn. Rules pt. 5600.0600, subp. 1 is reasonable and necessary in order to clarify for applicants seeking licensure by reciprocity what the passing score requirements are so they may determine their eligibility status in regard to applying for licensure by reciprocity. This rule provision is also necessary to replace the confusing language of part 5600.0600, subpart 3. which is being repealed.

Because all the standards and requirements for the FLEX Examination will be found under Minn. Rules pt. 5600.0400, the

reference to part 5600.0400 in the rule provides a simple cross-reference. Keeping all the FLEX standards and requirements under one rule provision will avoid the confusion caused when different FLEX standards existed under parts 5600.0400 and 5600.0600, subpart 3.

Likewise, the language regarding the passing score requirement (grade average of 75 or higher) on licensing exams of other states makes clear what score is needed to comport with the eligibility requirements for licensure by reciprocity. The previous rule language under part 5600.0600, subpart 3 was confusing and unworkable. It read in part, "a grade average of 75 on examinations other than FLEX shall be the passing grade on all examinations graded by the Board". Since the Board does not grade any examination this provision was not only confusing but also unenforceable.

By having the score for the FLEX examination and for licensing exams of other states clearly referenced or defined in proposed Minn. Rules pt. 5600.0600, subp. 1, rather than part 5600.0600 subpart 3 applicants can more easily identify and comply with the eligibility requirements for licensure by reciprocity. The subheading "Who may apply" further reinforces the idea that applicants must meet the scoring requirements listed. This may help avoid having applicants inappropriately submit application materials and fees which cannot be processed due to an applicant not having the appropriate FLEX exam or state licensing board score.

REPEALER. Minnesota Rules, Part 5600.0600, subpart 3 is repealed.

The repeal of Minn. Rules pt. 5600.0600, subp. 3. is reasonable and necessary to correct outdated, incorrect and confusing language found in Minn. Rules pt. 5600.0600, subp. 3 concerning the FLEX weighted average score, passing scores for exams other than FLEX, and standards on exam sittings and retakings.

Because the Federation of State Medical Boards changed the scoring of FLEX exams in 1985 from a FLEX weighted average score to component scores, the FLEX weighted average of 75 score under Minn. Rules pt. 5600.0600, subp. 3 is outdated. Minn. Rules pt. 5600.0400 will describe all standards regarding the FLEX Examination including passing scores, exam sittings and exam retakings.

The amended language of Minn. Rules pt. 5600.0600 subp. 1 also replaces Minn. Rules pt. 5600.0600, subp. 3 by clarifying the passing score requirements on the FLEX exam or state licensing board exams needed by applicants attempting to obtain licensure by reciprocity.

4. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Minn. Stat. §§ 14.05 to 14.12 and 14.22 to 14.28 specify certain procedures which must be followed when an agency adopts or amends rules. Minn. Stat. §§ 14.05 to 14.12 have been complied with by the Board as noted below. The procedures for adoption of non-controversial rules in Minn. Stat. §§ 14.22 to 14.28 are being followed inasmuch as no public hearing is presently planned and need not be held unless 25 or more persons make a timely written request for a public hearing.

The adoption of these rules will not require the expenditure of public money by local public bodies, nor do the rules have any impact on agricultural land. The adoption of these rules could have negligible effect on small businesses as discussed below. See Minn. Stat. § 14.115.

Pursuant to Minn. Stat. § 14.23, the Board has prepared this Statement of Need and Reasonableness which is available to the public. The Board will publish a Notice of Intent to Adopt Rules Without a Public Hearing in the State Register and mail copies of the notice and proposed rule to persons registered with the Board pursuant to Minn. Stat. §

14.14, subp. 1a. The notice will include the following information: 1) that the public has thirty days in which to submit comments on the proposed and give information pertaining to the manner in which persons may comment; b) that no public hearing will be held pursuant to Minn. Stat. § 14.25 unless 25 or more persons request in writing a public hearing on the proposed rule within the 30 day comment period; 3) that the rule may be modified if modifications are supported by data and the view submitted; and 3) that notice of the date of submission of the proposed rules to the Attorney General for review will be mailed to any persons requesting to receive the notice and give information on how to request the notice.

5. ADDITIONAL REQUIREMENTS

Small Business Considerations

It is the position of the Board that Minn. Stat. § 14.115 (1988) relating to small business considerations in rulemaking does not apply to the rules it promulgates. Minn. Stat. § 14.115, subd. 2 does not apply to "agency rules that do not affect small business directly." The Board's authority relates only to physicians and not to the businesses they operate.

The Board is also exempt from the provisions of Minn. Stat. § 14.115, subd. 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." Physicians provide medical care and are regulated by the state for standards and cost. The Board regulates physicians for standards. The Minnesota Department of Human Services regulates physicians for costs with respect to the Medicaid system.

However, should these proposed rules be construed as being subject to Minn. Stat. § 14.115, the Board notes below how the five

suggested methods listed for reducing the impact of the rules on small businesses should be applied to the proposed amendments. The five suggested methods enumerated 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) and (c) or 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 businesses. If, however, these proposed rule and 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 physicians who practice in solo or clinic settings of fewer than 50 employees, since that would include the vast majority of licensees. 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 most licensees from the purview of the rules, a result which would be absurd.

2. Reducing the impact of the proposed rules on small businesses would undermine the objectives of the Minnesota licensing law for physicians.

Pursuant to Minn. Stat. §§ 147.01 et seq., the Board was designated as the agency for establishing requirements for licensure and for adopting standards for disciplinary action to govern the practices or behavior of all physicians. Pursuant to Minn. Stat. § 147.01, subd. 3, the Board is specifically mandated to promulgate rules as may be necessary to carry out the purposes of the Minn. Stat. §§ 147.01 to 147.33. Given these statutory mandates, it is the Board's duty to establish licensure qualifications and disciplinary standards which apply to and govern all applicants and licensees regardless 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 physicians in solo or small practices than those practices large enough to remove themselves from the definition of small businesses. 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 physician or group of physicians 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 physicians, indeed possibly the vast majority of physicians, 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 physicians (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 physicians 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 physicians if the public whom they serve is to be adequately protected.

Licensees, regardless of whether they are considered individuals or small businesses, have had and will continue to have an opportunity to participate in the rulemaking process for the proposed rules. 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 and has also provided notices and articles in its newsletter about the proposed rules.