

12/24/90

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the
Adoption of Rules Relating
to Free Services Advertising,
Nonstandard Methods of Practice
Continuing Education Requirements,
Inactive License Status, and
License Termination Procedure

STATEMENT OF NEED
AND REASONABLENESS

Pursuant to Minnesota Statutes 14.23 (1990), the Minnesota Board of Chiropractic Examiners (hereinafter "Board") hereby affirmatively presents the need for and facts establishing the reasonableness of proposed Minnesota Rules relating to the above mentioned areas in the practice of chiropractic.

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

1. STATUTORY AUTHORITY

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

Minnesota Statutes, 148.08, subdivision 3 (1990), authorizes the Board to promulgate rules necessary to administer section 148.01 to 148.105. In particular, the Board wishes to promulgate

rules that will define, clarify, or establish Board policies in regard to the above-mentioned areas in the practice of chiropractic.

2. STATEMENT OF NEED AND REASONABLENESS

I. Advertising Free Services

The Board has received several complaints and questions from the public and from doctors of chiropractic alike, which pertain to the offering of free services by doctors of chiropractic. Most of the complaints center around when the free services end and services for a fee begin. For example, x-rays are often offered to be taken for patients during an "initial consultation" which is free. However, the x-rays offered to be taken are billed to the patient. The patient is not aware that x-rays are not taken for free. Therefore, patients file complaints with the Board regarding false advertising practices.

The Board intends to set in rule procedures which will eliminate any questions regarding how to advertise and offer to the public free chiropractic services.

Free services offers: The Board believes that this provision regarding who can take advantage of the free services offer is necessary because of problems that can later arise regarding billing matters. This provision puts everyone on the same level during the period of time the advertisement is in effect.

Level of services given - examinations: The Board believes that this provision is necessary in order to establish what the

public can expect from all advertised free services that doctors of chiropractic offer.

Advertising statement: The Board believes that this provision is necessary in order to give the public a means of contesting services not rendered properly in this proposed rule. This provision is also necessary in order for doctors of chiropractic to acknowledge their responsibility in the proper treatment and billing of patients in regard to free services advertisements.

II. License Termination Procedure

Upon the prior recommendation of the Attorney General's office, the Board has decided to promulgate these rules. See Richard Wexler memo. The Board currently has no means of expeditiously dealing with delinquent license matters. The Board currently must follow disciplinary procedures in order to take care of these matters. Whereas in the proposed rule the Board will be able to bypass administrative hearings, conference notices, and disciplinary status for failure to renew the license. The Board believes this is necessary in order to keep records up to date, save in attorney's fees and administrative costs, and time processing these matters in the Board office.

Failure to submit renewal application: The Board believes that setting out the procedures the Board will follow is necessary and reasonable. The procedures are proposed in order to maintain consistency and expediency in processing delinquent licenses.

If the doctor of chiropractic does not meet the requirements

to renew the license in the specified time period, the Board believes that most efficient way to proceed is by automatic expiration of the license. With these provisions, doctors still have adequate due process safeguard. They will be served notice and have 30 days in which to respond to the notice. This will not be considered disciplinary action by the board. This is important to the doctors in order to remain in good standing with the Board and other boards throughout the country. It will rather be considered an administrative "house cleaning" function.

If the doctor of chiropractic does not wish to have his license cancelled, and presents circumstances to the Board which would qualify as hardship, the Board is granted the right to waive the requirements of license renewal in accordance with the standards set out in Subpart 5, or defer the requirements for the specified time limit proposed in the rule.

This provision is proposed because the Board realizes that special circumstances do exist of some doctors of chiropractic, and the Board wishes to include a possible alternative for those doctors who qualify for a waiver or deferment of requirements. However, a limit of six months has been established in order to keep these provisions from becoming more of an incentive for doctors to be late in fulfilling license renewal requirements.

III. Continuing Education: IME Requirements

The Board believes with the new legislation, MS 148.09, and the new requirements doctors of chiropractic are expected to meet, the establishment of mandatory continuing education hours pertaining to IMEs is needed and reasonable.

The Board believes that a minimum of ten hours, which could constitute two programs, is reasonable to expect doctors to obtain in order to ensure competency in this area of practice. Ten hours is believed to cover all areas necessary in order to have a well-rounded seminar or seminars. The Board, therefore, believes that ten hours would not be too time consuming or costly for a doctor to satisfy.

The Board intends to include seminars and courses that include such subjects that would pertain specifically to IMEs procedures and skills.

IV. Continuing Education: Acupuncturists

The Board believes that doctors of chiropractic who are registered with the Board in acupuncture, must continue obtaining knowledge and skills in this particular area in order to protect patients' health and safety.

The Board believes that a minimum of ten hours, which could constitute two programs, is reasonable to expect doctors to obtain in order to ensure competency in this area of practice. Ten hours is believed to cover all areas necessary in order to have a well-rounded seminar or seminars. The Board, therefore, believes that ten hours would not be too time consuming or costly for a doctor to satisfy.

Therefore, the Board believes that mandatory continuing education pertaining to acupuncture is needed and reasonable.

V. Continuing Education: Sexual Abuse Recognition and Prevention

The Board believes that because of the increase in sexual abuse involving children and vulnerable adults, that a course in the recognition, prevention, and reporting thereof, is necessary for doctors of chiropractic to be more aware of the issues and reporting requirements.

The courses the Board will approve must encompass the requirements set forth in the proposed rule. The Board believes that these requirements help fulfill the reporting laws' requirements and help doctors of chiropractic have a better understanding of what is required of them. Because of the depth in which the continuing education seminars or courses entail, the Board determined that at least eight hours would be necessary in order to cover all subjects thoroughly.

There have been numerous complaints in the area of professional boundaries, many of which are still pending. Of those doctors scheduled for disciplinary conferences in fiscal year 1991 alone, 10 out of 13 conferences relate to nonreporting and sexual misconduct of doctors.

The doctors of chiropractic or applicants for the licensure examination must provide proof to the Board that they have fulfilled the continuing education requirements proposed in this rule.

This provision is proposed in order to have each newly licensed doctor fully aware of his responsibilities and duties regarding this subject.

This provision is proposed in order for all doctors of chiropractic to be kept up to date regarding new laws or

reporting requirements, and in order to mandate a "refresher" course in the subject matter. **Source:** New York Statutes 413.

Therefore, the Board believes this proposed rule is needed and reasonable.

VI. Waiver or Deferment of Continuing Education Requirements

The addition of this provision has been made in order to limit the Board's discretionary powers, and also to let doctors know that they must have some sort of plan in order to get continuing education hours fulfilled on time.

VII. Inactive License Status

The Board has determined a need to provide current, active Minnesota licensees a form of licensure that would allow doctors of chiropractic to be licensed in Minnesota without practicing in Minnesota. The Board has received numerous requests from licensees for an inactive form of licensure.

The Board has determined that without an inactive form of license a substantial number of licensees will retire their license with the State of Minnesota, resulting in a significant revenue loss to the Board.

Full licensure requirements present a hardship to many licensees who are: 1) licensed in several other states and need to meet multiple license renewal requirements; 2) not in active practice in the state of Minnesota; 3) retired and need to maintain a license; and 4) intending to return to Minnesota in the future.

The Board has determined that an inactive form of licensure would decrease administrative costs for processing and verifying license by approximately 25 percent of the current cost.

Inactive License

The provisions set forth in this part are necessary in order to explain how to apply for and how one qualifies for inactive license status. The Board is requiring all licensees to be up to date with fees and continuing education due for annual license renewal in order to start all inactive licensees on the same level.

Annual Renewal

The annual renewal fee is 75 percent of the current Board fee for annual license renewal. This has been established to reduce the fee for those doctors who are not practicing in Minnesota. The considerations mentioned previously for those who hold multiple licenses is also a factor in this provision.

The Board has also made budget provisions for this fee. See Fee Review forms.

Reinstatement of Inactive License

The provision outlines all requirements in order to be reinstated to an active license. The submission of an affidavit and certificates of good standing are required in order to verify that the doctor has been complying with the current state in which he is practicing in and that he has complied with the requirements for reinstatement.

The continuing education requirements have been established in order to ensure that doctors are keeping current with the

profession at large. Twelve hours of continuing education per year has been established because this is the national median. See Inactive.CE attached hereto.

Inactive Retired License

This provision has been set forth solely for the purpose of those considering to retire completely from the practice of chiropractic in Minnesota or elsewhere.

Annual Renewal of Inactive Retired License

The provision is the same as Inactive License in order to keep both inactive licenses the same for administrative ease in processing the licenses. Also, it is the same in order not to penalize one doctor because of the inactive status he chooses.

Reinstatement of Inactive Retired License

This provision allows for the inactive retired doctor to reinstate to a full license within three years of inactivity. This has been established in order to provide an alternative to those doctors who change their minds regarding retirement, and for those who are seeking only a short-term retirement.

Provision A. has been established in order to provide a safeguard for the Board. This would prevent doctors from jumping back and forth between license status in order to avoid fee and continuing education requirements.

Provision B. has been established in order to ensure the public and the Board that the doctor has obtained current information regarding the profession. Thirty hours has been established because this is half of the amount normally required over a three year period of active licensure. The Board believes

that 30 hours is not unreasonable to expect from these doctors. Thirty hours is considered attainable without imposing a hardship on the doctor who wishes to reinstate.

Provisions C. and D. have been established in order to ensure the doctor has not been disciplined in another state while not practicing in Minnesota. In addition, a fee must be paid in order to reinstate; this fee has been established in order to process the licensee's license again.

The three year limit has been established because the Board believes this to be enough time for a doctor to make the decision for full retirement or to go back into active practice in the state of Minnesota.

Therefore, the Board believes that these provisions are needed and reasonable.

VII. Nonstandard Methods

The Board has received several complaints regarding nonstandard chiropractic treatment. In addition, several questions have arisen as to the scope of practice regarding chiropractic methods of diagnosis and treatment. Therefore, the Board is proposing the following definitions and rule in order to clarify what is allowed and what the public can expect from doctors of chiropractic.

"Standard methods" is necessarily defined for the purpose of stating what the Board will accept as chiropractic methods and diagnostic procedures and devices in the treatment and diagnosis of patients. Examples of standard methods are: 1) Logan Basic

Adjustive Technique, 2) Ultrasound Therapy, and 3) Gonstead Adjustive Technique.

"Nonstandard methods" is necessarily defined for the purpose of stating that the Board does not consider any method and diagnostic procedure or device to be appropriate in the practice of chiropractic unless it is taught in or has been accepted by an accredited chiropractic college or a Minnesota Medical Board-accepted school of medicine. Examples of nonstandard methods are: 1) On-the-body Toxicity Testing, 2) Clinical Kinesiology, and 3) Network Adjustive Technique.

Nonstandard Methods Permitted

The Board believes it is necessary to require doctors of chiropractic to fully inform their patients of the methods, whether standard or not, in which they will use in the course of treatment or in diagnosing a condition. To carry out this requirement, doctors of chiropractic must obtain written informed consent from the patient when nonstandard methods are used. This provision, as proposed in this rule, may help prevent future complaints, and scope of practice questions for the chiropractor and the public alike regarding these nonstandard methods. The Board believes that if a doctor of chiropractic chooses to use a nonstandard method, that the cost to the chiropractor should not be passed on to the public without the patient's informed written consent.

3. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Minnesota Statutes, sections 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. Procedures applicable to all rules, Minnesota Statutes, sections 14.05 to 14.12, have been complied with by the Board as noted below.

The Board proposes adoption of these rules as noncontroversial rules in accordance with section 14.22 to 14.28, except that no public hearing is presently planned and need not be held unless 25 or more persons submit a written request for a hearing within the 30-day comment period.

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. See Minn. Stat. 14.11. The adoption of these rules could have a negligible effect on small businesses as discussed below. See Minn. Stat. 14.115.

Pursuant to Minnesota Statutes, section 14.23, the Board has prepared this Statement of Need and Reasonableness which is available to the public.

The Board will public a Notice of Intent to Adopt Rules without a Public Hearing in the **State Register** and mail copies of the notice and proposed amendments to persons registered with the Board pursuant to Minnesota Statutes, section 14.14, subdivision 1a. The notice will include the following information: a) that the public has 30 days in which to submit comments on the proposed amendment and giving information pertaining to the manner in which persons may comment; b) that no public hearing

will be held unless 25 or more persons submit a written request for a public hearing on the rule within the 30-day comment period; c) that the rule may be modified if modifications are supported by and the views submitted; and d) that notice of the date of submission of the proposed amendment to the Attorney General for review will be mailed to any person requesting to receive the notice, and giving information on how to request the notice.

The Board will submit the proposed rule and notice as published, the rule as proposed for adoption, any written comments which have been received, and this Statement of Need and Reasonableness to the Attorney General for approval of the amendment as to legality and form.

These rules will become effective five working days after publication of a notice of adoption in the **State Register**.

4. ADDITIONAL REQUIREMENTS

Approval of the Commissioner of Finance. Pursuant to Minnesota Statutes, section 16A.128, subdivision 1, if a fee is to be fixed by rule, the Commissioner of Finance must approve the fee, and the Commissioner's approval must be in the Statement of Need and Reasonableness. The Commissioner's approval of the proposed fee relating to Inactive License Status is given in the memorandum attached hereto.


Small Business Considerations. In preparing to propose these rules, the Board considered the methods for reducing the impact of the rules on small business as set forth in Minnesota

Statutes, section 14.115, subdivision 2 (1990). The Board noted that he suggested methods for reducing the impact of the rules on small business concern compliance, reporting requirements, and performance standards. Since the proposed rules relate to the definition of methods of practice, advertising, and licensure, there would appear to be no impact or significant affect on small business.

Nevertheless, any small business which believes they may be affected by the proposed rule will have opportunity to participate in the rulemaking procedure. Further, a notice of the proposed rulemaking will be mailed to the Minnesota Chiropractic Association, an organization which will likely represent small businesses affected by the rule.

Dated: 11-30-90

STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS



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(11/21/90)