



## MINNESOTA BOARD OF MEDICAL EXAMINERS

2700 University Avenue West, #106 St. Paul, MN 55114-1080 (612) 642-0538

June 19, 1991

Maryanne Hruby, Director  
Legislative Commission to Review Administrative Rules  
55 State Office Building  
St. Paul, MN 55155

RE: SONAR on Board of Medical Examiner Fees

Dear Ms. Hruby:

I am writing on behalf of H. Leonard Boche, Executive Director, Minnesota Board of Medical Examiners.

Enclosed is a copy of the Statement of Need and Reasonableness concerning Proposed Rules and Amendments relating to Board Fees.

The Notice of Intent to Adopt Rules Without a Public Hearing was published on June 17, 1991 in the State Register.

If you have any questions, please feel free to call me at (612) 642-0585.

Sincerely,

A handwritten signature in cursive script that reads "William R. Marczewski".

William R. Marczewski  
Medical Regulations Analyst

WRM/pg  
Enclosure

The Legislative Commission to  
Review Administrative Rules

JUN 20 1991



STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF MEDICAL EXAMINERS

In the Matter of Proposed  
Rules and Amendments  
Relating to Board Fees

STATEMENT OF  
NEED AND  
REASONABLENESS

Pursuant to Minn. Stat. § 14.23 (1990), the Minnesota Board of Medical Examiners (hereinafter "Board") hereby affirmatively presents the need for and facts establishing the reasonableness of proposed rules and amendments to Minn. Rule, pt. 5600.2500, relating to fees.

In order to adopt the proposed rules and amendments, the Board must demonstrate 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 of Need and Reasonableness 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. §§ 147.01, 147.02, 147.03, 147.037, (1990), 148.705, 148.73, 148.74 (1990), and 214.12, (1990) authorize the Board to promulgate licensure fees and other rules necessary to administer sections 147.01 to 147.161 and 148.65 to 148.78.

Minn. Stat. §§ 16A.128 (1990) and 214.06 (1990), require the Board to adjust any fee, which the Board is empowered to assess, in an amount sufficient so that the total fees collected will, as closely as possible, equal anticipated expenditures, including support costs, other statewide indirect costs, and attorney general costs attributable to the fee function.

#### 2. STATEMENT OF NEED

The Board has reviewed its anticipated costs for the next biennium (1992-1993) and found that if revenues are derived from existing fees, the projected costs would exceed revenue receipts by as much as \$978,000 by the 1993 Fiscal Year.

Estimated Cost for FY 1993	- \$3,034,000
Receipts for FY 1990-Existing Fees	- <u>\$2,056,000</u>
Expenditures in excess of Revenues	- \$ 978,000

(See Department of Revenue FEE  
REVIEW Document, Attachment A)

With expenditures exceeding revenues, the Board would be out of compliance with Minn. Stat. §§ 16A.128 and 214.06 which require the Board to adjust or set fees sufficient to collect revenues to cover anticipated expenditures. Thus it is necessary for the Board to adjust and set fees as requested in this document to insure compliance with Minn. Stat. §§ 16A.128 and 214.06.

### 3. STATEMENT OF REASONABLENESS

On January 5, 1991, the Board of Medical Examiners authorized its Executive Director, H. Leonard Boche, to begin the rulemaking process seeking the adoption of rules and amendments relating to Board Fees. Below is the text of the proposed rule with its amendments and new provisions.

#### RULES AS PROPOSED

##### 5600.2500 ANNUAL FEES.

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

- A. physician examination fee, full exam, \$425 \$490;
- B. physician examination fee, Part I only, \$250 \$290;
- C. physician examination fee, Part II only, \$300 \$345;
- D. physician application fee, \$200;
- E. physician annual license fee, \$115 \$144;
- 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 \$75;
- M. physical therapist examination fee, \$110;
- N. physical therapist annual registration, \$20 \$35;
- O. physical therapist late fee, \$10;
- P. physical therapist certification to other states, \$10;
- Q. physical therapist verification to institutions, \$5;
- R. physical therapist temporary permit, \$10.;
- S. duplicate license or registration fee, \$10;
- T. education or training program approval fee, \$25; and
- U. special purpose examination fee, \$345

The fee changes requested by the Board fit into three categories. They are fees involving physicians, fees involving physical therapists and miscellaneous fee charges. In each instance, the new fee and/or fee adjustments are for service-related costs that provide primary benefit to the individual fee payer.

### PHYSICIAN FEES

The fees involving physicians are found in proposed Minn. Rule, pt. 5600.2500, Items A.-C., F. and U. Items A.-C. concern physician examination fees. Item E. is the physician annual license fee. Item U. is the Special Purpose Examination fee.

#### ITEMS A - C

The physician examination fees are arranged as three separate components - physician examination fee (full exam), physician examination fee (Part I-only), and physician examination (Part II-only). This arrangement is necessary because of the licensing examination recognized by the Board for physician examination purposes.

The Federation of State Medical Boards offers the Federation Licensing Examination (FLEX). The Board accepts the FLEX exam as a physician licensing exam. Because the FLEX exam can be taken or retaken in its entirety or in separate parts, the fees must be arranged so as to provide applicants the option of paying for a full exam or for part of an exam.

The Board's physician examination fees reflect the cost of the exam as charged by the Federation of State Medical Boards and the exam administration fee of the Board needed to recover exam administration expenses incurred in conducting the exam.

On March 1, 1990, the Federation of State Medical Boards announced an examination fee increase starting in 1991. [See Attachment B - March 1, 1990 letter from James R. Winn, M.D., announcing the exam fee increases].

The Federation raised its fees as follows:

\$190 to \$220 = \$30 increase for Part I of FLEX  
\$240 to \$275 = \$35 increase for Part II of FLEX  
\$365 to \$420 = \$55 increase for the entire FLEX exam

The Board fees include an exam administration cost. Previously this administration cost was \$60. It is being increased by \$10 to \$70. Thus, the amended fee will reflect both the Federation cost increase and the Board administration cost increase. Therefore, the Board physician exam fees will be as follows:

Physician Exam Fee Part I  
From \$250 to \$290 = \$40 increase (\$30 Federation increase  
+ \$10 Board increase)

Physician Exam Fee Part II

From \$300 to \$345 = \$45 increase (\$35 Federation increase + \$10 Board increase)

Physician Exam Fee Full Exam

From \$425 to \$490 = \$65 increase (\$55 Federation increase + \$10 Board increase)

The Board increased its exam administration portion of the fees by \$10 to cover the increased costs of conducting the exam due to inflation (about 5% per year). The fees were last adjusted in 1987. The \$10 increase will generate about \$8,680 with about 124 applicants.

	<u>Estimated # of Applicants</u>		<u>BME \$ Fee</u>		
Full Exam	84	x	490	=	\$41,160.00
Part I	20	x	290	=	5,800.00
Part II	20	x	345	=	6,900.00

	<u>Estimated # of Applicants</u>		<u>Federation \$ Fee</u>		
Full Exam	84	x	420	=	\$35,280.00
Part I	20	x	220	=	4,400.00
Part II	20	x	275	=	5,500.00

\$41,160 - \$35,280 =	\$ 5,880.00
\$ 5,800 - 4,400 =	\$ 1,400.00
\$ 6,900 - 5,500 =	<u>\$ 1,400.00</u>
	\$ 8,680.00

(Exam Adm. Fee collected)

EXAMINATION ADMINISTRATION EXPENSES

Facility Rental	\$1,800 (\$450 x 2 tests x 2 yrs.)
Proctor Fees	5,200 (\$25/hr. x 26 hrs. x 2 proctors x 2 years)
Application Review/Mailings	<u>1,625</u> (\$25/hr x 65 hrs.)
	\$8,625 (Total)

It is, therefore, reasonable and necessary to increase the physician examination fees to accomodate the fee increases mandated by the Federation of State Medical Boards and to meet the exam administration cost increases due to inflation since 1987.

ITEM U.

The Board of Medical Examiners has proposed 1991 legislation which would provide for the use of the Special Purpose Examination (SPEX) as a means of obtaining licensure in Minnesota. [See attached proposed bill amending Minn. Stat. §§ 147.03 and 147.031 - Attachment F.] The Board has also begun to utilize the SPEX exam as part of disciplinary orders requiring physicians to successfully complete the exam in order to establish practice competency.

The combination of these two above situations will cause the increased administration of the SPEX exam by the Board. With the increased number of administrations, more staff time will be required, thus straining other Board licensing and/or discipline operations. It is therefore reasonable and necessary for the Board to establish a SPEX exam fee to list the Federation exam cost and provide for a Board exam administration fee to recover its costs.

The Federation of State Medical Boards fee for the SPEX exam is \$275. [See Attachment B - March 28, 1990 letter from James R. Winn, M.D.]. The Board will charge a \$70 exam administration fee to recover its expenses related to conducting the exam. This \$70 fee is the same amount as charged for the FLEX exam for a one day exam administration. It includes the cost of facility rental, proctors and exam review/mailings by Board staff.

Estimated  
# of Applicants

20	x	\$345 (BME Fee)	=	\$6,900	
20	x	275 (Fed. Fee)	=	<u>5,500</u>	
				\$1,400	(Exam adminis- tration fee collected)
Facility rental (\$150 x 4 sessions)				=	\$ 600
Proctor (\$25/hr. x 26 hrs.)				=	650
Exam Review/Mailings				=	<u>155</u>
					\$1,400

ITEM E.

The physician annual license fee is the largest Board fee for existing licensees. The Board's complaint review process and compliance monitoring system involve the largest Board expenditure of time, personnel and resources. It is therefore both reasonable and necessary for the Board to increase the physician annual license fee to recover the costs associated with the growing demands placed on the Board's complaint review and compliance monitoring functions. The \$29 fee increase from \$115 to \$144 will generate about \$435,000 in additional revenues [15,000 licenses x \$29 increase = \$435,000.]

The Board has seen a significant increase in disciplinary complaints filed against physicians. The number has risen with 505 (FY 1987), 687 (FY 1988), 1044 (FY 1989), and 1089 (FY 1990). There was a 52% increase over the years 1988 and 1989. It is projected the number of complaints received will rise to about 2400 by F.Y. 1993. [See Attachment A.]

In order to respond to the huge influx of complaints, a second complaint review committee was created in 1989. With more cases now being processed by the two committees, more cases have been referred to the Attorney General's Office - Health Division for evaluation, investigation and litigation (contested case proceedings). The number of cases referred to the Attorney General's Office - Health Division was 316 in FY 1990 and is projected to rise to 425 in FY 1991, 503 in FY 1992 and 654 by FY 1993. [See Attachment A.]

The Board is requesting appropriations of \$818,000 for FY 1992 and \$946,000 for FY 1993 for Attorney General's Office services in order to meet the increased caseload generated by the surge of complaints occurring and continuing since FY 1989. The appropriations reflect about a 15% increase per year growth factor.

In addition to the second complaint review committee being established, Board complaint staff has been increased with three new Medical Regulations Analysts and the Board's Medical Director. This again was in response to the surge of complaints starting in 1989 and continuing to the present time.

There has also been a corresponding increase in other Board discipline expenditures. These expenditures include professional services (consultant's fees, Office of Administrative Hearing costs for contested case proceedings and physical therapy rule hearing and miscellaneous legal services) and technical services (acquisition of medical records, copy fees and mailings.)

In fiscal year 1990, professional service fees were \$357,860 and technical service fees were \$67,161 for a total of

\$425,021. As of March 1991, the Board has already incurred \$264,000 in expenses for professional services and \$100,939 for technical services. The overall cost of professional and technical services has risen \$295,632 since 1989 [\$425,021 F.Y. 1990 - \$129,389 F.Y. 1989 = \$295,632] when the rise in complaints began.

The number of case dispositions resulting in orders approved by the Board against physicians has also grown concurrently with the surge of complaints and cases processed by the Board's complaint review committees. There is currently about 311 physicians under Board disciplinary order with about two-thirds of the orders requiring the individual to provide regularly scheduled reports to the Board, complete specific retraining or training programs, submit to biological fluid monitoring or obtain psychological or other counseling. It is projected that by F.Y. 1993, the Board will act on up to 218 orders, thus further adding to the physicians currently under order.

With the large number of physicians to be monitored, it is necessary to increase discipline staff to provide systematic compliance monitoring of physicians under order. Systematic compliance monitoring is necessary to insure the public is protected against physicians failing to comply with the Board's orders as well as to facilitate restoration of unrestricted license status to physicians properly in compliance with their order.

There are two additional factors which have impacted the Board's disciplinary process. They are the Board's Educational Outreach Program and the National Practitioners Data Bank.

#### Educational Outreach Program

In 1989, the Board began a program of Educational Outreach to attempt to eliminate or control behavior in physicians which leads to complaints. The program involved offering seminars on the subject of malprescribing. Eight seminars were conducted in the Spring and Fall of 1990. The response to the program from physicians was overwhelmingly positive.

Because of the overwhelmingly positive response, the Board has decided to continue offering educational outreach programs. These programs will focus on issues brought to the Board's attention through the complaint review process. The Board is requesting \$51,000 for FY (1992) and \$56,000 for FY 1993. These costs cover mailings, materials, presentators, and facility rental.



<u>FY 1992</u>		<u>FY 1993</u>	
Faculty	\$34,000	Faculty	\$37,000
Facilities	7,500	Facilities	8,250
Transportation	5,000	Transportation	5,500
Printing/Publicity	3,500	Printing/Publicity	3,850
Board Per Diems	<u>1,000</u>	Board Per Diems	<u>1,100</u>
	\$51,000		\$56,100

#### National Practitioners Data Bank

In 1986, Congress passed the Health Care Quality Improvement Act, Title IV, Public Law 99-660 establishing the National Practitioners Data Bank. The Bank will serve as a nationwide repository for information relative to physician professional conduct/competence, licensure status and malpractice claims. In September 1, 1990, the Board became the state's recipient agency for handling National Practitioners Data Bank reports. The Board has received about 20 reports per month, generating about 250 disciplinary cases per year, thus adding to the need for additional discipline staff.

With a properly functioning complaint review/compliance monitoring system, the Board can fulfill its responsibility of protecting the Minnesota public against incompetent and/or impaired physicians while providing all necessary due process to individuals under investigation or under order. The Educational Outreach Program represents an affirmative step by the Board to educate physicians about issues before they become complaints.

For these above reasons, it is reasonable and necessary the Board seek an increase in the physician annual license fee to recover its costs in providing an effective and high quality complaint review/compliance monitoring system and to continue its educational efforts aimed at reducing physician complaint behavior.

#### Physical Therapy Fees

The Board is seeking a \$15 increase in the physical therapist annual registration fee (Minn. Rule, pt. 5600.2500 Item N.), and \$35 increase in the physical therapist application fee (Minn. Rule, pt. 5600.2500 Item L.) in order to recover the expenses involved in the administration of the statutes and rules governing physical therapists.

In November, 1990, new rules governing physical therapists took effect. The new rules require additional application information from applicants [see Minn. Rule, pt. 5601.0300 D - N], mandates continuing education [see Minn. Rule, pts. 5601.2200 - 5601.2500] and requires Board auditing of continuing education compliance [see Minn. Rule, pt. 5601.2600]. These additional requirements will place additional demands on Board

staff in terms of collecting, verifying and processing application and registration renewal documents. It currently takes about five hours to process an application. This added work is coupled with an increase in the number of physical therapists being registered. The number of applicants has risen from 111 in FY 1987 to 172 in FY 1990. There is currently about 2350 physical therapists registered with the Board.

Also with the rule changes of November, 1990, physical therapists are now permitted to directly evaluate patients without a referral from a physician as was previously required. [See Minn. Rule, pts. 5601.1800 and 5601.1900]. It is expected, with this "direct access" by patients to physical therapists, that physical therapists will be the subject of more patient complaints related to the initial physical therapy evaluation. This will, in turn, require more time and attention of Board staff, the Complaint Review Committee, the Attorney General's Office--Health Division, and the Physical Therapy Advisory Council in terms of reviewing and processing complaints.

The Physical Therapy operating budget has been approximately \$53,000 since 1987 when the fees were last changed. Because of inflation, auditing of continuing education, expanded application information requirements, continued growth in the number of applicants, and expected rise in the number of discipline complaints against Physical Therapists, it is reasonable and necessary for the Board to increase its Physical Therapy application fee and registration renewal fee by \$35.00 and \$15.00 respectively.

2350 registrants x \$15 fee increase =	\$35,250
120 applicants x \$35 fee increase =	<u>\$ 4,200</u>
	\$39,450

Existing Physical Therapy Budget	\$53,000
Fee Increase Revenue	<u>39,450</u>
Project Revenue	\$92,450

#### Projected Physical Therapy Operating Budget

Salaries/Benefits	\$35,000
Advisory Council	5,000
Computerization	7,000
Overhead	16,000
Mailing/Printing	6,000
Document Development	3,000
Complaint Review	10,000
CE Adm./Audit	<u>10,000</u>
	\$92,000

The administration of the continuing education requirements and continuing education audit is a new requirement just mandated by the new physical therapy rules and was not listed in the previous operating budget.

### Miscellaneous Fees

The Miscellaneous Fees involve Minn. Rule, pts. 5600.2500 Item S. (duplicate license or registration fee) and Item T. (education or training program approval fee).

#### Item S.

The establishment of the \$10 fee to cover the cost of providing replacement license or registration documents is both reasonable and necessary to recover the staff time involved in providing the service. Because the processing of replacement documents is similar to the handling of certification requests, the fee charged is the same for both. [See Minn. Rule, pt. 5600.2500 Item F.] It takes about one-half hour to process a replacement license request.

With the Board now administering rules governing physicians, physician assistants, physical therapists and respiratory care practitioners (7/91), it is reasonable to expect that with this large number of licensees and registrants (about 16,000), at least 100 requests for replacement documents would be received in a biennium. The fee will generate about \$1,000 in revenue to cover staff time in processing replacement requests.

The duplicate license/registration fee rule is modeled after Minn. Rule, pt. 3100.2000 subp. 5 (A.) and Minn. Rule, pt. 6900.0250 (F.) of the Boards of Dentistry and Podiatry, respectively. [See Attachment E.]

#### Item T.

The \$25 education or training program approval fee is reasonable and necessary to allow the Board to recover its costs in processing applications seeking approval of continuing education programs for continuing education credit, and requests seeking approval of training programs acceptable for licensure purposes.

Minn. Rules, pts. 5605.0400 and 5601.2400 subp. 2. requires individuals or organizations to submit applications containing course materials and faculty credentialing information to obtain Board approval of their continuing education programs when the program is not otherwise recognized in Minnesota Rules. Minnesota Rule, pt. 5605.0400 applies to physicians and Minn. Rule, pt. 5601.2400 subp. 2. applies to physical therapists.

Thus, such applications must be reviewed relative to rule compliance and then prepared for submission to the Board for final action. The average application takes about an hour to review and process, and is charged at the rate of \$25 per hour of licensure staff time.

The Board has already received 37 applications in FY 1991 with at least 50 applications estimated per biennium. With about 50 applications, about \$1250 would be generated to recover staff costs.

The Board has also received a growing number of requests by licensure applicants to review graduate training programs for licensure purposes. Under Minn. Stat. §§ 147.02 subd. 2 (d), 147.037 subd. 1. (d) and Minn. Rule, pt. 5600.0600, subp. 2. (C.), and 5600.0700 subp. 2. (D.), the Board is authorized to approve other physician graduate training in addition to accepting graduate training programs or internships from institutions in the United States or Canada.

It is estimated that the Board will receive about 20 requests for internship/graduate training program approval for licensure purposes each year. The majority would involve foreign trained graduates. Here again, Board staff would have to obtain and prepare documents in order to allow the Licensure Committee/Board to assess if a program is acceptable for licensure purposes.

About \$500 per year would be collected for processing training program approval requests (\$25x20 applicants = \$500).

#### Board Appropriation Request

The Board has applied to the Commissioner of Finance and Minnesota Legislature for an increased appropriation to carry out its statutorily mandated activities. The Governor, Legislature, and Commissioner of Finance, approved appropriations of \$2,893,000 for FY 1992 and \$3,034,000 for FY 1993.

#### **SUMMATION**

The fee increases and new fees described in this document are modest and necessary financial adjustments to allow the Board of Medical Examiners to meet its responsibilities to its licensees and registrants. Reflected in each fee is the underlying legislative mandate of Minn. Stat. 16A.128 which requires the service-related costs provide a primary benefit to the fee payer. The fees provide for the needed expansion of services such as with the National Practitioners Data Bank, Physical Therapists, Educational Outreach Programs and compliance monitoring of individuals under Board order. The fees also respond to mandated

inflationary circumstances such as the Federation of State Medical Boards fee increases with the the FLEX and SPEX exams. Lastly, the fee changes recognize the need for the Board to recover costs for services previously not charged for such as with the SPEX exam, review/approval of education/training programs, and processing of replacement license or registration documents.

With these fee amendments and new fees, the Board can fulfill its statutorily mandated responsibilities under Minn. Stat. §§ 16A.128 and 214.06 and still maintain its high quality service without compromising existing licensing and discipline programs.

On March 25, 1991, a copy of the Minnesota Board of Medical Examiners UPDATE newsletter (spring 1991) was mailed to all current Board licensees and registrants. The newsletter contains an article describing the proposed fee changes requested by the Board and information concerning the rulemaking process. [Attachment G.]

#### COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Minn. Stat., §§ 14.05-14.12 and 14.22-14.28, specify certain procedures which must be followed when an agency adopts or amends rules. Procedures applicable to all rules, Minn. Stat., §§ 14.05-14.12, have been complied with by the Board as noted below. Because Board fees are fixed by rule rather than by statute, the procedures for adoption of non-controversial rules in sections 14.22 to 14.28 are being used, except that no public hearing is presently planned and need not be held unless 20 percent of those affected by the proposed amendments or new fees make a timely written request for a public hearing. See Minn. Stat. 16A.128 Subd. 2a.

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 rules to persons registered with the Minnesota Board of Medical Examiners pursuant to Minn. Stat. § 14.14, subd. 1a. The notice will include the following information: 1) that the public has thirty days in which to submit comments on the proposed rules and give information pertaining to the manner in which persons may comment; b) that no public hearing will be held pursuant to Minn. Stat. § 16A.128,

Subd. 2a, unless 20 percent of those affected 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 4) 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.

With the passage of Laws of Minnesota for 1991, Chapter 292, Article 1, Section 10, Subd. 4, the Board is allowed to use, for fees fixed by rule in the biennium ending June 30, 1993, the procedure for noncontroversial rules in Minn. Stat. §§ 14.22 to 14.28, except that, notwithstanding the requirements of Minn. Stat. § 14.22, paragraph 3, no public hearing is required. This procedure will be used by the Board since the total fees estimated for the biennium did not exceed the sum of the direct appropriations, indirect costs, transfers in and salary supplements as required under the statute. As directed by the law, the Board's NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING states that no public hearing will be conducted.

#### **ADDITIONAL REQUIREMENTS**

##### Approval of the Commissioner of Finance

Pursuant to Minn. Stat. § 16A.128, 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 contained in the Statement of Need and Reasonableness. The Commissioner's approval of the proposed new fees and fee amendments to Minn. Rule, pt. 5600.2500 is contained in Attachment H.

##### Small Business Considerations

It is the position of the Board of Medical Examiners that Minn. Stat. § 14.115 (1990), relating to small business considerations in rulemaking does not apply to the rules it promulgates. Minn. Stat. § 14.115, subd. 7(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 section 14.115, pursuant to subdivision 7(3) 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 and physical therapists provide medical care and are regulated by the state for standards and cost. The Board regulates physicians and physical therapists for standards.

The Minnesota Department of Human Services regulates physicians and physical therapists 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 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 for 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 requirement. 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 rules and amendments are viewed as compliance or reporting requirements for businesses, then the Board finds that it should be unworkable to lessen the requirements for those physicians and physical therapists who practice in the solo or clinic setting of fewer than 50 employees, since that would include the vast majority of licensees and registrants. 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 most licensees and registrants 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 and physical therapists.

Pursuant to Minn. Stat. §§ 147.01 et seq., the Board was designated as the agency for establishing requirements for licensure and 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. The Board is also the agency pursuant to Minn. Stat. § 148.65 et seq., for establishing requirements for registration of physical therapists and is authorized under Minn. Stat. § 148.74 to promulgate rules to carry out the purpose of §§ 148.65 to 148.78. Given the statutory mandates, it is the Board's duty to establish licensure and registration qualifications and disciplinary standards which apply to and govern all applicants, licensees and registrants 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 and physical therapists in solo or small practice than those practices large enough to remove themselves 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 physician/physical therapist group 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 or physical therapists indeed possibly the vast majority of physicians/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 physicians/physical therapists (which may consist of a non-existent class) who work in a large business setting and adopt another, less stringent set of standards to be applied to those physicians/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 physicians and physical therapists or the licensing system will be chaotic.



Licensees, or 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 rules and 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 and has also provided notices and articles about the proposed rules in its newsletter issued to all licensees and registrants.

(Finis)