

4/8/91

STATE OF MINNESOTA  
COUNTY OF RAMSEY

BEFORE THE MINNESOTA  
BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the  
Adoption of Rules Relating  
To Examination Procedures

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 po

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regard to the above-mentioned areas in the practice of chiropractic.

## **2. STATEMENT OF NEED AND REASONABLENESS**

The Minnesota Board of Chiropractic Examiners is required to examine each doctor of chiropractic who wishes to practice in this state for minimal competency. Therefore, the Board is charged with the task of examining applicants in various aspects of the healing art of chiropractic. The Board administers a written examination and a practical examination. The areas of examination include, but are not limited to, basic sciences, chiropractic technique, clinical competency, and x-ray safety. Minnesota Statutes 148.06 gives the Board authority to consider a valid certificate of examination from the National Board of Chiropractic Examiners as evidence of compliance with the written requirements. The Board also administers further testing in the areas of jurisprudence, historical foundations, and clinical nutrition. In order to facilitate standards relating to examination procedures, it was determined necessary to promulgate these rules.

### **2500.2500 Test Administration**

The Board has established this rule in order to provide a quality examination. The Board often relies on the chiropractic profession to administer the practical portions of its examination. The Board relies these on doctors as "experts" qualified enough to determine if an applicant is performing a

procedure correctly. Because of the subjective nature of a practical examination, the Board sets a three year minimum to be considered qualified. This is also in keeping with the guidelines set to be qualified to be a board member. **MS 148.03.**

The areas listed in which a doctor may participate are the only areas of the examination process in which the Board may need help administering. Therefore, no doctor will be allowed to participate in any other area of the examination process. For example--scoring examinations, regrade requests. "Post-exam Audit" is explained further in the **Regrade** portion of this statement.

The Board requires that a doctor who wishes to participate in an area of the examination must be in good standing with the Board. This means that the Board will not enlist or accept the help of a doctor who has current disciplinary action against her/himself, or pending disciplinary action which the doctor has been informed of. This has been established in order to keep a high standard of integrity associated with the examination and those involved.

To protect the integrity of the examination, no one doctor will be allowed to participate in more than one aspect of the examination process. Board members are exempt from this rule because they are involved in board-related activities that would involve them in several aspects of the examination. Therefore, the Board believes these rules to be needed and reasonable.

#### **2500.2510 Continuing Education Hours for Examiners**

The Board has established this rule in order to give incentive to the profession to help with the examination. A two hour minimum for a doctor to participate in the administration of the examination is required in order to obtain continuing education hours. This has been established in order to determine what the Board means by "participating" in the examination process. Two regular hours of continuing education has been chosen in order not to have doctors rely solely on fulfilling continuing education requirements with examination related activities. This would defeat the purpose of requiring continuing education hours for furthering one's knowledge of chiropractic.

Four hours each calendar year has been established in order to provide an opportunity to participate in both examinations given each year. Therefore, the Board believes these rules to be needed and reasonable.

#### **2500.2520 Application Prerequisites**

The National Board of Chiropractic Examiners provides testing in the subjects listed in MS 148.06 as subjects the Board must test in prior to the applicant being allowed to sit for the state license examination.

The cost of developing independent examinations in these subjects is beyond the resources of the Board. Requiring that applicants receive a passing score in the National Board of Chiropractic Examiners examinations fulfills some testing

requirements of MS 148.06 in an effective, objective, and cost effective way.

MS 148.06 and MS 214.03 allows the Board to use standard examinations as a substitute for direct testing by the Board. The resources of the NBCE allows it to maintain a high quality examination which meets or exceeds Board standards.

For clarification, the Written Clinical Competency Examination is often referred to as "Part III" of the National Board of Chiropractic Examiners' examination. Therefore, the Board believes these rules to be needed and reasonable.

#### **2500.2530 Examination Deadline**

Not less than four weeks prior to the first day of the examination has been established in order for the Board to make all necessary accommodations for the examination. The Board generally examines 70 to 85 applicants at each examination. Four weeks allows the Board to reserve a large enough space to examine all applicants in an adequate area, recruit enough examiners for the practical portion of the examination, and have enough materials for each applicant.

The Board will send out all notices during the fourth week prior to the first day of the examination in order to provide sufficient time for delinquent materials to arrive at the Board office. Two weeks prior was chosen in order for the Board to have enough time to make all final arrangements.

The Board in the past, without having rules established, has had to accept applicants at the last minute. Thus providing for

disruption in the administration of the examination process. The Board believes with the deadlines established, there is no longer reason for an applicant to provide the Board with late materials. Therefore, in keeping with this, the Board believes it is reasonable to deny an applicant to sit for the examination if materials are not received on time. Therefore, the Board believes these rules to be needed and reasonable.

#### **2500.2540 Regrades**

The Board has established this option in order to provide an applicant some recourse to contest a failing score of her/his examination.

Regrades provide for one more check to find errors of any kind, in the examination process. The Board takes four steps to ensure the validity, determine the difficulty and practicality of each examination: Test Item Review, Test Development Committee, and Postexam Audit. After exams are initially scored, all questions answered incorrectly by 30 percent or more applicants are examined by the postexam audit committee to determine the validity, difficulty, and practicality of the questions. The 30 percent cut-off has been established by the Board because it believes that if 30 percent of all applicants answer the same question incorrectly, there may be some kind of defect in the questions itself. The fourth step is Regrading Examinations. This available to recheck, by hand, scoring or questions missed by the Postexam Audit.

The requirements set forth are established for consistency in the regrade process. Receiving requests within 30 days after scores have been mailed, has been established in order not to prolong the regrade process. Thirty days has also been established in order for staff to begin the next examination's work free of the last examination's results.

The \$30 fee requirement has been set forth in M.R. 2500.1150, item B. Therefore, the Board has not sought further approval of any kind from the Commissioner of Finance.

The Board will exercise its option not to allow applicants to review their examinations. All necessary measures will be taken in order to protect the integrity of the test for all applicants and future applicants. See MS 13.34. Therefore, the Board believes these rules to be needed and reasonable. See Attachment No. 1.

#### **2500.2550 Retaking Examination**

MS148.06 allows for letting the applicant's fee of \$150 last for one year. Therefore, the Board will allow first time applicants to retake the portion(s) of the examination they have failed at the next examination. The Board is requiring applicants to take the examination at the next given examination in order to keep financial records regarding the \$150 fee in line with fiscal year planning.

Applicants need not reapply because their applications are complete and the Board will hold them over to the next

examination. Retakes must meet the same deadline as first-time applicants in order for the Board to plan for their attendance.

If an applicant fails to pass the examination in two consecutive attempts, the applicant must resubmit an application in order to have the most current information available on the applicant. This may include a certificate of good standing from another state, or perhaps a report regarding disciplinary action from another state. The applicant must also pay the application fee again in order for the Board's fiscal year records to be in line and also to be consistent with statutory guidelines stating that the application fee lasts only one year. The applicants must retake the entire examination because after two unsuccessful attempts, the Board requires the applicant to prove that she/he is a competent chiropractor. After failing twice, the Board may reasonably have reservations in the applicants' ability to practice competently without having passed the entire examination successfully. Therefore, the Board believes these rules to be needed and reasonable.

### **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 publish 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. However, since the fee for Regrades has been set forth in M.R. 2500.1150, item B, the Board has not sought the further approval from the Commissioner of Finance.

**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 the 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 Examination Procedures, 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: 3-11-91

STATE OF MINNESOTA  
BOARD OF CHIROPRACTIC EXAMINERS

  
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Joel B. Wulff, DC  
Executive Director