

2/24/92

STATE OF MINNESOTA

The Legislative Commission to Review Administrative Rules

BOARD OF NURSING

APR 28 1992

In the Matter of Proposed Permanent Rules Relating to Registration Renewal Fees



STATEMENT OF NEED AND REASONABLENESS

This document presents the explanation of the need to amend Minnesota Rules part 6310.3600 subpart 1.A. and the reasonableness of the proposed change. Minnesota Statute, section 214.06 requires that the Board adjust fees so that the total fees collected "...will as closely as possible equal anticipated expenditures during the fiscal biennium." The proposed fee increase is necessary to provide this balance. Minnesota Statutes sections 148.191 and 214.06 provide the statutory authority for the Board to adopt these rules.

The anticipated expenditures for fiscal years 1992 and 1993 total \$1,560,000 and \$1,597,000 respectively. The totals are the sum of the following parts:

Appropriation	\$1,346,000	\$1,401,000
Statewide Indirect Costs	35,000	35,000
Agency Indirect Costs	11,000	11,000
Attorney General Costs	150,000	150,000
	<u>\$1,560,000</u>	<u>\$1,597,000</u>

Part 6310.3600 REGISTRATION FEES

Subpart 1. Amount.

A. Registration renewal. This rule sets the fee paid by a nurse when renewing registration or reregistering. The increased fee is needed to provide sufficient income to balance expenditures during the current biennium. The registration renewal fee is the fee which is expected to provide this balance. The attachment entitled Fee Review - Detail of Costs shows the number of registered nurses and licensed practical nurses expected to renew registration during Fiscal Years 1992 and 1993.

The proposed fee is reasonable because it provides for sufficient income according to the projected number of registrants. If the fee is set higher, too much money will be generated. In reverse, if the fee is set lower, not enough income will accrue.

SMALL BUSINESS CONSIDERATIONS.

Minnesota Statutes, section 14.115 requires administrative agencies, when proposing a rule or an amendment to an existing rule, to consider various methods for reducing the impact of the proposed rule or amendment on small businesses and to provide an opportunity for small businesses to participate in the rulemaking process.

It is the position of the Board that this provision does not apply to the rules it promulgates. Minnesota Statutes, section 14.115, subd. 7, clause (2) (1990) states that section 14.115 does not apply to "agency rules that do not affect small businesses directly." The Board's authority relates only to nurses,

not to the businesses they operate. Furthermore, although the Board does not compile statistics on the issue, almost all nurses are not independent practitioners, but employees of the agencies or facilities at which they work. In these cases, it is clear that a nurse should not be considered a small business.

The Board is also exempt from the provisions of section 14.115, pursuant to its subdivision 7, clause (3) which states that section 14.115 does not apply to "service businesses regulated by government bodies, for standards and costs, such as...providers for medical care." Nurses provide nursing care and medical care and are regulated for standards and costs. The Board regulates nurses for standards and the Minnesota Department of Human Services regulates some nurses for costs.

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

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (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; and
- (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 rules.

Methods (a) and (c) relate to lessening compliance or reporting requirements for small businesses either by establishing less stringent requirements, establishing less stringent schedules or deadlines for compliance with the requirements, or consolidating or simplifying the requirements. Since the Board is not proposing any compliance or reporting requirements for either small or large businesses, it follows that there are no such requirements for the Board to lessen with respect to small businesses. If, however, these proposed rules are viewed as compliance or reporting requirements for businesses, then the Board finds that it would be unworkable to lessen the requirements for those few nurses who practice in a solo or group setting of fewer than 50 employees since the proposed rules have no effect on their businesses. 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 businesses, and therefore there is no reason to implement performance standards for small businesses as a replacement for design or operational 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 a few licensees from the purview of the rules with the result that a small number of nurses would be totally unregulated, a clear conflict with existing nursing statutes.

2. Reducing the impact of the proposed amendments on small businesses would undermine the objectives of the Minnesota licensing law nurses.

Pursuant to Minnesota Statutes, section 148.171, et seq., the Board was created for the purpose of establishing requirements for licensure and adopting standards for disciplinary action to govern the practices or behavior of all licensees. Pursuant to Minnesota Statutes, section 148.191, subd. 2, the Board is specifically mandated to promulgate rules as may be necessary to carry out the Board's purposes. Given these statutory mandates, it is the Board's duty to establish licensure qualifications and disciplinary standards which apply and govern all applicants and licensees regardless of the nature of their practice. As it has been stated above, it is the Board's position that the proposed rules will not affect small businesses and certainly do not have the potential for imposing a greater impact on nurses in a solo or small practice than on those employed by agencies and organizations. It has also been explained above that the Board considers it unfeasible 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 nurse or group of nurses 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 nurses from the requirements 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 nurses (which may consist of a nonexistent class) who work as employees and adopt another, less stringent, set of standards to be applied to those nurses who practice in a solo or small group practice. It is the Board's view that these rules must apply equally to all nurses if the public whom they serve is to be adequately protected.

Licensees, 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 these proposed rules. The Board has mailed a copy of the proposed rule amendment to everyone on the mailing list of persons desiring to receive proposed rules.

Board of Nursing

Date

Joyce M. Schowalter
Executive Director