

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF CHIROPRACTIC
EXAMINERS

In the Matter of the
Adoption of A Rule Relating
to Testimonial Advertising,
Fees, Change of Address, and
Continuing Education

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 area in the practice of chiropractic.

In order to adopt the proposed rule, 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 the Board has met these requirements.

1. STATUTORY AUTHORITY

The statutory authority of the board to adopt this rule 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

2500.0100 DEFINITIONS

Subpart 4a. Continuing education unit.

This term is being defined to clearly establish the standard to be used when awarding credit to chiropractors who attend educational programs for credit. The 50-minute session was chosen to accurately reflect the current standard for professional programs in health care. This amount of time and terminology are current standards and inclusion in this rule clarifies the boards standards for both attendees of an presenters of programs for which continuing education is awarded. Therefore, the inclusion of this in the rule is reasonable and necessary.

2500.0200 PROFESSIONAL STANDARDS FOR ADVERTISING

Subpart 3. Testimonial advertising.

This rule is being developed to establish requirements which protect the publics interest when practitioners use testimonial styles of advertising. The prohibition on testimonial advertising is being removed from the administrative rules in response to the determination that this prohibition may in fact be contrary to constitutionally guarantied rights of free speech. The established procedures and statements of patient rights protect the public from misleading and inaccurate advertisements and protect the patients who are being quoted in the advertisements from having their statements misused. Therefore, this rule is reasonable and needed.

2500.1100 INDIVIDUAL ANNUAL LICENSE RENEWAL

Subpart 2. Renewal fees.

This change is being made in order to correct an error. Part 2500.1300, as the rule currently reads, is incorrectly referenced. Therefore, this rule is needed and reasonable.

Subpart 3. Penalty fees.

This change is being made in order to deter licensed chiropractors in Minnesota from treating their license renewal lightly. There were 474 of 1672 renewing chiropractors in 1992 (28.4%) who failed to meet the December 31 deadline as established in M.R. 2500.1100.

M.R. 2500.1110 establishes a license termination process after 31 days of failure to renew. This provision will allow the MBCE to limit the length of time that licenses exist in the "not renewed status" but does nothing to effect those licenses that are not renewed by January 1 yet may be renewed before the termination process is complete. These licenses are not fully active under the law. This "not fully active" status creates a number of problems which directly, and adversely, affect the public. First, the malpractice coverage held by the chiropractor may not be in effect during this period of time. Any event which may result in malpractice charges being filed would therefore leave both the doctor and affected patient in a very negative situation. Second, the insurance coverage of the patient in most cases requires the chiropractor to be fully licensed in the state. Services rendered during this time may not be covered by the insurer. The resulting confusion and

possible legal actions could be avoided by timely renewal. Finally, this "not fully active" status is a "grey" area of the law. As practicing during this non-renewed time is not clearly lawful, the MBCE is required to investigate each case of practice during this time and take individual action against the doctors when appropriate. The \$150 penalty fee does not fully defray the costs of these disciplinary proceedings.

This fee is not one which would be required of any chiropractor who responsibly handled their license renewal. The licensees are informed at least 60 days prior to the December 31 deadline of their need to renew. This notification of the need to renew is beyond the clearly established expiration date on each license certificate issued. The renewal cycle is discussed in the quarterly newsletter produced and distributed by the MBCE. With this significant amount of notice to the profession which allows them to avoid this fee as well as the significant potential harm to the public when practitioners fail to renew their licenses in a timely fashion, this fee is both reasonable and necessary.

2500.1105 CHANGE OF NAME OR MAILING ADDRESS

Subparts 1 and 2.

For both subparts 1 and 2, the Board requires that licensees keep their names and addresses current with the board in order to keep proper records. In the past, the only time a licensee was asked about a name or address change was at the end of the year. With that policy in use, several months would go by before the Board was informed. In the meantime, newsletters,

official Board requests, and license renewal notices did not reach the licensee in a timely manner, or at all. The Board believes that notification within 30 days is a reasonable and usual amount of time given in matters such as these.

Name or mailing address changes will be reflected at the next renewal in order to keep Board costs down with printing licenses or other certificates. If a licensee wants to have an updated license or certificate, they must pay an extra fee. This fee has been established in 2500.1150 (E). The public depends upon accurate information from the MBCE in regard to the licensees regulated by the MBCE. The MBCE is the source of contact information on chiropractors in the state of Minnesota. Therefore, this rule is reasonable and necessary. (2500.1150 Item E)

2500.1150 BOARD FEES

(I.) This item is being deleted because the Board is instituting rule Part 2500.1410, Sponsorship of Education Programs, which establishes new fees. Therefore, the deletion of this item is needed and reasonable.

I. This item is being established because at the present time the Board is charged with regulating professional corporations. The Board is responsible for administering the annual registration of corporations. However, this year alone, the Board has had to send out dozens of reminders and letters inquiring about a corporation's renewal status. This expense to the Board is unnecessary due to the fact that each professional corporation registered with the MBCE is sent a renewal form

thirty days prior to the date renewal is required. A penalty fee of \$5 per month has been established to be in proportion with the renewal fee of \$25 per year. Therefore, this rule is needed and reasonable.

J. The Board has now taken over all maintenance of information pertaining to the licensure of chiropractors in the state of Minnesota. Therefore, the Board is now the sole source of current information that is often requested by outside parties. The Board is charging a fee of \$100 per computer list to help defray the cost of list production, equipment maintenance and data maintenance. This fee is below the usual and customary fee charged by such agencies as Print Communications at the Department of Administration. The MBCE is required to collect fees sufficient to cover costs that it incurs during its normal operations. These fees are supposed to be collected from the individuals receiving benefit from the service. The lists are requested and used by private organizations for purposes that often generate income for the requesting parties. To ask the licensees to defray the costs associated with generating these lists is inappropriate. Therefore, the Board believes this is a reasonable and necessary fee.

K. In much the same manner, as in "J" above, the charge for computer printed labels is designed to collect from the party requesting and benefiting from the lists the costs of generating the lists. The fee established in this rule is far below the usual and customary fee charged by Print Communications. Print Communications was charging \$250 per pack of labels. The cost of producing mailing labels is significantly higher than producing

the printout style list covered by the fee discussed under item J. The higher costs are associated with increased staff time, increased material costs and increased wear to the equipment used to produce the lists. Therefore, the Board believes this rule to be reasonable and necessary.

L. This item is being added to ensure that Minnesota licensed chiropractors keep a current mailing address with the Board. When the Board does not have a current mailing address, administrative costs are incurred through extra postage and staff time. This fee can be avoided by timely notification of a change of mailing address. The time allotted for notification is reasonable. To ask all licensed chiropractors to pay for the increased cost of multiple mailings and notifications to irresponsible practitioners is not reasonable. Therefore this rule is reasonable and necessary.

2500.1200 CONTINUING EDUCATION

Subpart 2. Biennial requirement.

The Board is changing the annual continuing education unit requirement to a biennial accrual system. At least half of the other health-related licensing boards have multi-year requirements. This provision will allow for doctors who take in-depth seminars over many months to accrue a greater number of continuing education units for license renewal. By allowing more time for accrual of continuing education units, this rule also allows Minnesota licensed chiropractors more choice in the continuing education courses they select. This in turn should result in courses of greater quality being offered. Doctors will

have the time flexibility to demand better quality courses. In turn, fewer requests for deferment of continuing education unit requirements are anticipated. The requirements of 40 units, 6 of which are in radiation safety or interpretation are only doubled from the annual requirements. Therefore, since the Board is switching to a biennial cycle, this requirement is reasonable.

(Subp. 3. This provision no longer applies with the new rules established.)

Subp. 4. Schedule of required continuing education units.

The Board is establishing January 1, 1992, as the beginning date for the first biennial cycle. This "back dating" allows chiropractors to use credits obtained during 1992 as part of their biennial requirement. This date has been chosen to take into account the long time period the Board has been working on this rule and the confusion that process has created within the profession. Many chiropractors mistook the notification of intent to pursue rulemaking as a statement of a change in the rule process and obtained continuing education during 1992 as though the rule change had already occurred. The Board staff also misjudged the time necessary for rule adoption and predicted an earlier adoption date. This prediction caused many chiropractors to act as though the rule was already adopted. The new deadline of December 31, 1993 provides all chiropractors an extra year in which to obtain required hours. Any hours obtained during 1992 will be applied to the biennial requirement and therefore maintain their full value to the chiropractors. This overall positive effect of the "back dating" establishes the need and reasonableness of this rule.

The revised schedule of required units will take effect upon adoption of the rule. The schedule specifies continuing education requirements for newly licensed chiropractors which must be obtained by a specific biennial date. Since the purpose of continuing education is to ensure that doctors keep abreast of new information, the board feels that no continuing education should be required immediately following graduation from an accredited chiropractic college. Currently the board has reduced CE requirement for the first years of licensure. The new process of reduced hours for doctors who are licensed in the first year of a biennial cycle and no hours for doctors licensed in the second year of the biennial cycle provide a fair process for doctors to cycle into the biennial cycle while recognizing the need for and goal of continuing education.

Continuing education is designed to ensure continued competency. Newly licensed practitioners having recently passed the licensure examination by proving their competency require less continuing education. Therefore, reduced requirements for newly licensed practitioners are in order.

2500.1410 SPONSORSHIP

The board is establishing a sponsorship of continuing education which delegates administrative duty, not true authority, to individuals and organizations. This change in the process of CE approval and tracking will reduce the cost to the board through reduced work load while increasing the ability of sponsors to offer special interest and small scale programs. The

actual approval criteria is set by administrative rule and the board has established monitoring procedures to ensure compliance with board rules as well as a sponsorship revocation procedure so that actual approval authority remains with the board. Therefore this rule is reasonable and necessary.

A. The fee of \$500 was established because it approximates the anticipated Board cost of regulating sponsors. By delegating the administrative responsibilities to the sponsors, the Board cannot justify the current fee of \$100 for each program approved. Therefore, the reduced cost of an annual registration fee will encourage sponsors to provide an increased selection of quality programs to the chiropractors who need to accrue CEUs.

The fee of \$100 will remain in place for single programs. Reducing this rate would only become an incentive for multi-seminar sponsors to circumvent the payment of the \$500 fee. The \$100 is an approximation of the cost to the Board of handling administrative duties associated with program approval and tracking. Therefore, the fee is reasonable and necessary.

Sponsorship approval must be renewed every year. Renewal requires submission of a new application and fee. This time frame is necessary due to the Board's annual budgetary cycle and also serves to provide appropriate oversight of the sponsors.

B. Items 1 and 2 are required for the purposes of the Board's administration and tracking of each sponsor.

Item 3. A signed statement is required in order to establish responsibility among the various parties that may be involved in the sponsoring of a seminar.

Item 4. A signed statement is required as proof to sponsors who do not follow through with this requirement that they did agree to provide the information.

C. This provision is included for auditing purposes. This is one way for the Board to maintain the integrity of the CEU process. The second part of this provision is included to deter any abuse of CEUs.

2500.1420 REPORTS TO THE BOARD.

Any changes in information, as stated in the sponsor's original registration, must be reported in order that the Board has accurate and current information on file.

The Board believes that two weeks' time is reasonable for a sponsor to generate and submit a list of attendees. Timely submission of this list allows the Board to keep up-to-date information on licensees' continuing education units.

1. - 3. are required for obvious recordkeeping purposes.

4. is required because the Board requires three types of CEUs during different renewal periods, which are sexual abuse recognition, x-ray, and general topic or regular.

2500.1500 PROGRAM APPROVAL CRITERIA

This part has only been changed to reflect the transfer of duties to sponsors, and the change from CE "hours" to CE "units."

A. - C. These items have not changed.

D. has been added in order to reduce problems with complaints filed against doctors regarding their recordkeeping. Current standards in health care demand high quality records.

Past education and practice experience does not always prepare a chiropractor to satisfy new standards. Therefore, the Board acknowledges the need for continuing education programs in recordkeeping.

2500.1710 SPONSORSHIP REVOKED

This sponsorship program puts the onus on the sponsors themselves to maintain the standards of the Board and to comply with all requirements of this rule. Therefore, if a sponsor violates any one of the requirements, their sponsorship may be revoked. The Board has specifically listed the violations that may result in revocation in order to limit the Board's discretionary powers.

2500.1720 PROGRAMS DEVELOPED

This part is being established to give credit to chiropractors for developing continuing education programs. The Board recognizes the amount of knowledge accrued when one develops a program.

In order for the chiropractors to receive these credits, the information in items A through C must be provided so the board may evaluate the program.

Awarding credits may only take place one time for each program developed. This is being established to prevent chiropractors from developing a program and giving it several times over the years and receiving credit when no new knowledge is obtained.

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 this rule as a noncontroversial rule 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 this rule will not require the expenditure of public money by local public bodies, nor does the rule have any impact on agricultural land. See Minn. Stat. 14.11.

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 the date and 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.

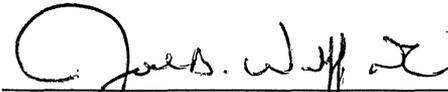
This rule will become effective five working days after publication of a notice of adoption in the **State Register**.

4. ADDITIONAL REQUIREMENTS

Small Business Considerations. In preparing to propose this rule, 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 rule changes better define requirements already established by statute. Therefore, the Board believes this rule will not have an economic impact.

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.

STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS



Joel B. Wulff, DC
Executive Director

8-25-92

Date