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STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Board of Psychology Relating to
Licensure of Psychological
Practitioners and Setting Fees, to
Implement Minn. Stat. SS 148.88 to
148.98 (1991 Supplement)

STATEMENT OF NEED
AND REASONABLENESS

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MINNESOTA BOARD OF PSYCHOLOGY

November 2, 1992

STATEMENT OF NEED AND REASONABLENESS

I. GENERAL INTRODUCTION

In 1991 the Legislature passed a new psychology act, superseding the existing practice that became law in 1973. The new practice act became Laws of Minnesota 1991, Chapter 255.

The new practice act imposed additional duties on the Board of Psychology, instituted a new licensure category, phased out independent licensure for master's level psychologists, and mandated continuing education as a requirement for renewal of license. The practice act was further amended in Laws of Minnesota 1992, Chapter 513, Article 6, Sections 29-33, and appropriations for the purpose of implementing the practice act were provided in Article 5, Section 8.

The Statement of Need and Reasonableness which follows the Statement of the Board's Statutory Authority and Small Business Considerations addresses rules proposed to correct existing rules so that they conform to the changes made in the statutes by the new psychology practice act.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt and amend rules relating to licensure requirements, fees, and professional conduct is set forth in Minn. Stat. SS 148.905, subds. 1(1), (2), (7) and (9), and 2 (1991 Supplement); and 214.06, subds. 1 and 2 (1990). Section 148.905, subd. 1(1) grants the Board the authority to adopt and enforce rules for licensing psychologists and for regulating their professional conduct. Subd. 1(2) grants the Board the authority to adopt rules that provide for examinations and establish a code of professional ethics and requirements for continuing education. Subd. 1(7) grants the Board the authority to establish reasonable fees for the issuance and renewal of licenses and other services of the Board. The fees must defray the costs of administering the provisions of SS 148.88 to 148.98 including applications, examinations, enforcement, and the cost of maintaining the operations of the board. Subd. 1(9) grants the Board the authority to establish or approve programs that qualify for professional psychology continuing educational credit. Subd. 2 grants the Board the authority to adopt rules as necessary to define standards or to carry out the provisions of SS 148.88 to 148.98. Section 214.06, subdivision 1 requires each regulatory board to promulgate rules providing for the adjustment of fees so that the total fees collected will as closely as possible equal anticipated expenditures during the fiscal biennium. Section 214.06, subdivision 2 requires each regulatory board to promulgate rules providing for the renewal of licenses. Under these statutes, the Board has the authority to amend its rules.

III. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. S 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 opportunity for small businesses to participate in the rulemaking process. It is the Board's opinion that Minn. Stat. Section 14.115 does not apply to these proposed rule amendments.

However, in the event of disagreement with the Board's position, the Board has reviewed the five suggested methods listed in section 14.115, subdivision 2, for reducing the impact of the rules on small businesses. 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.

As part of its review the Board considered the feasibility of implementing each of the five suggested methods, and considered whether implementing any of the five methods would be consistent with the statutory objectives that are the basis for this rulemaking.

1. It would not be feasible to incorporate any of the five methods into these proposed rule amendments.

Methods (a)-(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 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 amendments are viewed as compliance or reporting requirements for businesses, then the Board finds that it would be unworkable to lessen the requirements for those psychologists who practice in a solo or clinic setting of fewer than 50 employees, since that would include the vast majority of psychologists. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Board's amendments 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. Under the Board's view that these proposed rule amendments do not in any way regulate the business operation of psychologists, there are no rule requirements from which to exempt small businesses. However, if these proposed amendments are viewed as regulating businesses insofar as they regulate psychologists, then it would hardly make sense for the Board to exempt from its rules those psychologists who practice in a solo or clinic setting with fewer than 50 employees, since they constitute the vast majority of psychologists. For all of these reasons, it is not feasible for the Board to incorporate into its proposed amendments any of the five methods specified in subdivision 2 of the small business statute.

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

Pursuant to the Minnesota licensing law for psychologists, Minn. Stat. SS 148.88 to 148.98, the Board was created for the purpose of establishing requirements for licensure and adopting ethical standards governing appropriate practices or behavior for psychologists. Pursuant to Minn. Stat. S 148.905, subd. 2, the Board is specifically empowered to "adopt rules necessary to define standards or to carry out the provisions" of the Minnesota licensing law for psychologists. Given these statutory mandates, it is the Board's duty to establish rules relating to the practice of psychology which apply to 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 amendments will not affect small businesses, and certainly do not have the potential for imposing a greater impact on psychologists practicing in a large business setting. 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 rule amendments may affect the business operation of a psychologist or a group of psychologists, 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 psychologists - indeed, the majority of psychologists - 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 licensure requirements for those psychologists who work in a large business setting and adopt another, less stringent, set of licensure requirements to be applied to those psychologists who practice in a solo or small clinic practice. It is the Board's view that these rule amendments must apply equally to all psychologists, if the public whom they serve is to be adequately protected.

IV. STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Laws of Minnesota 1991, Chapter 255 created a new psychology practice act, which instituted a new type of licensure called "Psychological Practitioner". Under the provisions of Minn. Stat. S. 148.91, subdivision 6, in order to become licensed as a Psychological Practitioner an applicant must have earned at least a master's degree (or a master's equivalent in a doctoral program with a major in psychology, pass a skills assessment and an examination in psychology, pay a non-refundable application fee, reach the age of majority, be of good moral character, and not have engaged in unethical practice as defined in the Board's Rules of Conduct. The applicant does not need any post-degree experience, but must be under the supervision of a Licensed Psychologist for the duration of his or her practice.

The Board's responsibility at a minimum is to adopt rules that define in greater detail for Psychological Practitioners what constitutes a major in psychology, set the fees for licensure and renewal, provide for licensure examinations and satisfactory performance on them, and provide requirements for reporting or verifying that the Psychological Practitioner's employment has been supervised as required by law.

The overall need for rules relating to licensure of Psychological Practitioners is, therefore, established. The reasonableness of the proposed rules is addressed as each part is explained below.

7200.0650. REQUIREMENTS FOR LICENSURE AS PSYCHOLOGICAL PRACTITIONER.

This part states the requirements for licensure as a psychological practitioner by reference to items in the preceding existing part. The part is needed to make it clear to applicants what they must do to become licensed as Psychological Practitioners. Items C and D in part 7200.0600 are omitted from the list of items in this part because evidence of supervised employment is not a legal requirement for this license.

The part is reasonable because the items required to be eligible for licensure as a Psychological Practitioner reflect the licensure requirements in Minn. Stat. S. 148.91 for licensure as a Psychological Practitioner. It is reasonable also because the requirements for licensure are consistent for Licensed Psychologists and Psychological Practitioners, except, of course, for the need to provide evidence of meeting supervision requirements. In addition the need and reasonableness of part 7200.0600 have previously been established.

7200.1200 DENIAL OF LICENSURE.

This part adds failure to meet the requirements in part 7200.0650 (as an alternative to part 7200.0600) as ground for denial of licensure. The addition is needed so that an applicant for licensure as a Psychological Practitioner will not be denied licensure for failure to provide evidence of meeting supervision requirements. It is reasonable to have parallel grounds for denial of licensure as a Psychological Practitioner and for denial of licensure as a Licensed Psychologist, again with the exception that Psychological Practitioners are not required to have a period of supervised employment, because the grounds reflect the parallel requirements for licensure of licensed psychologists as provided in Minn. Stat. S. 148.91.

7200.1300, EDUCATIONAL REQUIREMENT FOR LICENSURE.

subpart 2a. Psychological Practitioner.

This subpart states that the education requirements for licensure as a Psychological Practitioner are the same as for licensure as a Licensed Psychologist by waiver. The subpart is needed because although the statutory education requirements for the two types of licensure (Licensed Psychologist by waiver and Psychological Practitioner) appear to be different, they are, in fact, the same, as both require a minimum of a master's degree or a master's equivalent in a doctoral program. In both cases a doctoral degree also qualifies because it exceeds the minimum. The difference between the two types of licensure occurs in the employment requirements, not in the education requirements.

The subpart also sets the standards for educational institutions granting the degrees on which licensure will be based, as required by Minn. Stat. S. 148.91, subd. 6. The subpart is needed because the statute requires the board to set the standards for educational institutions granting degrees acceptable for licensure.

The educational requirements as outlined are reasonable because they make it clear to applicants that educational requirements for Psychological Practitioners are the same as for Licensed Psychologist by waiver and they do not exceed the requirements in the statutes. The standard for educational institutions is also reasonable because the standard (accreditation by a regional accrediting association) is the same as for institutions granting degrees on which licensure as a Licensed Psychologist is based.

7200.3000 EXAMINATIONS.

subpart 1a, Passing Scores.

This subpart states that the passing score on each part of the examination is the same for both levels of licensure. The subpart is needed because Minn. Stat. S. 148.91, subd. 2, requires the board to decide whether examination standards for the two levels of licensure should be the same or different.

It is reasonable to make the passing score for both licenses the same because although psychological practitioners are required to be supervised in their practice, the psychological practitioner will be alone with the client in most situations encountered in practice, and therefore will need to come to licensure with the same minimum skill as a licensee in independent practice. A mistake in diagnosis, a violation of a Rule of Conduct, or a failure to refer when in the best interest of the client, for example, all have the same negative impact on a client whether the psychologist is in independent practice or is supervised. Because protection of the client from unprofessional, unethical, or incompetent practice is the reason for a regulatory board's existence, it is reasonable to set the standards for all licensees as similar and as conducive to promoting client welfare as possible.

7200.3400 RENEWAL DEADLINE.

The existing text in this part remains unchanged. However, it is necessary to designate the text as subpart 1, so that the proposed added text can be separated from the existing text by means of new subparts. Designating existing text as subpart 1 is reasonable because it addresses issues which are different from those addressed in the added text.

Subpart 2 establishes the information required of psychological practitioners at the time of renewal of license. The required information is needed to ensure that the psychological practitioner has complied during the preceding two years of practice with statutory requirements for practice outlined in Minn. Stat. S. 148.925, subd. 2, (1). Without regularly-occurring reporting, the Board would have no reliable assurance that psychological practitioners are complying with law.

Each of the items to be reported relates directly to the supervision requirements in the statute cited. The reporting, for each position held, of the beginning and end dates, the number of hours worked per month, the name of the supervisor, and the number of hourly one-to-one supervisory contacts per month is reasonable because the statute cited varies the amount of supervision required in proportion to the number of hours worked per month, and because the supervisor must be a licensed psychologist, naming the supervisor allows the Board to verify that this requirement is met. It is reasonable to require the supervising licensee to verify that the supervision meets requirements and to permit the verification to be included on the renewal form because verification by the supervisor on the renewal form assures compliance with the law and saves the time and paperwork resulting from the use of separate forms.

An alternative verification method is needed if the supervisor is unavailable for this purpose so that the psychological practitioner is not penalized for a situation beyond his or her control. It is reasonable to provide that a verification can be made by an agency director or clinical director because persons in these positions are most likely to possess the information necessary for verification. It is also reasonable to permit the submission by the renewer of an affidavit or a log of supervisory contacts or similar documentation for verification so that in the event that no person is available to provide verification, the psychological practitioner has the opportunity to submit a valid renewal.

7200.6100 FEES.

This part sets the fee for licensure and renewal for a psychological practitioner at \$180 and the fee for late renewal at \$120. It is necessary to set these fees by rule because Minn. Stat. SS. 148.905 and 148.91 require the Board to set licensure and renewal fees, and ongoing fees must be set by rule. Fees for licensure, renewal and late renewal of psychological practitioners are also needed because the Board must, by law, raise sufficient revenue through fees to cover its expenditures, which are set by the legislature for each biennium.

It is reasonable that the fee set for psychological practitioners' licensure be less than the fee set for licensed psychologist licensure because the earning potential of psychological practitioners is less than that for psychologists in independent practice; that is to say, a license to practice independently is potentially more valuable to the holder than a license to practice under supervision. Further, it costs the Board less to process applications for licensure as a psychological practitioner because there is no experiential component to calculate and verify.

It is reasonable to make the renewal fee for psychological practitioner the same as the licensure fee because they are then parallel to the respective fees for licensed psychologists. Further, the initial licensure fee covers the same period of time--two years--as the renewal fee, so it is reasonable on this score to make them the same.

It is reasonable to set the late renewal fee for psychological practitioners at a level which makes its ratio to the renewal fee approximately equal to the ratio between the late renewal fee and renewal fee for licensed psychologists, allowing for rounded numbers for ease in accounting procedures. The ratio between the two fees for psychological practitioners is 0.75; for licensed psychologists, it is 0.72.

Further, the State Finance Department has approved the fees as proposed, as meeting the guidelines for generating enough, but not too much, anticipated revenue. A copy of the approval is attached.

Proper notification of the Board's intent to adopt this fee rule has been sent to the chairs of the House Appropriation Committee, the Senate Finance Committee, and the Legislative Commission to Review Agency Rules.

Office Memorandum

Department: of Finance

Date: October 6, 1992

To: Lois E. Mizuno, Interim Executive Director
Board of Psychology

From: Bruce J. Reddemann, Director *BJR*
Budget Operations

Phone: 296-5188

Subject: Fee Requests for Approval



I have received your requested fee approvals, dated September 30, 1992, for the Psychological Practitioners and have reviewed the requests with your assigned Executive Budget Officer.

I hereby approve the following fees:

- Application for licensure as a psychological practitioner \$180.00
- Renewal of license for a psychological practitioner \$180.00
- Late renewal of license for a psychological practitioner \$120.00

cc: Josie Ashton
Glenn Olson