

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF MEDICAL PRACTICE

In the Matter of Proposed
Rule Relating to the
Physician Annual License Fee

STATEMENT OF
NEED AND
REASONABLENESS

Pursuant to Minn. Stat. 14.23 (1991), the Minnesota Board of Medical Practice (hereinafter "Board") hereby affirmatively presents the need for and facts establishing the reasonableness of a proposed rule and amendment to Minn. Rule, pt. 5600.2500, relating to fees.

In order to adopt the proposed rule and amendment, 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), 214.12 (1990), and Act of Apr. 29, 1992, Ch. 513, Art. 5, Sec. 8, Subd. 1, 1992 Minn. Laws 968, authorize the Board to promulgate licensure fees and other rules necessary to administer sections 147.01 to 147.161.

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 1992 legislature passed an appropriations bill requiring the Board of Medical Practice to increase fees to recover the cost of the appropriations for the reporting and monitoring of health care workers infected with the human immunodeficiency virus (HIV) or hepatitis B virus (HBV)

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In the 1993 Fiscal Year, the Board will be contributing \$138,000 to the monitoring program as well as increasing its expenditures for Attorney General services by nearly \$135,000. Without an increase in the renewal fee, 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 the fee as requested in this document to insure compliance with Minn. Stat. 16A.128 and 214.06.

3. STATEMENT OF REASONABLENESS

On July 11, 1992, the Board of Medical Practice 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 amendment.

RULE AS PROPOSED

5600.2500 ANNUAL FEES.

The annual fees charged by the Board are fixed at the following rates:

- A. physician examination fee, full exam, \$490;
- B. physician examination fee, Part I only, \$290;
- C. physician examination fee, Part II only, \$345;
- D. physician application fee, \$200;
- E. physician annual license fee, \$144 ~~\$168~~
- 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 license, \$60;
- K. physician late fee, \$60;
- L. physical therapist application fee, \$75;
- M. physical therapist examination fee, \$110;
- N. physical therapist annual registration, \$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 seventy-seventh legislature passed a bill providing for a means of protecting the public through the reporting and monitoring of certain licensed health care workers, including physicians, who are infected with the human immunodeficiency virus or hepatitis B virus. The bill required the board to enter into a contract with the Commissioner of Health (hereinafter "Commissioner") to perform certain functions.

The first function is to evaluate the past and current practice of the health care worker. After evaluation of the health care worker's past and current professional practice, the board or the commissioner, acting on behalf of the board, shall establish a monitoring plan for the health care worker.

The second function is for the board or the commissioner acting on behalf of the board to appoint an expert review panel to provide expert assistance in the subjects of infectious diseases, epidemiology, practice techniques used by regulated persons, and other subjects determined by the board or by the commissioner acting on behalf of the board.

The board may also contract with the commissioner to conduct inspections of the clinical practice of health care workers to determine whether the regulated person is following accepted and prevailing infection control procedures. If accepted and prevailing infection control techniques are not being followed, the board may educate the regulated person or take other actions.

Finally, the board is authorized to adopt rules setting standards for infection control procedures.

The anticipated cost for implementing this legislation is as follows:

	<u>FY93</u>	<u>FY94</u>	<u>FY95</u>
Monitoring Costs	\$61,014	\$57,232	\$59,885
Establishment and Enforcement of Infection Control Standards	57,962	48,016	33,914
Communication/Education	20,000	20,000	0
Inspections	0	40,200	40,200
TOTAL	\$138,976	\$165,448	\$133,999

All costs associated with this program are to be recouped through increased fees to licensees. An estimate of the fee increase for the board during FY93 is as follows:

$$\begin{array}{rcll} \text{Number of licensees} & \times & \text{Amount of Increase} & \\ 14,000 & \times & \$12 & = \$168,000 \end{array}$$

Regulation of Health Care Workers

The board will forward reports of licensees who are known to be infected with HIV or HBV to the commissioner. The board is required to contract with the commissioner for monitoring, if necessary, of the infected persons. The board anticipates 27 cases will be referred to it from the commissioner. While this number is small, the cases will be difficult and time-consuming.

The expenses for regulation are based on the amount of staff time and costs necessary to forward complaints to the Commissioner of Health, provide for the costs of obtaining records, process cases referred from the commissioner, maintain statistical records, and reimburse the Department of Health for report processing and monitoring.

Establishment and Enforcement of Infection Control Standards

The board will be authorized to determine whether licensees are following infection control procedures related to the prevention of HIV and HBV transmission at clinical practice locations other than locations licensed and subject to inspection by the commissioner. The board must contract with the commissioner for the inspections or validation surveys.

Before any inspections are conducted, the board is authorized to promulgate rules which set standards for infection control procedures. The board must engage in joint rulemaking with the boards of chiropractic, dentistry, nursing, and podiatric medicine.

The expenses for inspections and the requisite rulemaking include the costs of personnel, communication, travel, printing, supplies, equipment, legal, and hearing expenses.

Communication/Education

The board is required to promulgate rules requiring continuing education in the topics of infection control, including blood borne diseases. The board also plans to inform licensees about the continuing education rules, infection control standards, reporting requirements, monitoring system and inspections through educational seminars around the state and/or publication of information.

The costs of providing the education include professional services, communication, travel, printing, and supply expenses.

Inspections

The board will be required to contract with the commissioner to conduct surveys of the practice sites of licensees other than location licensed and subject to inspections by the commissioner. It is expected that each inspection will cost \$600 per day. Two sites would be inspected per day. No inspections will be conducted in FY93.

The board anticipates 1,000 physicians will be inspected per year (about 10 per cent of physicians with Minnesota addresses.) It is estimated that 7.5 physicians practice at a site (office/clinic). Therefore, 133 sites will be inspected at two per day, equalling 67 inspection days x \$600 = \$40,200.

Attorney General Costs

The mission of the Board to protect the public is, in part, accomplished by receiving and taking action on every complaint alleging a violation of statutes, investigating allegations, conducting hearings, taking disciplinary action as indicated, and enforcing Board orders. The limited ability of the Attorney General to investigate and provide legal services due to their budget constraints has limited the Board in carrying out its mission.

The Board requires an increase in attorney general services in order for it to reduce the inventory of unresolved complaints and to shorten the time period between the date a physician is informed of an investigation commencing and the disposition of the complaint being investigated.

<u>Number of:</u>	<u>FY 90</u>	<u>FY 91</u>	<u>FY 92</u>	<u>FY 93</u>	<u>FY 94</u>
Complaints Received	1,089	1,061	1,217	1,512	1,708
Complaints Reviewed by Discipline Committee	1,063	943	1,156	1,375	1,637
Complaints Referred by Attorney General for Investigation	248	186	191	210	231
Discipline Committee Agenda Action Items	244	236	200	308	385
Total Board Orders	81	76	74	82	90

The Board's objectives are to reduce the inventory of unresolved complaints over the next four years from 1,844 to 1,200, and, to shorten the time period required to resolve a complaint by establishing a base line time period in 1993, reducing that time by 15% in 1994, and reducing it another 15% in 1995.

SUMMATION

The fee increase described in this document is a modest and necessary financial adjustment to allow the Board of Medical Practice to meet its responsibilities to its licensees and registrants and to meet its obligations set forth in the HIV and HBV legislation. Reflected in each fee is the underlying legislative mandate of Minn. Stat. 16A.128 which requires that service-related costs provide a primary benefit to the fee payer.

With the fee amendment, the Board can fulfill its statutorily mandated responsibilities under Minn. Stat. 16A.128 and 214.06, as well as Minn. Stat. 214.17, and still maintain its high quality service without compromising existing licensing and discipline programs.

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 per cent of those affected by the proposed amendment or new fee make a timely written request for 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 Practice 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 Act of June 4, 1991, Ch. 292, Art. 1, Sec. 10, Subd. 4, 1991 Minn. Laws 1689. 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 Act of June 4, 1991, Ch. 292, Art. 1, Article 1, Section 10, Subd. 4, 1991 Minn. Laws 1689, 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 fee amendment to Minn. Rule, pt. 5600.2500 is contained in Attachment E.

Small Business Considerations

It is the position of the Board of Medical Practice 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 provide medical care and are regulated by the state for standards and cost. The Board regulates physicians for standards. The Minnesota Department of Human Services regulates physicians 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, subd. 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, this proposed amendment is viewed as a compliance or reporting requirement for businesses, then the Board finds that it should be unworkable to lessen the requirements for those physicians 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.

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 of behaviour 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 Minn. Stat. 147.01 to 147.33. 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 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 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, indeed possibly the vast majority of physicians, 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 who work in a large business setting and adopt another, less stringent, set of standards to be applied to those physicians 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 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.

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