

**BEFORE THE MINNESOTA
BOARD OF ABSTRACTERS**

In the Matter of the
Proposed Adoption of
Rules of the Board of
Abstracters Relating to
Fees and License Renewals

**STATEMENT OF
NEED AND REASONABLENESS**

1005.0400 TEMPORARY LICENSES

It is the Board's experience that approximately fifteen percent of the persons who are licensed by the Board fail to renew their licenses in a timely manner. Because the Board proposes in these rules that such persons will cease to be licensed after two months of nonrenewal and must, therefore, re-examine, the Board believes it is necessary to permit such persons to obtain a temporary license to enable them to continue to practice. This is reasonable because such persons remain qualified and, if licensed temporarily, remain under the jurisdiction of the Board while they would otherwise be unlicensed. This rule also minimizes the hardship for such persons and to the public, in view of the small number of abstracters, especially in Greater Minnesota, while fully protecting the public.

1005.1100 FEES

Subpart 1

The fees authorized by this rule are necessary to raise sufficient revenue to cover the cost of the Board's operations, as mandated by law. The fees are reasonable because they are set at that level which permits the Board to recover its costs and reflect the cost of providing the service for which the fee is collected.

Subpart 2

This rule is necessary to ensure that the Board does not keep funds to which it is not entitled. It is reasonable because the Board's costs in reviewing an application which is rejected are minimal, as the bulk of the examination fee is devoted to costs incidental to

administration of the examination: rental of examination space and preparation of examination materials.

Subpart 3

This rule is necessary to ensure that the Board's costs in issuing a license are covered, as mandated by law. These costs are incidental to the issuance of the license and are incurred upon issuance irrespective of its duration. Therefore, the cost of a license should not decrease if it is issued into the license period. For this reason, because costs are related to issuance and not duration, the rule is reasonable.

1005.1200 RENEWAL OF LICENSE

Subpart 1

This rule is necessary to establish the dates between which licenses are valid. It is reasonable because the dates will be in Minnesota Rules and, therefore, will be of public record. Currently, this is not the case. This rule is also necessary to clarify that licensees must continue to meet all requirements of law and rule, which is reasonable because it effectuates the intent of the legislature and protects the public.

Subpart 2

This rule is necessary to encourage licensees to renew their licenses in a timely manner since approximately fifteen percent of licensees do not do so. It is reasonable because it will help to ensure that abstracters are continuously licensed and, therefore, subject to the jurisdiction of the Board for the protection of the public.

Subpart 3

This rule is necessary to create a strong incentive for licensees to renew their licenses in a reasonably timely manner. Approximately fifteen percent of the persons who are licensed by the Board fail to renew their licenses on time. This subpart is reasonable because all licensees should be able to pass the examination and part 1005.0400 permits such persons to obtain a temporary license, enabling them to continue to practice pending

passage of the next examination while, at the same time, protecting the public by maintaining continuous licensure.

1005.1300 EXAMINATION

Subpart 1

This rule is necessary to ensure that the Board receives all information necessary to ensure that applicants are eligible for examination. It is reasonable because it enables the Board to process applications efficiently and accurately, ensuring that only qualified persons sit for the examination.

Subpart 2

This rule is necessary to ensure that the Board receives applications in time to process them, to ensure that applicants are eligible for examination, and to arrange for sufficient space and materials. It is reasonable because it allows applicants approximately eleven months after the previous examination to make application while giving the Board sufficient time to prepare for the examination.

Subpart 3

This rule is necessary to discourage last-minute cancellations by applicants for examination and to minimize unnecessary cost to the Board since most applications will be processed by the date proposed. It is reasonable because the deadline is sufficiently prior to the examination to allow applicants time to cancel their appearance.

1005.1400 ALTERNATIVE TO BOND AND INSURANCE

Subpart 1

This rule is necessary to ensure that the Board knows and has proof that the applicant or licensee is exempt from the bonding or insurance requirements. It is reasonable because it reduces the possibility of fraud on the part of applicants and licensees and protects the public from unbonded and uninsured abstracters.

Subpart 2

This rule is necessary to ensure that no one is licensed without proof of bond and insurance or alternate security. It is reasonable because it offers greater protection to the public, who are the beneficiaries of the bonding and insurance requirement.

SMALL BUSINESS CONSIDERATIONS

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 businesses 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 proposed rules.

Methods (a) to (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 abstracters who practice in a setting of fewer than 50 employees, since that would include, at a minimum, the vast majority of licensees and probably all of them. 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 for any or all requirements of the rules. The application of this provision would exempt virtually all licensees from the purview of the rules, a result which would be absurd.

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

Pursuant to Minn. Stat. § 386.63 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 Minn. Stat. §§ 214.06, 386.63, subd. 1, and 386.68 (1992), 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 to and govern all applicants and licensees equally regardless of the nature of their practice. As 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 abstracters in a small practice than on those practices large enough to remove them from the definition of small business. 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 an abstractor 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 abstracters indeed, the vast majority of abstracters and perhaps the entire profession, 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 abstracters which may consist of a nonexistent class who work in a large business setting and adopt another, less stringent, set of standards to be applied to those abstracters who practice in a small practice. It is the Board's view that these rules must apply equally to all abstracters if the public whom they serve is to be adequately protected.

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