



## MINNESOTA BOARD OF OPTOMETRY

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St. Paul, MN 55114-1087

(612) 642-0594

April 29, 1994

Maryanne V. Hruby  
Legislative Commission to  
Review Administrative Rules  
Room 55 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155-1201

Dear Ms. Hruby:

Please find enclosed a copy of the Board of Optometry's Statement of Need and Reasonableness, for proposed rules relating to fee changes.

The Notice of Intent to Adopt Rules Without a Public Hearing will be published in the State Register on May 16, 1994.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Mickelson".

Laurie Mickelson  
Executive Director

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF OPTOMETRY

In the Matter of Proposed Rule  
Amendments of Rules of the  
Minnesota Board of Optometry  
Relating to Fee Changes

STATEMENT OF NEED AND  
REASONABLENESS

TABLE OF CONTENTS

Subject

- I. Introduction
- II. Statement of Board's Authority
- III. Small Business Considerations
- IV. Expenditure Of Public Money By Local Public Bodies
- V. Impact On Agriculture Lands
- VI. Statement of Need and Reasonableness
- VII. Department of Finance Approval

## BOARD OF OPTOMETRY

### STATEMENT OF NEED AND REASONABLENESS

#### I. INTRODUCTION

Upon review of the current financial records of the Optometry Board it was found that the current fee structure would not provide for the collection of adequate revenue to equal the anticipated expenditures of the board for fiscal year 1995. Therefore, the need to increase fees for license renewal and late penalty. The rule being modified is 6500.2000, subp. 1 and 4, increasing the renewal fee from \$90 to \$105 and increasing the late penalty fee from \$30 to \$35.

Part II addresses the Board's statutory authority to adopt rules; Part III addresses small business considerations; and Part IV addresses expenditure of public money by local bodies; Part V addresses the impact on agriculture lands; and Part VI provides a detailed statement of the need and reasonableness of the proposed rules regarding fee changes.

#### II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

Minn. Stat. 148.53 (1992) grants the Board power to make any rules which it may deem necessary for the effective enforcement of sections 148.52 to 148.62. The purpose of the licensing law for optometrists is clearly the protection of the public from incompetent, unprofessional, and/or unethical practice.

In addition, Minn. Stat. 214.06, subd. 1 (1992) requires the board to adjust any fee which it is empowered to assess a sufficient amount so that the total fees collected will as closely as possible equal anticipated expenditures during the fiscal biennium.

#### III. SMALL BUSINESS CONSIDERATIONS

Minn. Stat. 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. 14.115 does not apply to this proposed rule amendment, as it should have no impact on small businesses.

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 rule 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 requirement, (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, this proposed amendment is viewed as compliance or reporting requirements for businesses, then the Board finds that it would be unworkable to lessen the requirements for those optometrists who practice in a solo or clinic setting of fewer than 50 employees, since that would include the vast majority of optometrists. 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 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 optometrists, 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 optometrists, then it would hardly make sense for the Board to exempt from its rule those optometrists who practice in a solo or clinic setting with fewer than 50 employees, since they constitute the vast majority of

optometrists. 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 optometrists.

Pursuant to the Minnesota licensing law for optometrists, Minn. Stat. Chapter 148, the Board was created for the purpose of establishing requirements for licensure and adopting ethical standards governing appropriate practices or behavior for optometrists. Pursuant to Minn. Stat. S 148.53, the Board is empowered to "make any rules . . . . . for the effective enforcement" of the Minnesota licensing law for optometrists. Given these statutory mandates, it is the Board's duty to establish rules relating to the practice of optometry 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 amendment will not affect small businesses, and certainly does not have the potential for imposing a greater impact on optometrists 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 amendment may affect the business operation of an optometrist or a group of optometrists, 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 this rule for the Board to exempt one group of optometrists - indeed, the majority of optometrists - from the requirements of this rule. 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 optometrists who work in a large business setting and adopt another, less stringent, set of licensure requirements to be applied to those optometrists who practice in a solo or small clinic practice. It is the Board's view that this rule amendment must apply equally to all optometrists, if the public whom they serve is to be adequately protected.

#### IV. EXPENDITURE OF PUBLIC MONEY BY LOCAL PUBLIC BODIES

The Minnesota Board of Optometry has reviewed the proposed rules, and find no evidence that the rules would cause the expenditure of public money by any local public body.

#### V. IMPACT ON AGRICULTURE LANDS

The Minnesota Board of Optometry has reviewed the proposed rules, and find that the subject matter of the rules is not

related to agriculture lands.

VI. STATEMENT OF NEED AND REASONABLENESS

The Minnesota Board of Optometry, according to MN Stat. 214.06, Subd. 1 and 2, has authority to adjust any fee which the board is empowered to assess.

With the decline of individuals being licensed to practice optometry in the State of Minnesota and the increase in those licensees renewing their optometry license the board has found it necessary to increase the annual license renewal fee in order to collect fees to closely as possible equal anticipated expenditures for fiscal year 1995.

The Optometry Board has found it necessary to increase the annual license renewal fee and late penalty fee in order to collect fees to closely as possible equal anticipated expenditures for fiscal year 1995.

In recent years the board has seen a decline in the number of individuals applying for and being granted licensure to practice optometry in the State of Minnesota. In addition, the number of licensees voluntarily terminating their licenses in the State of Minnesota has increased.

VII. Department of Finance Approval

Fee adjustments have been submitted to and approved by the Department of Finance. Evidence is attached.

Date: April 29, 1994

Laurie Mickelson  
Laurie Mickelson  
Executive Director