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Board of Podiatric Medicine

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TO: Maryanne Hruby  
Legislative Commission to Review Administrative Rules  
55 State Office Building

FROM: Lois E. Mizuno *Lois E. Mizuno*  
Executive Director

DATE: February 15, 1995

RE: Proposed Rules

Enclosed are a copy of the proposed rules to be published in the State Register on February 27, 1995, and a copy of the Statement of Need and Reasonableness.

The Notice states that the Board intends to adopt the rule without a public hearing.

If you have any questions, please contact me.

enclosures

**STATE OF MINNESOTA**  
**BOARD OF PODIATRIC MEDICINE**

**In the Matter of the Proposed  
Adoption of Rules of the Minnesota  
Board of Podiatric Medicine  
Relating to Temporary Permits,  
Licensure, License Renewal,  
and Continuing Education**

**STATEMENT OF NEED  
AND REASONABLENESS**

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## BOARD OF PODIATRIC MEDICINE

### STATEMENT OF NEED AND REASONABLENESS

#### 1. INTRODUCTION

The Board's Rules were last given a thorough revision in June, 1991, at which time they were updated to reflect changes in philosophy of regulation that had taken place since the 1987 passage of the podiatric medicine practice act (Minnesota Statutes, Chapter 153) and rules implementing the act in 1988. The only amendments since that date related to including HIV/HBV infection control in continuing education requirements (September, 1993) and raising fees to cover non-discretionary expenses (June, 1994). In the interim the development of greater professionalism in providing post-graduate training of podiatrists before entering private practice has generated the need to modernize the corresponding rules relating to Board assessment of that training as it impacts on licensure in Minnesota.

The major thrust of the current proposed rule amendments is toward increasing the probability that podiatrists seeking licensure in Minnesota have been trained sufficiently well to provide competent care to patients. The proposed amendments also correct rules that hinder the licensure process without providing protection to the public, and reorganize license renewal and continuing education rules for greater clarity and utility. It should be noted that no fee increases are included in the proposed rules.

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

Minn. Stat. S 153.02 (1992) grants the Board the authority to adopt rules as may be necessary to carry out the purposes of the podiatric medicine licensing law. Minn. Stat. S 214.06, subdivision 2 authorizes licensing boards to promulgate rules providing for renewal of licenses.

#### III. SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes, Section 14.115, subdivision 2, requires that when an agency proposes new or amended rules, it must consider "methods for reducing the impact of the rule on small business" and "document how it has considered these methods". Subdivision 4 requires the agency to "provide opportunity for small businesses to participate in the rulemaking process." Subdivision 7, clause 2, states that Section 14.115 does not apply to rules that do not affect small businesses directly, and clause 3 states that Section 14.115 does not apply to "service

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businesses regulated by government bodies for standards and costs, such as....providers of medical care....".

It is the Board's position that the proposed rules do not directly affect businesses in general, whether large or small, because the proposed rules govern the licensure and license renewal of individual podiatrists, irrespective of whether the individuals are owners of professional practices, employees of another entity, or not gainfully employed at all. Licensure and license renewal rules are related solely to the right to practice in this state and are not at all concerned with the economic status or condition of the individuals granted the right to practice, or where the individuals practice. Neither the existing rules nor the proposed amendments impact on the business aspects of any professional podiatric medical practice (which may be considered by some as belonging to the category designated as "small business").

It is also the Board's position that subdivision 7, clause 3, clearly exempts rules proposed by boards who regulate the practice of providers of medical care from compliance with section 14.115, subdivision 2.

Despite the fact that these proposed rules do not directly affect small business, and by definition appear to be exempt from small business considerations, the Board examined the methods in subdivision 2 of lessening the impact of the proposed rules on small businesses.

Clause (a) cannot be implemented because licensure requirements must be equally applied to every licensee or person seeking licensure in order to protect the public adequately, and no reporting requirements are imposed on businesses by the proposed rules.

Clause (b) cannot be implemented because a less stringent schedule for compliance would result in chaos with respect to assuring uniformity and fairness in applying licensure standards, and again, no reporting requirements are imposed on businesses by the proposed rules.

Clause (c) cannot be implemented because businesses are not required to comply with or report under the proposed rules.

Clause (d) cannot be implemented because no performance or operational standards are imposed on businesses by the proposed rules.

Clause (e) cannot be implemented because businesses are not directly impacted by the proposed rules.

Further, should the rules be modified as a result of any of the

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provisions of subdivision 2, the rules would then be contrary to the statutory objectives that are the basis of the proposed rulemaking, that is, to implement statutory requirements in a fair, even-handed manner for the protection of the public.

Therefore, it remains the Board's position that Section 14.115 does not apply to these proposed rules, but if it does apply, the small business considerations have been examined and determined to be not applicable in this rulemaking process.

### **IV. EFFECT ON LOCAL PUBLIC BODIES, IMPACT ON AGRICULTURAL LAND**

Minnesota Statutes S 14.11 imposes certain duties upon agencies if proposed rules would require the expenditure of public money by local public bodies (subdivision 1) or would have a direct and substantial adverse impact on agricultural land (subdivision 2).

It is the position of the Board that Minnesota Statutes S 14.11, subdivision 1, does not apply in the case of these proposed rules, inasmuch as the proposed rules would require little, if any, expenditure of additional funds by individuals seeking licensure, and none at all by local public bodies. While some licensees may provide services to residents of a city or county, for example, the services are provided on a fee-for-service basis. What little cost (if any) there may be associated with implementation of the proposed rules would be absorbed by the licensee, not the local public body contracting for the services. Therefore, no fiscal note regarding the proposed cost to local public bodies is required.

It is the position of the Board that subdivision 2 does not apply to the proposed rules, because the rules do not relate at all to agricultural land, and, therefore, cannot have a direct and substantial adverse impact on agricultural land. Therefore, the provisions of Sections 17.81 to 17.84 need not be followed.

### **V. STATEMENT OF NEED AND REASONABLENESS**

#### **6900.0010 DEFINITIONS.**

**Subpart 1A. Acceptable graduate training.** The proposed amendment deletes reference to "other graduate training" and is needed to provide internal consistency in the rules, because the subpart addressing "other graduate training" is proposed to be repealed. The amendment is reasonable because it eliminates the confusion inherent in retaining a term in the definitions that is not used in the body of the rules.

#### **6900.0020 LICENSURE REQUIREMENTS**

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**Subpart 2. Education.** The proposed amendment deletes references to all six of the specific colleges of podiatric medicine, so that the applicant for licensure must submit a complete transcript from any college accredited by the Council on Podiatric Medical Education, American Podiatric Medical Association. The effect of the amendment is that a degree from any college so accredited is acceptable for licensure. The amendment is needed because it obviates the need to amend the rule every time another college is so accredited. At the time this rule was adopted, six colleges were accredited (those named in the rule). There are now seven. The amendment is reasonable because it provides greater clarity (due to its being drastically shortened) without altering the meaning or intent of the rule.

**Subpart 3. Examination.** The proposed amendment changes the phrase "each section of all parts" (of the National Board examination) to "each part". The amendment is needed to bring the rules into conformance with the National Board of Podiatric Medical Examiners changes in scoring methods for the National Board examination. Where formerly the individual scores for each of the seven subjects in each of the two parts of the examination were reported, now the composite score for each part is reported. The amendment is needed to prevent an applicant from being denied licensure for failing to meet a requirement that cannot be met. The amendment is reasonable because its provisions match information available from the testing entity, and, in fact, is less stringent than the language it replaces because of averaging scores above and below the passing score, with the possibility of achieving an overall passing score, where formerly failing to pass one subject disqualified an applicant.

**Subpart 3a. State clinical examination.** The only proposed changes to the existing text are to separate the state clinical examination requirement from the national exam requirement and to correct a statutory reference in which an incorrect paragraph is cited. The separation is needed so that it will be clear to applicants that the state clinical examination is a different examination from the national examination and that a passing score must be obtained on each in order to meet licensure requirements. The citation correction is needed to bring the rule into agreement with the statute. The proposed amendment is reasonable because it does not impose any additional examination requirements and it increases the clarity of the text.

**Subpart 4. Graduate training.** The proposed amendment to this subpart spells out the type of evidence of satisfactory completion of graduate training that the applicant must submit to qualify for licensure: written verification of completion by the program supervisor and submission of the applicant's surgical and other training logs. Since the existing rule was adopted in

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1988, acceptable evidence of satisfactory completion has been written verification by the program supervisor. It is necessary to specify this requirement in the rule so that the requirement cannot be challenged on the ground that it is not in the rule. The addition of submission of the applicant's surgical and other training logs is needed to provide assurance to the Board that applicants have had sufficient practical, hands-on experience in their training to render them at least minimally qualified to practice independently with reasonable skill and safety. The logs will show whether the applicant's training included hands-on experience rather than only observation of procedures performed by their mentors. The requirement of written verification from the program supervisor is reasonable because it puts into rule what has been a long-standing practice. The submission of training logs is reasonable because (1) it will apply only to applicants who will have entered a training program after June 30, 1995 (that is, after adoption of these rules), so that applicants who entered training programs before that date and who may not have kept their logs will not be affected. As a practical matter, this proposed amendment will not affect applicants until after June 30, 1996, because of needing one year of post-graduate training to become licensed. The proposed amendment is also reasonable because graduate training programs generally require trainees to keep logs of their activities in order to have a written record of the number and types of procedures observed, participated in, and performed alone. Therefore, the requirement is easily met.

**Subpart 5. Clinical residency.** The only proposed amendment to this subpart is the deletion of the word "advanced" from the phrase "advanced podiatric medicine and surgery". The amendment is needed because a one year clinical residency gives the trainee his or her first practical podiatric medical experience, and cannot, therefore, be considered "advanced" training in podiatric medicine and surgery. The amendment is reasonable because it eliminates the appearance of expecting a one year residency to provide advanced training.

**Subpart 7. Preceptor requirements.** The proposed amendment to paragraph A adds the modifier "hands-on" to the word "training". The amendment is needed to provide assurance that the applicant who offers a preceptorship to meet post-graduate training requirements has had actual experience in providing podiatric services, rather than learning only by observation. Actual experience is needed to ensure that the applicant is at least minimally competent to provide podiatric services with reasonable skill and safety to patients when licensure is granted. The amendment is reasonable because a licensee providing podiatric care that does not meet minimum standards is subject to disciplinary action.

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The proposed amendment to paragraph E requires the preceptor's supervision of the trainee to include review and evaluation on a monthly basis of patient services provided from the trainee's surgical and other training logs. This requirement is in addition to the existing requirement to review patient charts on a daily basis. While review of patient charts and records may be by telecommunication, logs must be reviewed in person. The amendment is needed to ensure that the logs provide an accurate record of patient contact and hands-on care, and that the preceptor has a more complete account of the trainee's developing skills. The amendment is reasonable because it aids the preceptor in providing meaningful supervision and a means to measure the trainee's progress in gaining competence, without unduly burdening the preceptor with too much paperwork.

**Subpart 8a. Applicant lacking state clinical examination.** This proposed amendment is a new subpart that provides a means by which an applicant who is qualified for licensure except for having taken and passed the state clinical examination can practice under supervision for up to one year while waiting to complete the state clinical examination requirement and be scheduled for the personal appearance any time during that year. The state clinical examination consists of Parts II and III of the PMLexis, the national podiatric medicine licensure examination, because those parts meet the statutory requirement for a state clinical examination. The PMLexis has been available for states to use for only six years, and currently a little over half the states use it. The amendment is needed because applicants for licensure here who may have been licensed in another state either before the PMLexis was available or that does not use the PMLexis are now prevented from practicing in Minnesota until after they have taken and passed the PMLexis. Because the examination is given only twice a year, the waiting period can be financially burdensome. The amendment is also needed to ensure that once the PMLexis scores have been forwarded to the board, there will not be a delay in licensure due to any delay in scheduling the personal interview. It is reasonable for the Board to consider a licensee from another state, with proper credentials and with no record of disciplinary problems, to be competent to practice with reasonable skill and safety. The subpart is reasonable because it allows podiatrists licensed in other states to continue using their skills without interruption, while their supervised practice provides insurance that the public is not likely to be harmed.

### **6900.0160 TEMPORARY PERMIT.**

**Subpart 1. Prerequisites.** The proposed amendment deletes the requirement that the applicant for a temporary permit must

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complete a licensure application as well as a temporary permit application, shortens the first sentence without altering its meaning, and requires the applicant to submit a transcript as provided in part 6900.0020, subpart 2. The effect of the amendments is to reduce the documentation needed for a temporary permit to one application and the official academic transcript. The amendment is needed for the following reasons: (1) Much of the information on the licensure application does not apply to podiatrists just out of school who are seeking a temporary permit to complete their post-graduate training, such as malpractice coverage, completion of residency, licensure in another state. (2) Many applicants for a temporary permit, in spite of clear directions, fail to complete and return the licensure application, which creates extra staff work to ensure completed applications. (3) The current rule was drafted before the Board had any experience with providing for post-graduate training, the need for it having been passed by the legislature only the year before. It was anticipated that podiatrists who completed their post-graduate training in Minnesota would become licensed in Minnesota, in which case the licensure application would have already been submitted. That has proved to be an incorrect assumption: only a small percentage of trainees here become licensed here. They come from all over the country and tend to return to their home states. (4) Requiring an applicant for a temporary permit to complete a licensure application effectively requires completion of as many licensure requirements as possible, even though they may not be requirements for admission to a residency program. An example is submission of national board examination scores, which are needed for licensure but not for admission to a residency program.

The proposed amendments to this subpart are reasonable because they reduce the financial and paperwork burden on the applicant and decrease the amount of processing time for the staff without impairing in any way the Board's ability to protect the public.

**Subpart 2. Term of permit.** The proposed amendment to this subpart broadens the justification for granting the reissuance of the one-year permit by including the completion of a residency that extends for more than one year. The amendment is needed to provide the opportunity for a trainee to complete a two-year residency without having to apply for full licensure for the second year. When this rule was adopted, two-year residencies were uncommon. As the training for, and professionalism of, the practice of podiatric medicine has evolved, two-year residencies have become commonplace, and the need to accommodate this trend has grown accordingly. In view of the fact that a lengthened training period increases the probability of greater competence when entering licensed independent practice, easing the process for the trainee is not only needed, but is also reasonable.

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The proposed amendment also deletes the provision that the temporary permit can be re-issued only once. The amendment is needed to accommodate specific and valid reasons for extending the permit beyond the second year. For example, a trainee may be offered a six-month opportunity for advanced surgical training after completing a standard two-year surgical residency (PSR-24). The trainee may be hesitant to accept if full licensure is required for that six months and the trainee has no plans to become licensed here. (Under the existing fee schedule, the licensure fee is \$500, the temporary fee \$250). The amendment is reasonable because the issue of public protection is fulfilled: while the podiatrist remains in training, he or she is under the supervision of a licensee, and the cost to the trainee is commensurate with the benefit derived.

### **6900.0200 LICENSE RENEWAL.**

It is proposed that subpart 1 of the existing license renewal rule be divided into four subparts. Separating the text is needed for clarification, to allow for a more logical organization, to limit the text of each subpart to one subject, and to increase understanding of its provision. The separation is reasonable because it does not impose any greater burden on licensees than the existing rule. The specific changes are addressed below under the proposed new subparts.

**Subpart 1. License renewal term.** The proposed amendment deletes the provision relating to late renewals. The provision is moved to subpart 1c, which addresses the issue of late renewals. The relocation of the provision is needed to promote the clarity of the text related to the license renewal term. The deletion is reasonable because it does not alter the meaning of the overall license renewal rule or negatively impact on licensees.

The proposed amendment also deletes the provision relating to the renewal process in the first renewal term following adoption of the two-year renewal term (1991). The provision, which was needed to phase in the renewal term for licensees with even numbered licenses, is no longer needed because the phase-in period is in the past and all renewals are for two years. The amendment is reasonable because it does not impose additional requirements or impact negatively on licensees.

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**Subpart 1a. First license renewal following licensure.** The purpose of the proposed amendment to this subpart is to consolidate all of the proration provisions relating to the first renewal term following initial licensure into the subpart relating to that renewal term. While proration of the renewal fee has been in this rule part, proration of continuing education hours has been (and continues to be) in the continuing education rule, rule part 6900.0300. Transfer of the proration of continuing education hours to the renewal rule is needed to make the proration provisions clearer and easier to find. The transfer is reasonable because the proration is calculated in the same manner for both the renewal fee and the continuing education hours and reporting of continuing education hours is required for renewal.

**Subpart 1b. Submission of license renewal application.** The proposed amendment to this subpart rearranges existing text so that all the provisions relate to what the licensee must do in order to submit a valid renewal, rather than having the provisions intermix what the Board must provide on the renewal form with what the licensee must do to complete it. For example, the proposed text requires the licensee to sign the form in the place provided for his/her signature, where the existing text requires the renewal form to provide a space for the (licensee's) signature. Existing text implies that it must be signed, but there is no stated require to that effect. In effect, the text rearrangement tells licensees what they must do to submit a valid renewal, but does not impose any additional requirements. The amendment is needed to promote better understanding of what is required for valid license renewal. The amendment is reasonable because it does not negatively impact on licensees.

The proposed amendment also deletes reference to the late renewal fee. The reference is duplicative of new subpart 1c text. The deletion is needed to increase clarity by removing extraneous issues. The deletion is reasonable because the existing provision does not add any needed information regarding late renewals.

**Subpart 1c. Renewal applications postmarked after June 30.** The proposed text of this subpart is composed of text deleted from proposed new subpart 1 (page 4, lines 22 to 24) and an added sentence providing that the late renewal is not complete until the late fee is received by the Board. The amendment is needed to separate late renewal provisions from timely renewal provisions so that licensees who do not renew by the June 30 deadline have a clear understanding of what is required. The amendment is reasonable because it does not impose any additional requirements on licensees beyond what is required in existing rules.

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**Subpart 2. Failure to submit renewal application.** The proposed amendment to this subpart relating to failure to renew deletes text specifying what information is in the renewal application and substitutes for it a simple reference back to the subparts relating to what is required for license renewal. The amendment is needed because the deleted text does not specify all the elements of license renewal and, furthermore, if retained, would probably need to be amended if subparts lb and lc are amended in the future. With this change, the subpart is automatically updated if and when subparts lb and lc need amending. The amendment is reasonable because it does not alter the meaning of the subpart.

**Subpart 3. Notice.** The proposed amendment to this subpart changes plural "licensees" to singular "licensee", changes the verb to match, substitutes "completed and submitted" for "applied for", and changes "renewal" to "renewal application". The amendment is needed to make the entire sentence singular rather than a mix of singular and plural and because the notice of failure to make application for renewal is initiated only when a renewal application is not completed and submitted. A renewal of license can be applied for but be incomplete. In that case, the licensee is notified regarding the application's deficiencies and is given time to submit a complete application. The amendment is reasonable because it corrects ambiguous and grammatically incorrect language but does not alter the meaning of the subpart.

### **6900.0210 REINSTATEMENT OF LICENSE.**

**Subpart 1. Requirements.** The proposed amendment to paragraph C, in addition to rearranging the elements of the sentence, deletes "15" hours of continuing education (per year) and substitutes "one-half the number of hours....required for biennial renewal" (under the continuing education rule). The rearrangement is needed to increase clarity of the subpart. The substitution is needed to accommodate the fact that in addition to the total number of continuing education hours required, hours in infection control are also required. It is simpler and more accurate to cite the number of hours of continuing education needed under rule part 6900.0300 because that rule part addresses both total hours and hours in infection control. The amendment is reasonable because it does not impose any additional requirements on the former licensee who seeks to be relicensed.

The proposed amendment to paragraph D deletes the words "evidence of continuing competency as shown by submission of 75 hours" and substitutes "the amount (of acceptable continuing education) required in item C". The amendment is needed to remove redundant language that is confusing and to make the text agree with paragraph C. The amendment is reasonable because it aids comprehension without altering the meaning of the paragraph.

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### **6900.0300 CONTINUING EDUCATION.**

**Subpart 1a. Prorating continuing education hours.** The proposed amendment to this subpart deletes the reference to the ending of the first renewal period following adoption of the infection control continuing education rule. The amendment is needed to remove text that no longer applies: prorating of continuing education hours in infection control occurs now only to initial licensure periods of less than two years. The amendment is reasonable because it affects only a provision not applicable to renewal periods occurring after June 30, 1994.

**Subpart 2. Obtaining continuing education hours.** The proposed amendment to this subpart adds completion of a verifiable home study program as a means of fulfilling continuing education requirements. The amendment is needed because (a) without the added provision, licensees who for valid reasons are unable to attend enough continuing education programs to meet license renewal requirements are faced with not being permitted to continue practice, and (b) many home study programs provide as valuable scientific information as conferences, workshops, and the like. Two examples of valuable home study program types are video tapes of continuing education programs, which permit the viewer to receive as much information as having been present, and textbooks on a particular subject such as infection control, with tests included that are scored before the podiatrist can be given a completion certificate. The amendment is reasonable because the home study programs must be verifiable, so that no negative impact on the quality of podiatric care can result from licensees using this method of accruing continuing education hours.

**Subpart 3. Requirements of program approval.** The proposed amendment to this subpart deletes the words "as meeting requirements of this part. In order to be approved by the board, the program must meet", and substitutes the words ", based on". The effect of the amendment is to remove excess verbiage and shorten the subpart. The amendment is needed to aid clarity in presenting requirements. The amendment is reasonable because it does not alter the meaning of the subpart.

**Subpart 3b. Home study programs.** This proposed amendment is a new subpart that addresses how home study programs are to be evaluated: by measuring them against the criteria used for evaluating programs that may be attended by licensees, to the extent that the criteria are relevant, and by specifying that verification of completing home study programs must be by means of an independently scored quiz relating to the subject matter of the program or other procedure approved by the Board. The amendment is needed to provide a means by which the Board can objectively evaluate home study programs and be assured that public protection concerns are being met. The amendment is also needed to provide some flexibility in evaluating a home study

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program in the event other equally valid methods of verification are developed. The amendment is reasonable because it provides an evaluation means for home study programs that parallels that used for programs attended by licensees, and substitutes a rational verification method - an independently scored quiz - for the attendance certificate provided by program sponsors to attendees.

**REPEALER.** It is proposed that Minnesota Rules, part 6900.0020, subpart 8, be repealed. This subpart provides for post-graduate training other than in a residency or a preceptorship. The subpart needs to be repealed for several reasons:

(1) At the time this subpart was adopted, post-graduate training as a requirement for licensure had just been made law, and, in any case, was a relatively new development nationwide. Few residencies and preceptorships were available compared with the number of podiatric medical school graduates each year. The Board had to be sure that enough post-graduate training programs were available and acceptable to avoid denying licensure to otherwise qualified applicants. However, since the subpart was adopted in 1988, only two licensees had been trained under its provisions. Therefore, the need for the subpart has not been as great as anticipated.

(2) Since the adoption of the subpart, the number of qualified residencies and preceptorships has burgeoned across the country. In Minnesota, there are four such training programs at present, training ten graduates each year. Because there is now no shortage of residencies and preceptorships, provision for other training programs is no longer necessary.

(3) Because the rules include a waiver and variance provision, in the unlikely case that an applicant seeking licensure here was trained in a program other than a residency or preceptorship, the applicant could request a waiver or variance of the post-graduate training rules, and be granted licensure if the training offered was equivalent to that available in residencies and preceptorships. The subpart is, therefore, not needed, and not repealing it would add to the length of the rules without adding substance.

The repeal is reasonable because the repeal does not present any absolute bar to licensure, as might be the case without the waiver and variance provision.

*Lee & Marino*  
*February 14, 1995*