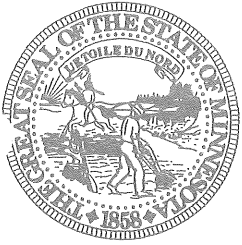


JAN 17 1996 KB



Minnesota Board of Chiropractic Examiners

January 17, 1996

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

Dear Ms. Hruby:

Enclosed you will find a copy of the Statement of Need and Reasonableness, the *Notice of Intent of Adopt Rules Without a Public Hearing*, and a copy of rules for Minnesota Board of Chiropractic Examiners' proposed rules relating to advertising, licensing, and continuing education.

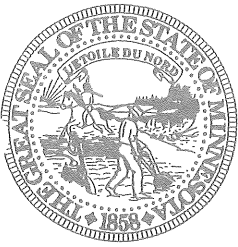
If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lori A. Campbell".

Lori A. Campbell
Office Manager

/lac



Minnesota Board of Chiropractic Examiners

**STATE OF MINNESOTA
COUNTY OF RAMSEY**

**Before the Minnesota
Board of Chiropractic Examiners**

**In the matter of the proposed amendments
to rules governing advertising, continuing
education, license renewal, termination and
reinstatement, and recordkeeping.**

Statement of Need and Reasonableness

Pursuant to Minn. Stat. 14.23 (1994) the Minnesota Board of Chiropractic Examiners (hereinafter "Board") hereby affirmatively presents the need for, and facts establishing the need for, and reasonableness of, a proposed addition to Minnesota Rules, chapter 2500, relating to license termination procedures, development of continuing education programs, advertising, individual annual license renewal, license reinstatement, waiver or deferment of continuing education, and record keeping.

In order to adopt the proposed rules or amendments to the rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. Those requirements are as follows: 1) there is statutory authority to adopt or amend the rules; 2) the rules or amendments are needed and are reasonable; 3) all necessary procedural steps have been taken; and 4) any additional requirements imposed by law have been satisfied. This Statement demonstrates that the Board has met these requirements.

1. STATUTORY AUTHORITY

The statutory authority of the Board to adopt or amend these rules is codified in Minnesota Statutes, section 148.08 (1994) which authorizes the Board to "promulgate rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic, and defining any terms, whether or not used in sections 148.01 to 148.105, if the definitions are not inconsistent with the provisions of 148.01 to 148.105."

2. STATEMENT OF NEED AND REASONABLENESS

2500.0200 Subp. 1. ADVERTISING

This rule has been subjected to the scrutiny of a review process, which found that the current language seemed to prohibit the utilization of "trade" or "proprietary" names. It is believed that the use of such trade names should not be prohibited, assuming that other components requiring specific identification of the licensee are met. Further, it was believed that there was some rhetoric in the rule that appeared to be more a statement of philosophical position rather than legal requirements. This was felt to be superfluous and could, in the interest of clarity and brevity, be eliminated. Therefore, this rule is needed and reasonable.

2500.1100 INDIVIDUAL ANNUAL LICENSE RENEWAL

Board experience has suggested that there is a potential for confusion in the language of the current rule which requires that "the licensee shall submit the license renewal fee to the board no later than . . ." The confusion involved the term "submit" in that there is no criteria to determine when something has been "submitted." It could be argued that "submission" occurs when materials are placed in the mail, or when they are received by the board which could be up to a week later in some cases. The board needs to be very precise about licensure status, as well as the

assessment of any penalties that may be imposed. It is believed, therefore, that a postmark by a recognized mailing service (e.g. United States Postal Service, Federal Express, or professional courier service) gives the most objective indication of when the licensee has satisfied his/her responsibility for renewal submission. Additionally, the board is interested in receiving not only the fees, but all related license renewal materials requested by the renewal deadline. Therefore this rule is needed and reasonable.

2500.1110 Subp. 2; Subp. 3. LICENSE TERMINATION PROCEDURE

Through various interactions with the attorney general's office and licensees, it has come to the attention of the board that the termination process for unexpired licenses may be confused according to currently existing language. The current rule contains language utilizing terms that appear to be synonymous, but which, in fact, are not. Specifically, the terms "expire" and "terminate" seem to be used interchangeably. In fact they reflect two different status's as reflected in statutes or rules. All licenses automatically expire as of December 31 of each year unless the renewal process is completed. Failure to do so by the licensee, initiates the assessment of a substantial late renewal penalty fee. However, an expired status, and the assessment of late renewal penalties, cannot be allowed to continue indefinitely. Therefore, failure to renew eventually results in a termination procedure, in which the staff of the board modifies the status of the license, and the assessment of late renewal penalty fees ceases. In either event, the licensee is not able to practice. However, for a doctor to renew a license that is simply expired, s/he must simply complete the renewal application, pay the renewal fee, and any accrued penalty fees. For the licensee to reinstate a terminated license, s/he must conform to some additional requirements which may include an additional fee, and/or the acquisition of some continuing education. There is also some confusion in the language of the current rule, which suggests that the "licensee's right to practice chiropractic in the state of Minnesota shall terminate as of the date specified in the notice." In truth, the licensee's right to practice ceased as of the point of expiration on December

31. However, the approach to reinstating this right is contingent upon the status of the license (*i.e.* expired or terminated). Therefore this rule is needed and reasonable.

2500.1200 Subp. 5. CONTINUING EDUCATION

In 1993, the board adopted new rules modifying the annual continuing education cycle, to a biennial continuing education cycle. However, they had previously adopted a subject specific continuing education requirement in the subject area of professional boundaries and sexual abuse recognition that utilized a quadrennial requirement. However, the quadrennial cycle was not established in alignment with the biennial cycle creating a great deal of confusion in the profession. The net effect was such that in the middle of a biennial cycle, licensees would have to come up with 8 hours in abuse recognition, not otherwise attached to their normal biennial relicensure continuing education requirements. This has become perplexing to the licensees, and an administrative headache to the board. No matter what level of explanation is offered through publication, there are still a significant number of licensees who have difficulty understanding what requirements are due and when. Therefore the effect of the rule amendment is to modify language to reflect the biennial continuing education cycle, as well as to realign (by advancing by one year) the quadrennial requirement such that the two cycles are now superimposed. Additionally the name of the rule "sexual abuse recognition" was not entirely descriptive of the intent since it really covered two distinct subject matters: the professional boundaries that exist in the patient-doctor relationship, and the statutory requirements licensees have for the reporting of suspected abuse of children and vulnerable adults. Accordingly, the change in the name more properly reflects the dual nature of the rule. Therefore, this rule is needed and reasonable.

2500.1200 Subp. 6. CONTINUING EDUCATION; FULL TIME FACULTY

The purpose of continuing education is to provide access to continually updated information utilized by the profession in the provision of quality care to the public. To a great extent, this information is often derived as a result of research programs performed at accredited institutions. Moreover, as such information becomes available, it is common for instructors at such institutions to acquire, assimilate, and disseminate such information to the student population. A certain amount of continuing education is derived simply from the requirement of the educational process; i.e. the preparation and presentation of classes. Additionally, full time faculty come into abundant contact with such information simply through constant and consistent interface with colleagues in the academic environment. It may be argued that it is overly burdensome to require more continuing education of full time faculty than other doctors in the field: first by virtue of that discussed above, and secondly requiring them to accumulate the same amount of additional classroom education as other doctors in the field. Therefore, allowing for some credit to be applied toward the requirement of continuing education is needed and reasonable. However, it is not the intent of the board to mitigate the overall need of the faculty member to acquire some specific additional classroom education, nor to have specialized education in the areas of radiographic safety, technique, and/or interpretation; infection control; or professional boundaries or reporting parameters for abuse. Therefore the rule imposes a limitation which disqualifies these mandated areas of continuing education from consideration for this credit. Additionally, the rule imposes a limitation on this credit to 12 hours, which equates to thirty percent of the total requirement. The board does not intend to mitigate a full time instructors complete requirement but simply to apply some credit for ongoing academic experience. As a result of the foregoing, this rule is needed and reasonable.

2500.1200, Subp. 7 - CONTINUING EDUCATION; ALTERNATIVE FORMS.

There are a significant number of chiropractors in this state practicing in Greater Minnesota. However, due to the demographic sprawl, there are not nearly as many continuing education programs available to the practitioners in these areas, largely due to the lack of financial feasibility to prepare and put on such education programs. This puts the practitioners in the position of being required to travel to the Twin Cities to acquire the necessary continuing education for relicensure. The loss of revenue while attending such programs, the cost of the programs themselves, and the costs associated with traveling to and from the programs, places a significant financial burden on the practitioner. Through previous experience with other states and other disciplines, it has been determined that classroom attendance is not necessarily the only appropriate form of acquiring continuing education. There are numerous programs available for practitioners (e.g. correspondence, video tape, etc) that may reasonably provide such continuing education while allowing the practitioner to proceed through the course at their own pace and within their own timeframes. This reduces the burdens on all practitioners by allowing them to learn when they are mentally prepared to participate in the program, as well diminishing the need to close the office doors in order to take part. Further, such programs may be obtained and utilized in the practitioners own home, further reducing the financial burden of travel for those outstate practitioners. Therefore this portion of the rule is needed and reasonable. The only element not available in some alternative forms of education may be access to the interaction between the instructor and the participant, as well as the interaction that naturally occurs between the participants either during or between presentations, which may itself be educational. The board fully appreciates the value of the interactive learning process, in which the instructor and participant may engage in question/answer discourse, adding increased value to the learning process. This interaction is believed to be even more important in the areas of the specific requirements such as professional boundaries or reporting parameters for abuse, and diagnostic imaging, which constitute some of the mandated requirements of continuing education. (SEE MR 2500.1200, subp. 4,5.) The board feels that the value of that described above is sufficient enough

to warrant that some significant requirement of the traditional didactic approach to continuing education be maintained realize their maximum potential. Therefore the limitations imposed by this rule are also needed and reasonable.

2500.1720 PROGRAMS DEVELOPED

Credit has been given to those licensees who developed and taught programs for other doctors licensed in the state. The belief is that the development of a program in itself, resulted in additional "self" education of the presenter by requiring some research and evaluation of current issues in the subject matter. The language in the current rule was designed to limit the number of hours acquired this way to six hours for each new program developed. However, the board feels that the acquisition of all continuing education credits through this method by a licensee may result in a narrowed focus of education and continuing development. Additional "self" education notwithstanding, the board feels all doctors should participate in a reasonable amount of specific education through accepted continuing education structures or formats designed to broaden the doctors knowledge base, resulting in better educated chiropractors and a resultant improvement of service provision to the public. Therefore, the proposed rule places a limit on the total quantity of education credit that can be acquired by simply developing and presenting a program to others. Therefore, this rule is needed and reasonable.

2500.1900 LICENSE REINSTATEMENT

The primary intent of the language modification in this rule is to be consistent with the enabling statute, which specifically defines the chief administrative officer of health related boards as the "Executive Director", while the chief administrative officer of non-health related boards as the "Executive Secretary." **See MS 214.04, subd. 3.** Further, the portion of the rule being deleted, is proposed since it makes reference to Minnesota Rule 2500.1700 which has been repealed. **See 17 SR 1711.** Therefore, this rule is needed and reasonable.

2500.2000 WAIVER OR DEFERMENT OF CONTINUING EDUCATION REQUIREMENTS

It is not uncommon for the board to receive requests for waiver or deferment of continuing education requirements after the licensee's license has expired. The decision making body imbued with the responsibility of considering such requests is the Executive Committee, which is composed of the officers of the board. It has been noted that some of these requests are frivolous, and often done in defense of failure to timely renew, and as a way of avoiding late penalty fees. It is felt that a written request submitted in advance would more likely be offered in good faith, as well as giving the executive committee time to consider such a request. The language modification from class hours to units is done to reflect consistency in current language pertaining to continuing education rules. The modification related to the deferment period from 60 days, to a termination on March 31 has a twofold effect. Since the new rule requires requests to be submitted prior to the end of the calendar year, the net effect is to increase the period of deferral by a potential of 31 days, while at the same time reducing administrative difficulty by terminating all deferral's on the same calendar day. The language proposed makes the waiver/deferral constraints much clearer to the licensee and reduces the possibility of arbitrary or capricious activity. Therefore this rule is needed and reasonable.

2500.5000 RECORD KEEPING

The board established an Ad Hoc committee to review the impact of rules that had been in place for more than one year. Following this review it was determined that the adoption of the record keeping rule was accompanied by some unexpected repercussions. While it was intended to establish a foundation and premise for standards by which good quality records could be measured, the board was unprepared for the literal translation of the rule superimposed by third party payors, and how this interpretation would adversely impact licensees reimbursements . . . an interpretation even more stringent than that offered by the board. It is not uncommon for a third party payor to refuse to reimburse a licensee for services, for what they (the third party) considered to be an infraction of the record keeping rule. Such interpretations would leave the patient unprotected and liable for the bill, often damaging the doctor-patient relationship. Additionally, the quantity of complaints for seemingly minimal infractions of this rule have become nearly overwhelming, as the third party payors find simple recourse to refuse payment. The board is more concerned that the licensee is in substantial compliance with the rule, and was uninterested in initiating disciplinary proceedings when the licensee has merely failed to supply a key of abbreviations to the third party payor. The board also needs a little latitude to be able to make a decision as to whether or not the licensee is in violation of the intent of the rule, which is to produce records sufficient to justify care. Therefore this rule is needed and reasonable.

3. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Pursuant to Minnesota Statutes, section 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 Amend or Adopt the Rules With a Public Hearing in the **State Register** and mail copies of the Notice and proposed amendment to persons registered with the Minnesota Board of Chiropractic Examiners pursuant to Minnesota Statutes, section 14.14, subdivision 1a. As required by Minn. Stat. 14.22, and M.R. 2010.0300, the notice

will include the following information: a) that the public has 30 days in which to submit comments in support of, or in opposition to, the rules; b) a statement that if 25 or more persons submit a written request for a public hearing within the 30 day comment period, a hearing will be held; c) the manner in which persons may submit comments; d) that the rules may be modified if modifications are supported by data and views submitted; and e) that notice of the date of submission of the proposed amendment to the Attorney General for review will be mailed to any person requesting to receive the notice, and giving information on how to request the notice.

The Board will submit the proposed amendment and notice as published, the amendment as proposed for adoption, any written comments which have been received, and this Statement of Need and Reasonableness to the Attorney General for approval of the amendment as to the legality and form.

These rules will become effective five working days after publication of a notice of adoption in the **State Register**.

4. RULE DEVELOPMENT PROCESS

The development of rules follow action by the full board, in which an authorizing resolution is adopted. At this point the proposed rule idea is submitted to the rules committee for language development, and the Notice of Intent to Solicit Outside Information is published. The rules committee consists of three board members, (at least one of which is a member of the executive committee) and the executive director. At this point, the rules follow the rest of the statutory requirements. On occasion, when the rule is expected to be controversial in nature, or when specific information may be needed by outside groups or experts, a special meeting or series of meetings may be called to acquire specific input. An example of this is the rule regarding Alternative forms of Continuing Education. In this case, the subject of continuing education is vast and complex. Therefore, it was felt appropriate to convene a meeting, to which all continuing education sponsors were invited for input. This input will be utilized in the development of the concept and the language. In addition, the board established an ad hoc committee for the purpose of reviewing the impact of rules previously adopted. In essence, this committee evaluated the rules to determine whether the rule had accomplished it's intended purpose, or to determine if certain rules created more problems than they solved. Some of the rules proposed herein were subject to this review process, resulting in some modifications in the language.

5. DESCRIPTION OF CLASSES OF PERSONS PROBABLY AFFECTED BY RULE

Minnesota Statutes 14.131 (1994) were amended to require that the SONAR must include a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

It is the boards position that the class(es) of persons that will be affected by the rule(s) will be licensees of the board who will have to comply with the requirements of the rule(s). It is also the view of the board that the class(es) of persons that will benefit from the proposed rule(s) will be the public consumers of chiropractic.

6. PROBABLE COSTS TO AGENCY(IES) OF IMPLEMENTATION AND ENFORCEMENT

Minnesota Statute 14.131 (2) requires that the agency promulgating the rule include any information ascertained regarding the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule(s) and any anticipated effect on state revenues.

The board has an annual budget for attorney general's costs of \$120,000, utilized in its efforts at enforcement. Therefore, costs for enforcement would be unable to exceed that amount plus any amounts required of staff time. However, the nature of the rule(s) proposed are such, that it is expected that the costs required to enforce these requirements would be minimal. Beyond that discussed here, it is not expected that there would be any costs to other agencies. Since the board operates from appropriations compensated for by licensing fees and other revenues from the profession, there are no anticipated effects on state revenues.

7. DETERMINATION OF LESS COSTLY/INTRUSIVE METHODS FOR ACHIEVING PURPOSE

Minnesota Statute 14.131 (3) requires that the agency promulgating the rule include any information ascertained regarding whether it has been determined whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule(s). The board submitted the rule to the scrutiny of the "Notice of Solicitation For Outside Information", as well as publishing information in the MBCE newsletter. Additionally, the professional association representing the professional interests of the licensees has had access to the proposed rules. To date, no information has been presented which suggests less costly or intrusive methods for accomplishing the purposes of the proposed rule. Additionally, there will be a Notice of Intent to Adopt published in the State Register as part of the normal process of promulgation. This will allow another opportunity for interested parties to make such comments which will become part of the record, and which will be reviewed by the full board before final adoption. The board will have the opportunity to submit the proposed rule(s) to additional changes if comments suggest less costly or intrusive methods to accomplish the task. Finally, the board will consider final adoption at a public board meeting, allowing a final opportunity for comment and modification if necessary.

8. DESCRIPTION OF ALTERNATIVE METHODS CONSIDERED

Minnesota Statute 14.131 (4) requires that the agency promulgating the rule include any information ascertained regarding a description of any alternative methods for achieving the purpose of the proposed rule that were considered by the agency, and why they were rejected in favor of the proposed rule.

There were no other methods considered for achieving the purpose of the proposed rule(s). This stems from the fact that the board is consistently advised by the attorney general's office of the board's limitations in establishing enforceable policies by any method other than rule. While some of the rules may be achieved by education to the profession, experience has shown that such attempts to educate the profession through such vehicles as the board newsletter, are not consistent, and cannot be relied upon. Moreover, efforts such as this are costly, and do not have

the force and effect of law. Therefore, there is no motivation for the licensees to comply even if they do become aware of the policy(ies). In order for the board to establish standards by which the public can feel protected, and by which the licensees can measure their behavior, such policies must be the subject of rule or statute. Administrative rule making is the vehicle granted by the legislature to the agency to establish such policy(ies)

9. PROBABLE COST OF COMPLIANCE WITH RULE

Minnesota Statute 14.131 (5) requires that the agency promulgating the rule include any information ascertained regarding the probable costs of complying with the proposed rule(s). It is believed that there will be no costs associated with complying with the rule(s).

10. ASSESSMENT OF CONFLICT WITH FEDERAL REGULATIONS

Minnesota Statute 14.131 (6) requires that the agency promulgating the rule include any information ascertained regarding an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference. It is believed that the rule(s) herein proposed offer no conflict with federal regulations.

11. RECOMMENDATIONS BY COMMISSIONER OF FINANCE

Minnesota Statute 14.131 requires that the agency promulgating the rule include the comments and recommendation of the commissioner of finance and address any fiscal and policy concerns raised during the review process, as required by section 16A.1285 for any rules setting, adjusting, or establishing regulatory, licensure, or other charges for goods and services. It is believed that no such recommendations are necessary since there are no charges or fees being established by the proposed rule(s).

12. DESCRIPTION OF ADDITIONAL EFFORTS TO NOTIFY

Minnesota Statute 14.131 requires that the agency promulgating the rule include any information ascertained regarding additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made. The persons primarily affected by the proposed rule(s) are chiropractors actively licensed to practice in the state of Minnesota. The board provides a quarterly newsletter mailed at no charge to all licensees as well as other persons, organizations, or agencies indicating interest in acquiring the newsletter. All notices statutorily required to be printed in the **State Register** are accompanied by a similar printing in the professional newsletter. It is known that the professional association which represents the interests of the profession at large is also a recipient of the newsletter. Therefore, it is not uncommon for the association or individuals receiving the newsletter to take a more active role in participating in the rules promulgation process.

Dated: _____, 1995

STATE OF MINNESOTA

BOARD OF CHIROPRACTIC EXAMINERS

Larry A. Spicer, D.C.
Executive Director