

Minnesota Board of Chiropractic Examiners

May 18, 2009

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the State Board of Chiropractic Examiners
Governing License Reinstatement Procedures
Governor's Tracking #AR 366

Dear Librarian:

The Minnesota Board of Chiropractic Examiners intends to adopt rules governing license reinstatement procedures. We plan to publish a Notice Of Intent to Adopt Rules without a Public Hearing in the June 1, 2009 State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-2849.

Yours very truly,

A handwritten signature in cursive script that reads "Micki King".

Micki King
Rules Committee Coordinator

Enclosure: Statement of Need and Reasonableness

STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

**Proposed Permanent Rules Relating to
License Reinstatement Procedures.**

**STATEMENT OF NEED
AND REASONABLENESS**

1. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (Hereinafter "Statement") can be made available in an alternative format, such as large print, Braille, or Cassette tape. To make a request, contact the Board at:

Minnesota Board of Chiropractic Examiners
2829 University Ave. SE, Suite 300
Minneapolis, MN 55414-3220
Phone: 651-201-2850
Fax: 651-201-2851
TTY: 1-800-627-3529

2. INTRODUCTION

The Minnesota Board of Chiropractic Examiners (hereinafter "Board") is the regulatory agency empowered with the responsibility of regulating doctors of chiropractic in the State of Minnesota. The Board was codified originally in 1919, but the rule making authority by which these rules are promulgated originates in the 1983 legislative session. Pursuant to Minn. Stat. §14.23 (2006) the Board hereby affirmatively presents the facts establishing the need for, and reasonableness of the establishment of rules related to the reinstatement of a practitioners license, when that license is no longer active for various reasons.

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.

3. STATUTORY AUTHORITY

The general statutory authority of the Board to adopt or amend rules is codified in Minn. Stat. § 148.08 (2006) 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." Research indicates that this authority was originally established in Session Laws Chapter 346, section 4 (Subd. 3) amending 1982 Statutes, Section 148.08. To date, this authority has not expired.

4. STATEMENT OF NEED AND REASONABLENESS

General Discussion: A chiropractic license can be removed from ACTIVE status for a number of reasons. Such a license can be Voluntarily Retired, may be changed to Emeritus status (essentially the same as voluntarily Retired), may be Terminated for various administrative reasons, or may be lost through a disciplinary proceeding. However it has been determined that the reinstatement of such licenses occurs through a variety of procedures. The Board has concluded that such reinstatements should be homogenized to the degree possible.

The Board, via the Rules committee seeks to establish a consistent rationale establishing conditions for reinstating licenses. The conclusion reached is that the current status results from a "patchwork" approach to reinstatement, developed over the years through individual rulemaking efforts, rather than establishing a rationale based upon a philosophical construct. Once this is in place, then future such Rulemaking efforts can be applied to the established framework. Additionally, establishing a consistent approach to such rulemaking makes the procedures, by definition, more defensible.

The Rules committee considered this at length and determined that the fundamental consideration in reinstatement, is competency, and methods to assure this. Accordingly, the rules committee has determined that a practitioner who has not been in practice for a period of 5 years or more, may have allowed their skills to deteriorate to such a degree as to have a potentially deleterious impact on public safety. Therefore, this is the benchmark established by the committee. The committee has had to reconcile several questions, including the period of time the Minnesota license was not active, combined with whether the licensee was practicing elsewhere. The Committee established the following grid to assist its thought process. Two primary sets of criteria were placed onto a grid, the intersections of which drove the rulemaking decision process. The two primary criteria were 1) Length of time (greater or lesser than 5 years), and 2) whether the practitioner had remained in practice elsewhere (which would also require ongoing continuing education.) It is self evident that a practitioner who remains in active practice elsewhere, is likely maintaining and/or improving his/her essential skills. The fundamental conclusions reached by the committee are best expressed in the grid below, which was used to assist the committee in its deliberative process. The ideas illustrated in this grid represent an amalgamation of the best practices contained in the different reinstatement provisions.

Non Active in Minn.	Practicing (Elsewhere)	Non-Practicing
less than 5 years	Complete Application Complete interim CE Pay Interim Fees/penalties Repair deficiencies, if any.	Complete Application Complete interim CE Include an additional 10 hours CE/year Pay Interim Fees/penalties Repair deficiencies, if any. or Licensee may bypass CE by taking SPEC (or other Exam required by the Board) Take Jurisprudence Exam Pay Interim Fees/Penalties Repair Deficiencies if any
Greater than 5 years	Complete Application Complete interim CE Pay Interim Fees/penalties Repair deficiencies, if any. Complete Jurisprudence Exam	Complete Application Must Take SPEC Exam (Or other exam required by the Board.) Take Jurisprudence Exam Pay interim fees/penalties Repair Deficiencies if any

All of the elements contained in these proposed rules may be accurately juxtaposed with this grid. Additionally, any future such rulemaking considerations should, likewise, be conducted with this grid as a frame of reference.

An astute observer may, after reviewing the graph for a period of time, note that the continuation of practice creates a philosophical demarcation in reinstatement requirements. The columns divide the question of whether or not the practitioner remained in practice elsewhere. Looking at the column for the person who has been practicing (elsewhere) one will note that the reinstatement provisions are confined almost entirely to “administrative” requirements, *i.e.* completing interim CE, paying fees, completing application.¹ However, a review of the right hand column for the person who has not been practicing, shows an increased attention to competency determination via increased CE or the use of the S.P.E.C. Examination.²

2500.1900 License Reinstatement This provision allows for reinstatement of a license from a Terminated status. Termination is a non-disciplinary, administrative “de-activation” of the license, for those persons who failed to complete the renewal requirements, or who may have failed to acquire the required continuing education (CE) for maintaining an ACTIVE license. Previously, all that was required to reinstate was either completion of all the original requirements necessary for renewal, (typically CE, application, and payment of fees). The previous rule did contain a provision for taking the Special Purposes Examination in Chiropractic (SPEC) to bypass the need for interim continuing education. However, there were no provisions for persons who had been terminated for many years, and who had not been in active practice. The proposed rules repair this deficiency, and establish standard reinstatement provisions in accordance with the above grid. Moreover, sub paragraph “E” still provides the licensee an opportunity to bypass the requirements for taking the interim continuing education by taking the SPEC examination. The rationale behind this is that CE is designed to facilitate ongoing cognitive competency. The SPEC examination is an examination designed to assess current cognitive competency. This provision also establishes a maximum time period for which the SPEC may be used for this purpose...in this case, 12 months proximate to the application. Finally, this provision clarifies that CE approved by another jurisdiction for license renewal may be used for this purpose,

1 The notable difference here is the requirement for an applicant who has been out of Minnesota for a period of greater than 5 years, but who has been practicing elsewhere. It was concluded that such a person should demonstrate a familiarity with the Minnesota statutes and rules which have likely changed in the Interim...thus the requirement for the Jurisprudence examination.

2 S.P.E.C. is an acronym for the Special Purpose Examination in Chiropractic. This is a competency examination designed under rigorous controls by the National Board of Chiropractic Examiners. It is specifically designed for those persons who have active practice experience (rather than an entry level practitioner) and is commonly used in disciplinary or competency determination cases.

rather than requiring that the licensee take only those hours which were approved by Minnesota. This allows the practitioner who had relocated to Alaska, and who wishes to return to Minnesota, to use the hours previously taken for license renewal in Alaska to be used, rather than having to find classes which were approved in Minnesota, before they have an opportunity to actually relocate to Minnesota. In this way, persons pursuing reinstatement, may complete all requirements and have their license "in-hand" prior to actually making a move. At the same time, this provision prohibits "double dipping" by allowing the licensee to use previously acquired CE which was acquired for the purposes of reinstatement, to also satisfy requirements which would be required by all other licensee's to renew their license at the end of the instant calendar year.

2500.2040 Reinstatement of Inactive License This amendment in paragraph A(3) is merely housekeeping, and represents a discretionary amendment by the Revisor, rather than any policy consideration on the part of the Board.

2500.2110 Reinstatement of Voluntarily Retired License and

2500.2130 Emeritus Change to Active Status Again, in the interest of consistency, one should refer to the table above to appreciate the uniform provisions. The proposed rule requires that the applicant complete the administrative requirements for reinstatement, including an application, pay the previously established reinstatement fee, and pay the interim license fees. After this, the next step is determined by the length of time the practitioner has been un-licensed, in Minnesota, juxtaposed with whether the applicant has been licensed and actively practicing elsewhere. This provision is congruent with the others.

5. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Pursuant to Minn. Stat. §14.23, (2006) and in accordance with the requirements established in Minn. Stat. §14.131 (2006), 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 Without a Public Hearing in the **State Register** and mail copies of the Notice and proposed amendment(s) to persons registered with the Minnesota Board of Chiropractic Examiners pursuant to Minn. Stat. § 14.22, subdivision 1, and §14.14, subdivision 1a. As required by Minn. Stat. §14.22, and M. R. 2010.0300, the notice will include the following information: 1) that the public has 30 days in which to submit comments in support of, or in opposition to, the

proposed rule(s) and that comment is encouraged; 2) that each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed; 3) that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held; 4) the manner in which persons shall request a public hearing on the proposed rule; 5) the requirements contained in section 14.25 relating to a written request required for a public hearing, and that the requester is encouraged to propose any change desired; 6) that the proposed rule(s) may be modified if modifications are supported by the data and views submitted; and 7) that if a hearing is not required, notice of the date of submission of the proposed rule to the Chief Administrative Law Judge for review will be mailed to any person requesting to receive the notice; 8) that if a hearing is required, the time, date and location of the hearing. Further, in connection with clauses (1) and (3) above, the notice will also include the dates on which the comment period ends.

The Board will then 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 Administrative Law Judge for approval of the proposed rules or amendments as to their legality and form.

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

6. RULE DEVELOPMENT PROCESS

The development of rules follows action by the full Board in which an authorizing resolution is adopted. The proposed rule is then submitted to the rules committee for language development, and the Request for Comments is published. The rules committee consists of three Board members, (at least one of which is a public member) and the executive director. At this point, the rules follow the rest of the statutory requirements established in the Administrative Procedures Act. In addition, the Board established an ad hoc committee for the purpose of reviewing the impact of rules previously adopted. In essence, this committee evaluates the rules to determine whether the rules have accomplished their intended purpose, or to determine if some elements of adopted rules create more problems than they solve. Some rules promulgation may derive from the recommendations of this committee. However, this amendment was not subject to this process.

7. DESCRIPTION OF CLASSES OF PERSONS PROBABLY AFFECTED BY RULE

Minnesota Statute §14.131 (1) (2006) requires that the SONAR 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 Board's position that the class(es) of persons that will be affected by the rule(s) will be formerly Actively licensed doctors of chiropractic who may have separated from their license by various means, and who may be considering reinstatement to an Active license.

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

Minnesota Statute §14.131 (2) (2006) 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 of \$160,000 to be used for Attorney General's costs, 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. There are no other state agencies responsible for implementing or enforcing the Board's rules. Therefore the Board does not believe other state agencies will incur any costs if these rules are adopted. These proposed rules will have no impact on the State's general fund, since the Board's entire budget is administered through the Special Revenue Fund, rather than the General Fund.

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

Minnesota Statute §14.131 (3) (2006) requires that the agency promulgating the rule include any information ascertained as to whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule(s). The Board submitted the rules to the scrutiny of the "Request for Comments", as well as publishing information in the Board newsletter. Furthermore, the professional association representing the professional interests of the licensees receives all rules

promulgation mailings. 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 third opportunity for comment and modification if necessary. Nevertheless, the Board does not believe there are any less costly or intrusive methods for achieving this purpose. Having said that, it is likely that having disparate methods of reinstatement from a lost license lends itself to confusion, and criticism for being arbitrary. Such charges could result in contested case hearings for those who may become disgruntled by the impact upon their particular situation. It is expected that homogenizing the process will forestall such criticism, establishing a more defensible position.

10. DESCRIPTION OF ALTERNATIVE METHODS CONSIDERED

Minnesota Statute §14.131 (4) (2006) 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 the objectives of some of the rules may be achieved by education to the profession, experience has shown that the outcomes of these 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 Rules promulgation is the vehicle granted by the legislature to the agency to establish such policy(ies). The only other vehicle currently available to the Board to achieve these goals, is to utilize the Boards Rules Waivers authority. However, the Board uses this authority sparingly and not, typically, for an ongoing experience. The use of the Variance rule is typically utilized to address unanticipated situations. Accordingly, the Board believes rule making is the most appropriate vehicle to accomplish this goal.

11. PROBABLE COST OF COMPLIANCE WITH RULE

Minnesota Statute §14.131 (5) (2006) requires that the agency promulgating the rule include any information ascertained regarding the probable costs of complying with the proposed rule(s), as well as “including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.” Additionally, Minnesota Statute §14.127 (Session Laws 2005) requires that an agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full time employees; or (2) any statutory or home rule charter city that has less than ten full time employees. With the following exception, the Board anticipates minimal costs will be associated in complying with this rule amendment to any affected party. This exception would be for the person who has been terminated for a period greater than five years, and who has not been otherwise practicing. They will be required to take the S.P.E.C. examination, (already required elsewhere), and this will engender some cost. However, this situation is relatively rare. The proposed amendment makes no changes to the assessment of fees established in the previous rule.

12. PROBABLE COST OF NOT ADOPTING PROPOSED RULES

Minnesota Statute §14.131 (6) (2006) requires that the agency promulgating the rule include any information describing the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals. As mentioned above, there is a remote possibility of an applicant filing a contested case for a procedure which appears to discriminate against a licensee attempting to acquire his/her license back. While it is unlikely that there would be any associated costs to the agency for not adopting the proposed rules, still the possibility cannot be entirely ruled out.

13. EVALUATION BY COMMISSIONER OF FINANCE

Minnesota Statute §14.131 (6) (2006) requires that the agency promulgating the rule must consult with the Commissioner of Finance to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government. There are no new fees associated with this rule, nor are there any new uses of previously established fees. Pursuant to a memorandum from the Minnesota Office of Management and Budget, the Department of Finance has concluded that the "rule will have no fiscal impact on local units of government." (See Attached.)

14. ASSESSMENT OF CONFLICT WITH FEDERAL REGULATIONS

Minnesota Statute §14.131 (7) (2006) 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. Since the federal government is not involved in the licensure of doctors of chiropractic, it is believed that the rule(s) herein proposed offer no conflict with federal regulations.

15. DESCRIPTION OF ADDITIONAL EFFORTS TO NOTIFY

Minnesota Statute §14.131 (2006) requires that the agency promulgating the rule(s) 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 Board provides a newsletter mailed at no charge to all licensees as well as other persons, organizations, or agencies indicating interest in acquiring the newsletter. Notices regarding rule subject matter and invitations to acquire information on rules being promulgated are a standard part of the newsletter. Additionally, the Board maintains a current list of all persons or organizations indicating an interest in the Board's rules promulgation activity. The Board mails separate notification to all persons or organizations on this list. It is known that the professional association which represents the interests of the profession at large is a recipient of the newsletter, and is also maintained on the active rules notification list. Finally, beginning in October of 1998, the Board established a web site (www.mn-chiroboard.state.mn.us). Since that date, all statutorily required postings also appear on the Board's web site. The Board diligently attempts to make the profession and the public aware of the Board's web site. Beyond this, the primary affected parties to this rule, are formerly licensed doctors of chiropractic, and no extraordinary methods were utilized for notification. This derives from the fact that the Board maintains no reliable contact information on those persons no longer maintaining license status with the Board.

16. STATE REGULATORY POLICY

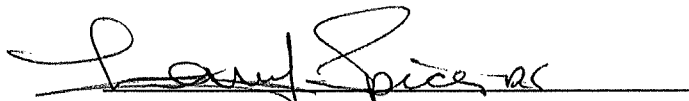
Minnesota Statute §14.131 (2006) requires that this Statement describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002 (2006). Minnesota Statute §14.002 states that whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals. By this rule, the Board attempts to set a standard process by which licenses can be reinstated, which is consistent, understandable, and defensible. Therefore, the Board believes that this proposed amendment meets both of these goals.

17. CONCLUSION

Based on the information contained herein, the Board has demonstrated that these proposed rules are both needed and reasonable to enable the Board to fulfill its regulatory and enforcement duties in accordance with current statutes and rules, and provide necessary and important services to applicants and former licensees. Accordingly, the Board hereby respectfully submits this Statement of Need and Reasonableness.

Dated: December 3, 2008

STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

A handwritten signature in black ink, appearing to read "Larry A. Spicer, D.C.", is written over a solid horizontal line.

Larry A. Spicer, D.C.
Executive Director

Attachment: Memorandum; Minnesota Office of Management and Budget