# Minnesota Board of Chiropractic Examiners

April 30, 2014

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

Re: In The Matter of the Proposed Rules of the Board of Chiropractic Examiners Governing Independent Examiner Registration, Revisor's ID Number RD 4187.

Dear Librarian:

The Minnesota Board of Chiropractic Examiners intends to adopt rules relating to Independent Examiner Registrations. We plan to publish a Dual Notice of Hearing in the May 12, 2014 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 an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Dual Notice of Intent to Adopt Rules.

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

Yours very truly,

Micki King
Health Program Representative

Enclosure: Statement of Need and Reasonableness

2829 University Avenue SE #300, Minneapolis, Minnesota 55414-3220
Telephone 651-201-2850 • Fax 651-201-2852 • Internet www.mn-chiroboard.state.mn.us

**STATE OF MINNESOTA**

**BOARD OF CHIROPRACTIC EXAMINERS**

**Proposed Permanent Rules Relating to Independent Examinations**

**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: 651-201-2852**
**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 general rule making authority by which rules are promulgated originates in the 1983 legislative session. Pursuant to Minn. Stat. §14.23 and §14.131 (2013) the Board hereby affirmatively presents the facts establishing the need for, and reasonableness of the establishment of rules related to Independent Examinations conducted under the authority of Minn. Stat. §148.09 (2013) .

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 (2013) 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

Doctors of chiropractic may register as Independent Examiners[1] "...for the purpose of generating a report or opinion to aid a reparation obligor under chapter 65B in making a determination regarding the condition or further treatment of the patient..."[2] In essence this means that they are hired by various 3rd party insurance payors (Payors) who indemnify citizens for losses resulting from auto accidents. These losses may include, but not be limited to, charges for care for

---

1 This registration is subordinate to the antecedent doctor of chiropractic licensure.

2 See Minn. Stat. §148.09

injuries sustained, property loss/damage, transportation, etc. This function is, theoretically, one of the Payors tools to help stem the tide of excessive costs, resulting from unnecessary or excessive care, or care which is unrelated to the accident. Statutes place certain limitations on these registrants, which include but are not limited to:

- They must either be an instructor at an accredited school of chiropractic or have devoted not less than 50 percent of practice time to direct patient care during the two years immediately preceding the examination;
- They must have completed any annual continuing education requirements for chiropractors prescribed by the Board of Chiropractic Examiner[1]
- They must not accept a fee of more than $500 for each independent exam conducted; and
- They must register with the Board of Chiropractic Examiners as an independent examiner and adhere to all rules governing the practice of chiropractic.[2]

In addition, an Independent Examination registrant (Examiner) must "...apply for registration with the board not less than 30 days prior to the anticipated date of commencement of independent examinations."[3]

The subject of Independent examinations is a vexing one. To begin with, in spite of the title, these examinations are not entirely "independent." More accurately, they are a service paid for by the Payor. It can, and has been, argued that this by its very nature is not independent, as the end result is most commonly the discontinuance of reimbursement for care to the patient, resulting in benefit to the Payor (the purchaser of the service.). In some cases, auto insurance contracts obligate the patient to participate in such examinations when requested by the Payor. Additionally statutes require the cooperation of patients to "...submit to a physical examination by a physician or physicians selected by the obligor as may reasonably be required." Further, "...If the claimant refuses to cooperate in responding to requests for examination and information as authorized by this section, evidence of such noncooperation [sic] shall be admissible in any suit or arbitration filed for damages

---

1 No such continuing education requirements have been established.

2 SEE Minn. Stat. §148.09

3 SEE Minn. R. 2500.1160, Subp. 2 REGISTRATION. This is mentioned here as it is subject to amendment in this promulgation.

for such personal injuries or for the benefits provided by sections 65B.41 to 65B.71."[1] It comes as little surprise that failure or refusal to cooperate will likely result in the Payor discontinuing any further reimbursement for care.[2]

A typical scenario occurs when a patient is injured, and seeks care from a doctor of chiropractic. At some point in the care regimen, the Payor directs the patient to submit to an Independent Examination.[3] The Patient is notified of the time, date, and location of the examination and possibly given the name of the Examiner although this is unknown to this author. Most often, the exam is conducted in an office that is not the office where the patient has been receiving care. Presumably the Examiner and patient meet at the appointed time and place, and certain information is given to the patient regarding the examination. The Examiner then conducts the consultation and examination, and dismisses the patient. The Examiner then reviews the available records of care, and completes the process by generating a written report which is provided to the Payor. Very commonly, these reports address such questions as:

- Are the injuries a direct result of the accident in question?
- Is the care directly related to the injuries sustained in this accident?
- Is more care of this nature warranted or not, and if not, at what point should the care have been discontinued?

Based upon the contents of the report, the Payor then makes a determination regarding ongoing reimbursement for continued care, or even reimbursement for care which has been delivered but which the examiner believes should have ended prior to the exam.

Given the Board's objective of protection of the public, it would be remiss to ignore the mind set of the patient who is subjected to this process. A cross section of complaints received over many years is illustrative of this mind set. (A description of such complaints will follow.) The Board

---

1 SEE Minn. Stat. § 65B.56. (2013) COOPERATION OF PERSON CLAIMING BENEFITS.

2 An additional comment on this subject is forthcoming.

3 Information received by the Board indicates a trend toward such requests happening in an increasinglyearlier stage in the treatment regimen. In one case, a request for an examination was made after the 6th visit of the patient.

recognizes that these patients have been in auto accidents, while passengers or drivers in a vehicle that may be several thousand pounds in weight, and traveling at various speeds ranging from 5-50 miles per hour[1]. While technological and mechanical advances in the auto industry have focused on improved compartmental protection, nevertheless, such improvements do not overcome the frailty of the human body. Such events may result in substantial bodily injury, and very often result in psychological injury as well. While psychological injury is beyond the scope of chiropractic care and beyond the scope of this missive, it serves the reader to keep in mind that this is a person who is in a substantially vulnerable state of mind and body. It also serves the reader to be mindful of the fact that this patient has been paying insurance premiums for, perhaps, many years. And while the patient would never wish to be subjected to such a traumatic event, they should be somewhat comforted by the fact that this is exactly what they have been paying these insurance premiums for.

Accordingly, they search for and find a doctor of chiropractic, to whom they entrust the care for their physical injuries. In this process they develop what is generally referred to as a "doctor-patient" relationship. This relationship requires time and experience to develop a level of trust...trust in the doctors education, training, and experience to treat these injuries. This relationship also extends to the doctors staff, and even to the physical surroundings where the care is delivered, to produce an environment where the patient can relax and comfortably submit to the ministrations of the doctor and staff.

Then one day, the patient gets a letter from their insurance company. The Payor is requiring them to submit to this examination in a location and in surroundings with which they are unfamiliar, and to a doctor they do not know and have never met. They are told this doctor is going to examine them, but this doctor is not acting as "their doctor." and are not establishing a doctor patient

---

1 The reader should not be misled here. Comprehensive studies of the physics of auto crashes with all of the many variables and the resultant imposition of soft tissue injuries to the occupants, forecloses on a linear outcome of speed-to-injury ratio. In fact, it has been irrefutably determined that due to certain variables, those subjected to lower speed crashes are often the recipients of far worse soft tissue injuries, than those at some higher speed events. Please see, for example, Foreman, S., Croft, A. "Whiplash Injuries: The Cervical Acceleration/Deceleration Syndrom. Lippincott, Williams, and Wilkins. 2001.

relationship.[1,2] Moreover, it is likely that they have now discussed this upcoming examination with their treating doctor, who may have had less than favorable experiences with such examinations. In fact, these examinations are often referred to in the industry as "adverse exams." Whether or not this is true, it is possible (or more likely probable) the patient has come to learn that the intent of the exam is to terminate their care. So when all of these considerations are put together, the patient enters this exam in a highly vulnerable state of mind, with an Examiner who wields considerable power over this patient with regard to their future care for injuries sustained. .

The Board has received numerous complaints over the years regarding the conduct of the Independent Examinations. To paraphrase, these complaints have included, but are not limited to:

- The examiner was very stern and spoke very harshly with me or the examiner berated me and brought me to tears;
- The Examiner accused me of fraud, or the Examiner was abusive/sarcastic/offensive
- The Examiner made disparaging remarks about my treating doctor;
- The Examiner exacerbated my injury through his rough handling of me;
- The Examiner spent no more than 5 minutes examining me;
- The Examiner could not have read my records because he has made so many inaccurate statements which are not contained in my records;
- The Examiner did not correctly characterize, or lied about what I said during the consultation
- The Examiner has provided false information regarding the results of his examination;
- The Examiner touched me inappropriately;
- The Examiner made highly inappropriate suggestive remarks about my body;
- The Examiner asked me inappropriately personal questions;
- The Examiner used incorrect examination procedures, such as using a pinwheel through my clothing, or "eyeballing" ranges of motion rather than using a standard measuring device;

---

1 Very commonly, the Examiners try to make it very clear to the patient that they are not "their" doctor, and that they are not establishing any form of doctor-patient relationship. Just as commonly, the Examiner has the patient sign a form attesting to their understanding of this position.

2 A writing by one author (Mark Studin, DC, FASBE, DAAPM, DAAMLP) states "The purpose of this language is to attempt to establish that the IME doctor is not held to the same standards as the treating doctor, thereby insulating the doctor from any licensure or malpractice issues based upon any conclusion and giving them more leeway in rendering an opinion.

Finally, there have been numerous situations in which the patient informed the Board, as part of a complaint, that they attempted to have a third party observer (of their choice) in the room. Such requests have almost universally been denied by the Examiner, further adding to the tension of the situation. In some cases when the patient attempted to insist, the Examiner reportedly advised the patient that they (the Examiner) would simply terminate the exam, and write a report stating that the patient was uncooperative with the exam...the net effect of which would again likely be the termination of care.[1] Again, the Examiner wields unfettered power over a highly vulnerable patient. In at least one situation, the complainant avers that she was previously the subject of substantial sexual abuse as a child and never goes into a doctors office (including her chiropractor), without the presence of a third party to make her feel safe...typically a personal friend or family member. In another situation, the patient was a vulnerable adult with mildly diminished mental capacity who was not allowed to have their personal care attendant in the room. Such allegations are very difficult to pursue, since historically the only persons in the room are the Examiner and the patient. So this highly vulnerable patient is subjected to a situation over which they have no control, and over which there is little to no accountability...a condition the Board seeks to remedy via this rule.[2]

**Rules Process**

It should be pointed out that the original rules (Minn.R. 2500.1160) were developed in approximately 1009-91, and were adopted following a hearing with the Office of Administrative Hearings. No substantive changes have been made to these rules since that time. Part of the instant rules process included language development by the Board's Rules Committee. This committee is composed of 3 members of the Board, 2 who are professional members (licensee's in private practice) and one of

---

1 This issue was mentioned earlier, and is incorporated into Mnn. Stat. 65B.56. A failure of the language contained therein is that cooperation, or lack thereof, is not defined in any manner. In such instances where patients have been threatened with non-cooperation, they have indicated that they fully intended to otherwise cooperate with the exam, but merely wanted a third party in the room for their protection. Nevertheless, the Examiners have stretched the intent of this statute, creating an untenable scenario for the patient.

2 As a point of clarification, this rule does not seek to exert any influence over the opinions of the Examiners. The Board merely seeks to allow the patient to create an environment over which they may feel some measure of personal protection and where there is some potential accountability for any breaches of the patients rights.

the Board's public members.[1] The meeting is also attended by the Executive Director, and an additional staff member. The development of this language followed two public meetings which were attended by interested parties. These parties attended, likely as a result of a direct contact by the Board of all currently registered Independent Examiners, as well as notices contained in the State Register and the Board's web site. These parties were given significant, unrestricted time to voice their opinions and views regarding the subject matter of this rule. This included considerable interactive dialogue between the Rules Committee members and the participants. The interactions were cordial, and the Rules Committee utilized this opportunity to not only acquire divergent opinions regarding this subject, but to educate themselves on additional issues to consider while developing language for this rule. A discussion of these opinions, as well as their influence on the development of the rules language will follow the review of the current proposal.

**Review of Rule Provisions**

Subpart 1. Independent Examination Registration. One of the original provisions in the language was that Registrants must be "...involved in direct patient care for 50 percent of the time spent in practice during the two years immediately preceding the independent examination of a patient.[2] However, the method of calculating this was never defined or clarified. The current proposal is designed to give some guidance as to how direct patient care is to be measured, in order to be able to calculate the 50 percent requirement.

Subpart 2. Registration. The original rule required that the Registrant must apply for registration "...not less than 30 days prior to the anticipated date of commencement of independent examinations." While the historical record is a bit vague on this issue, it has been determined that this provision was established in order to give the Board time to process such an application before such service was rendered. Upon further consideration, including improvements in licensing methods and technological capabilities, it has been determined that this provision is unnecessarily

---

1 Interestingly, by profession this public member has been in the insurance profession for 44 years, serving the last 11 years as a Registered Independent Life and Health Insurance agent.

2 The original intent of this provision was to assure that a Registrant did not make a full time profession of being an examiner, and that remaining in current practice would serve to maintain currency in their professional skills.

burdensome to the Registrant. Accordingly, the Board proposes to eliminate the 30 day "waiting" period, simply allowing the Registrant to commence examinations as soon as the application is approved (typically a matter of 1-3 days from receipt of a completed application.)

Subpart 3. Third Party Presence. This provision makes up the "heart" of this promulgation effort, and is designed to address the issue previously discussed under the "General Discussion" section above. This section makes it impermissible for an Examiner to prohibit the presence of a 3rd party in the environment during the examination. It also establishes that this third party may be one of the Patient's choice, in order to facilitate their comfort and feeling of protection. This provision is consistent with conduct typically experienced in a chiropractor's office, wherein a patient may have a third party of their choice in the room during treatment. This provision serves a dual purpose: First it protects the patient by improving their comfort level, and forestalls the likelihood of any improper conduct by the examiner, such as improper touching or improper conversation. It also provides an observer who can add to the accountability of the exam. Should an Examiner fail to provide a complete exam, or reports that he performed certain examinations which were never performed, the patient will have a witness to this effect. Accordingly, it is likely that the Examiner, now knowing that the Examination is being witnessed, will conduct the complete exam and not report things which did not happen.

However, this also provides a protection for the Examiner. Just as the potential exists for an Examiner to provide false information, a disgruntled patient can also falsely accuse an Examiner of improper (e.g. sexual) conduct. The Board is mindful of at least one situation in which this threat was an element. Such an accusation can impose substantial hardship on a doctor as a result of defense efforts. This possibility increases when there are no other observers in the room, and having such an observer will likely forestall spurious accusations.

This provision also allows for any person, regardless of credential, to be present during the exam, but does so without requiring the third party to provide any advance notice or identification other than their name to the Examiner, which the Examiner must then include in their written report. This provision also allows for recording of the proceedings in either written or audio form, but does not allow video recording of the exam. Having said this, the third party is prohibited from any form of substantial interference in the conduct of the exam. Such interference may include in engaging in

unnecessary questioning or dialogue with the Examiner, or any other behavior which may subvert the examination process. In other words, the third party is merely an observer and nothing else. Should the Examiner conclude that the third party is interfering with the exam, the Examiner is required to describe the interference in the report. Finally, this provision states that the patient may not be considered as failing to cooperate with the exam for the exercise of these rights.

Subpart 4. Records. The Board has become aware of a trend over the years in which the Examiner is basing his conclusions upon what can only be referred to as an incomplete record. It is unclear why the third party would produce less than the full record to the Examiner, but unequivocal evidence has shown this to be the case on occasion. The net result, however, is that the Examiner derives conclusions on an incomplete record...conclusions which may (and typically does) derive to the detriment of the patient. For example, in one case a patient treated with the doctor for approximately six months. However, the Examiner was only provided with approximately the first 6 weeks of records. The Examiner drew conclusions that the patient failed to derive a measurable benefit from the treatment provided. It is well understood that the first 4-6 weeks represent the more "acute" period of care. Following a certain period of treatment, a cascade of healing and tissue repair begins to manifest.[1] In this case, the period reviewed by the Examiner fell within that acute period, and the Examiner concluded that the care was not providing a measurable benefit and would, therefore, not likely receive any benefit from care in the future. Had the examiner had later records which included progress notes and follow-up exams, he would have seen that there were significant improvements in the patients condition such as reduction in pain index, increases in ranges of motion, increase in tolerance to activities of daily living, etc. One could surmise that this information may have resulted in a different conclusion. Very often, the reports don't even indicate what period of records were reviewed. Such discoveries have been made following Board investigations, and while the Examiner did not provide inaccurate information, the text of the report implies a more thorough review. Therefore, this provision requires that the Examiner affirmatively state in the report, what

---

1 This period of acuity is different for each patient, and is influenced by many variables such as all of the elements occurring during the traumatic event, the age of the patient, the general pre-injury health index of the patient, cultural issues, patients work, recreational, and other activities of daily living, etc.

period of care was actually reviewed by the Examiner. This will allow any third party trier of fact to incorporate this into any decisions they make.

Subpart 5. Disclosures. This provision merely requires that the Examiner provide certain written disclosures to the patient, including the disclosure regarding the purpose of the exam and their rights to have the third party presence.

Subpart 6. Annual renewal. Technical numbering change only.

Subpart 7. This provision simply places any violations of this provision under the provisions of unprofessional conduct.

For the Reasons stated above, the Board believes these rules to be needed and reasonable.

## 5. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Pursuant to Minn. Stat. §14.23, (2013) and in accordance with the requirements established in Minn. Stat. §14.131 (2013), the Board has prepared this Statement of Need and Reasonableness which is available to the public.

The Board will publish a Dual Notice of Intent to Amend or Adopt the Rules With or 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 Subd. 1 (2013), and §14.14, Subd. 1(a)(2013). As required by Minn. Stat. §14.22 (2013), 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. 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 remainder of the statutory requirements established in the Administrative Procedures Act.

## 7. DESCRIPTION OF CLASSES OF PERSONS PROBABLY AFFECTED BY RULE

Minnesota Statute §14.131 (1) (2013) 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 doctors of chiropractic who are registered to perform independent examinations, as well as persons who are the victims of auto accidents who may be the subject of such an examination.

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

Minnesota Statute §14.131 (2) (2013) 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 State Government Special Revenue Fund, rather than the General Fund.

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

Minnesota Statute §14.131 (3) (2013) 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 dual Notice of Intent to Adopt (with and without a hearing) 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.

## 10. DESCRIPTION OF ALTERNATIVE METHODS CONSIDERED

Minnesota Statute §14.131 (4) (2013) 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 Administrative Procedures act imposes limitations on State Agencies 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 or Board web site, 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 Waiver authority. However, the Board uses this authority sparingly and not, typically, for an ongoing experience. The variance rule is typically utilized to address unanticipated situations. Accordingly, the Board believes rule making is the most appropriate vehicle to accomplish its goal.

## 11. PROBABLE COST OF COMPLIANCE WITH RULE

Minnesota Statute §14.131 (5) (2013) 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 (2013) 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. The Board anticipates minimal costs will be associated in complying with this rule amendment to any affected party and certainly no costs would meet those thresholds.

## 12. PROBABLE COST OR CONSEQUENCES OF NOT ADOPTING PROPOSED RULES

Minnesota Statute §14.131 (6) (2013) 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. This is difficult to ascertain, as it is based on speculative outcomes. As mentioned earlier, examiners can become the subject of complaints for inadequate examinations or improper conduct. Such complaints can either be corroborated or refuted with the presence of a third party in the room. In any event, the outcomes, whatever they may be, are more likely to be reliable and defensible.

## 13. EVALUATION BY COMMISSIONER OF MANAGEMENT AND BUDGET

Minnesota Statute §14.131(2013) 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. Pursuant to a memorandum from the Minnesota Office of Management and Budget, Susan Melchionne, Executive Budget Officer, has concluded "These rule changes will have no fiscal impact on local governments." (See Attached.)

## 14. ASSESSMENT OF CONFLICT WITH FEDERAL REGULATIONS

Minnesota Statute §14.131 (7) (2013) 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. ASSESSMENT OF CUMULATIVE EFFECT WITH FEDERAL AND STATE REGULATIONS

Minnesota Statute §14.131(8) (2013) requires that the Board make an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. This statute is vague as to what effects are contemplated. However, consistent with previous statement, there is no known effect, cumulative or otherwise, with state or federal regulations.

## 16. DESCRIPTION OF ADDITIONAL EFFORTS TO NOTIFY

Minnesota Statute §14.131 (2013) 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 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 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. On June 3, 2013, the Board submitted an Additional Notice Plan for consideration to the Honorable Raymond R. Krause, Chief Administrative Law Judge with the Office of Administrative Hearings. In addition to describing notice to those otherwise described in this SONAR, the Board also described its intent to submit notice to the major No-Fault carriers in Minnesota. This Plan was approved by the Honorable Eric L. Lipman, Administrative Law Judge on June 7, 2013, and is attached and incorporated by reference herein.

## 17. STATE REGULATORY POLICY

Minnesota Statute §14.131 (2013) 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 (2013). 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. As a general matter, this rule is not directed toward performance related issues, but more toward protection of the public. Given that it is anticipated that this protection is gained with no additional cost to any affected party, it is believed that superior achievement will be attained by the dual impact of increasing accountability and protection of the examiner while at the same time providing a level of comfort to the injured patient. It is believed there will be no loss in flexibility over the regulated party, with the slight exception of adding one or two comments in their record (i.e. period of records reviewed, and name and stated identity of the third party.)

## 18. EFFECT ON LOCAL GOVERNMENTS

Minnesota Statutes §14.128 (2013) requires that an agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule, and if so, to specify the date of implementation. Promulgation of this rule appears to have no such effect on any division of local government, which would require the adoption or amendment of an ordinance or other regulation.

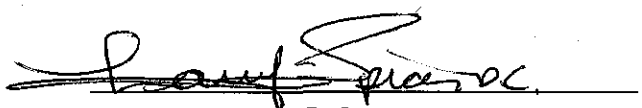
## 19. CONCLUSION

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: February 10, 2014

**STATE OF MINNESOTA**

**BOARD OF CHIROPRACTIC EXAMINERS**



Larry A. Spicer, D.C.
Executive Director

Attachments: Memorandum: Minnesota Office of Management and Budget (February 10, 2014)
Additional Notice Plan, Approved June 7, 2013

Sources (Partial List)


I. Minn. Stat. § 148.08 (2013)

II. Minn. Stat. § 148.09 (2013)

III. Minn. Stat. § 14.23 (2013)

IV. Minn. Stat. § 14.131 (2013)

V. Minn. Stat. § 65B.54 (2013)

VI. Minn. Stat. § 65B.56 (2013)

VII. Minn. Stat. § 14.14 (2013)

VIII. Minn. Stat. § 14.128 (2013)

IX. Minn. R. 2500.1160 (2013)

X. Foreman, S., Croft, A. Whiplash Injuries: The Cervical Acceleration/Deceleration Syndrome. Lippincott, Williams, and Wilkins. 2000

XI. Kirschner v Mills, 274 A.D. 2d 786 (N.Y. A.D. 3rd Dept 2000)

XII. Smith v Radecki, 238 P.3d 111 (Alaska 2010)

XIII. Joseph v The District of Columbia Board of Medicine, 587 A.2d 1085 (D.C. 1991)

XIV. Ritchie v Krasner, 221 Ariz. 288 (Ariz. App. Div. 1 2009)

XV. Hafner v Beck, 185 Ariz. 389 (Ariz. App. Div. 2 1995)

XVI. Dyer v Trachtman, 470 Mich. 45 (2004)

XVII. Rand v Miller, 185 W. Va. 705 (1991)

XVIII. Green v Walker 910 F.2d 291 (5th Cir., 1990)

XIX. Webb v T.D., 287 Mont. 68 (Mont., 1997)

XX. Hoover v Williamson, 236 Md. 250 (1964)

XXI. Studin, M. Are IME and Peer-Review Doctors Accountable in the Doctor-Patient Relationship? Dynamic Chiropractic. July 1, 2012. Vol 30, Issue 14.

XXII. Studin, M. Are IME and Peer-Review Doctors Accountable in the Doctor-Patient Relationship? (Part 2) Dynamic Chiropractic. July 29, 2012. Vol 30, Issue 16.