

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of the Proposed
Adoption of Rule Amendments
of the Minnesota Board of
Psychology Governing Licensure
and Professional Conduct

AMENDED
STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This Amended Statement of Need and Reasonableness (Amended SONAR) serves as a supplement to the Statement of Need and Reasonableness dated September 7, 1988 (original SONAR), which is incorporated into and made part of this Amended SONAR. Except as noted herein, the original SONAR remains unchanged.

The original SONAR is being supplemented by this Amended SONAR pursuant to the Report of the Administrative Law Judge dated December 29, 1988 (ALJ Report), which concluded that the Board failed to comply with the small business considerations in rulemaking statute in the Board's initial proposed adoption of its rule amendments. This Amended SONAR also addresses the modifications proposed by the Board to the rule amendments as initially proposed. The modifications are in response to the public comments received during the initial rulemaking proceeding as well as the findings and conclusions contained in the ALJ Report.

SMALL BUSINESS CONSIDERATIONS

Minn. Stat. § 14.115 requires administrative agencies, when proposing a rule or an amendment to an existing rule, to consider various methods for reducing the impact of the proposed rule or amendment on small businesses and to provide opportunity for small businesses to participate in the rulemaking process. In its original SONAR, the Board stated its conclusion that Minn. Stat. § 14.115 does not apply to these proposed rule amendments. It was, and remains, the Board's position

that these proposed rule amendments fall within two exemptions found in the small business statute: first, the exemption for agency rules that do not affect small businesses directly; and second, the exemption for service businesses regulated by government bodies for standards and costs. See Minn. Stat. § 14.115, subd. 7(b) and (c), respectively.

In his ALJ Report, Judge Beck concluded that neither of these exemptions applies to the proposed rule amendments. The Board responded to the ALJ Report by requesting the Chief Administrative Law Judge to review the ALJ Report and to make a determination as to whether the proposed rule amendments were exempt from the small business statute. (See Addendum A, which is attached to and made part of this Amended SONAR.) Chief Judge Brown responded to the Board's request by declining jurisdiction to review the matter, but also indicated that he agreed with Judge Beck's rejection of the Board's rules based upon the fact that the rulemaking record did not indicate cost regulation of psychologists by another agency. (See Addendum B, which is attached to and made part of this Amended SONAR.)

In order to comply with Judge Beck's determination that these proposed rule amendments are subject to the small business statute, the Board has reviewed the five suggested methods listed in section 14.115, subdivision 2, for reducing the impact of the rules on small businesses. The five suggested methods enumerated in subdivision 2 are as follows:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

As part of its review the Board considered the feasibility of implementing each of the five suggested methods, and considered whether implementing any of the five methods would be consistent with the statutory objectives that are the basis for this rulemaking.

1. It would not be feasible to incorporate any of the five suggested methods into these proposed rule amendments.

Methods (a)-(c) of subdivision 2 relate to lessening compliance or reporting requirements for small businesses either by (a) establishing less stringent requirements, (b) establishing less stringent schedules or deadlines for compliance with the requirements, or (c) consolidating or simplifying the requirements. Since the Board is not proposing any compliance or reporting requirements for either small or large businesses, it follows that there are no such requirements for the Board to lessen with respect to small businesses. If, however, these proposed amendments are viewed as compliance or reporting requirements for businesses, then the Board finds that it would be unworkable to lessen the requirements for those psychologists who practice in a solo or clinic setting of fewer than 50 employees, since that would include the vast majority of psychologists. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Board's amendments do not propose design or operational standards for businesses, and therefore there is no reason to implement performance standards for small businesses as a replacement for design or operational standards that do not exist. Finally, method (e) suggests exempting small businesses from any or all requirements of the rules. Under the Board's view that these proposed rule amendments do not in any way regulate the

business operation of psychologists, there are no rule requirements from which to exempt small businesses. However, if these proposed amendments are viewed as regulating businesses insofar as they regulate psychologists, then it would hardly make sense for the Board to exempt from its rules those psychologists who practice in a solo or clinic setting with fewer than 50 employees, since they constitute the vast majority of psychologists. For all of these reasons, it is not feasible for the Board to incorporate into its proposed amendments any of the five methods specified in subdivision 2 of the small business statute.

2. Reducing the impact of the proposed amendments on small businesses would undermine the objectives of the Minnesota licensing law for psychologists.

Pursuant to the Minnesota licensing law for psychologists, Minn. Stat. §§ 148.88 to 148.98, the Board was created for the purpose of establishing requirements for licensure and adopting a code of ethics governing appropriate practices or behavior for psychologists. Pursuant to Minn. Stat. § 148.90, subd. 2(4), the Board is specifically mandated to "prescribe rules as may be necessary to enable it to carry into effect" the Minnesota licensing law for psychologists. Given these statutory mandates, it is the Board's duty to establish licensure qualifications and ethical standards which apply to and govern all applicants and licensees, regardless of the nature of their practice. As it has been stated above, it is the Board's position that the proposed amendments will not affect small businesses, and certainly do not have the potential for imposing a greater impact on psychologists in a solo or small practice than on psychologists practicing in a large business setting. It has also been explained above that the Board considers it infeasible to implement any of the five suggested methods enumerated in subdivision 2 of the small business statute. Nonetheless, to the extent that the proposed rule amendments may affect the business operation of a psychologist or group of psychologists, and to the extent it may be

feasible to implement any of the suggested methods for lessening the impact on small businesses, the Board believes it would be unwise and contrary to the purposes to be served by these rules for the Board to exempt one group of psychologists - indeed, the majority of psychologists - from the requirements of these rules. Similarly, the Board believes it would be unwise and contrary to its statutory mandate for the Board to adopt one set of education and ethical standards for those psychologists who work in a large business setting and adopt another, less stringent, set of education and ethical standards to be applied to those psychologists who practice in a solo or small clinic practice. It is the Board's view that these rule amendments must apply equally to all psychologists, if the public whom they serve is to be adequately protected.

Licensees, regardless of whether they are considered as individuals or small businesses, have had and will continue to have an opportunity to participate in the rulemaking process for these proposed amendments. A copy of the proposed rule amendments and notice of hearing for the initial rulemaking hearing held on November 4, 1988, was mailed to each licensee of the Board on September 30, 1988. A copy of the proposed rule amendments as modified and notice of hearing for the second rulemaking hearing to be held on March 29, 1989, also will be mailed to each licensee of the Board.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

This section remains unchanged from the original SONAR.

III. STATEMENT OF NEED AND REASONABLENESS

The following parts and subparts have been modified by the Board in response to public comments received during and subsequent to the initial rulemaking hearing held on November 4, 1988. This Amended SONAR limits its discussion to the need for and reasonableness of these modifications. The Board's justification for the rule amendments as originally proposed may be found in the Board's original SONAR.

7200.0100 DEFINITIONS. Subpart 5a. Dual relationship.

The definition of "dual relationship" has been modified as a result of testimony presented during the hearing process, suggesting that an "emotional" relationship (affecting objectivity and effectiveness) may be too abstract and diffuse a concept and that the rule appears to include the financial relationship occurring when a client pays a fee for services. The proposed modification deletes "emotional," substitutes "personal" for "social," modifies "financial" involvement to exclude legitimate payment for psychological services, and rearranges the clause. The modification is needed to clarify the meaning of the definition. The Board intended the term "emotional" to mean significant personal involvement other than cohabitational, familial, or supervisory involvement. The Board did not intend "significant financial involvement" to include the legitimate payment for psychological services rendered. The modification is reasonable because it clarifies the subpart without altering the meaning. The ALJ Report states that so modified, the proposed definition is needed and reasonable.

7200.0400 ADMISSION TO EXAMINATION.

7200.1300 Subparts 3 and 4. EDUCATIONAL REQUIREMENT FOR LICENSURE.

7200.1450 POST-DEGREE PROGRAM COMPLETION.

The proposed modification to these three parts, which changes the effective date of the new educational requirements for licensure from 1990 to 1991, are discussed together because the proposed modification is the same for all three and has the same effect. The proposed date change results from testimony presented by educators and students that the 1990 date does not provide sufficient time for faculty to alter curricula or students to modify their degree programs to conform with the new

requirements. The modified date is needed to allow sufficient time for orderly conversion and is reasonable because the 1990 date had been set when the Board believed the proposed rules would become effective in the summer of 1988. The ALJ Report states that the date modification makes the subparts needed and reasonable with respect to date of implementation.

7200.1300 EDUCATIONAL REQUIREMENT FOR LICENSURE. Subpart 4. Degrees earned after June 30, ~~1990~~ 1991.

As a result of public testimony indicating that "semester" and "quarter" are not the only divisions of the academic year ("trimester" being offered as an additional division), this subpart is modified to include the words "the equivalent of" quarter and semester credits. The modification is needed to avoid appearing to bar admission to examination to any applicant with a period designation other than "quarter" or "semester" on the academic transcript. The modification is reasonable because it permits any other period designation as long as it is equivalent to either a "quarter" (two and one-half to three months in length) or a "semester" (four to four and one-third months in length). The ALJ Report states that the Board may include a reference to "trimester" in its final rule. The Board believes this modification accomplishes the purpose as stated.

7200.2000 PROFESSIONAL EMPLOYMENT REQUIREMENTS.

As a result of public testimony which indicated that this part seems to require supervision to take place whether or not the trainee is at work, this part is modified so that supervision is required for each week at work. The modification is needed to clarify that a trainee need not obtain supervision for those weeks the trainee has been absent from work due to

vacation, illness or other reason. The modification is reasonable because it does not alter the meaning of the text. The ALJ Report states that the Board should consider incorporating its announced policy that it does not expect trainees to complete two hours per week of supervision when absent from work due to illness or vacation.

7200.3900 COLLABORATION.

As a result of public testimony indicating that the text as written would exclude college professors and retired psychologists from serving as collaborators, the word "practice" has been changed to "experience." The modification is needed to clarify that a licensed consulting psychologist need not be a practitioner in order to serve as a collaborator. The modification is reasonable because it does not alter the meaning of the text. The ALJ Report states that the Board did not oppose language which would clarify that professors and retired practitioners may serve as collaborators but did not see it as necessary. Upon reconsideration, the Board now believes the clarification is necessary.

7200.4900 CLIENT WELFARE. Subpart 1a. Client records.

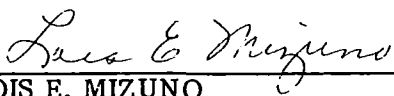
As a result of public testimony indicating that, because the definition of "client" includes individuals and entities, there is confusion as to which client and which records are meant by the text, the subpart is modified to narrow the application to the client who is the direct recipient of psychological services (as opposed to the entity requesting or paying for the services, if different from the direct recipient) and to narrow accessibility to those records relating to psychological services. The modification is needed to avoid confusion and is reasonable because it states more clearly the intended effect of the subpart.

As a result of other public testimony expressing concern that clients in the judicial system whose psychological records are confidential under state law may erroneously believe this subpart gives them access to their records, the text is further modified to clarify that clients whose records are classified as confidential under Minn. Stat. § 13.84 do not have access to those records. The modification is needed to ensure that the Board's rules do not appear to conflict with state law, and is reasonable because it does not alter the intended meaning of the rule. The ALJ Report states on page 15: "Should the Board add a sentence to subpart 1a to the effect of 'Nothing in this subpart or subpart 2, item H. shall be construed to require a psychologist to disclose confidential data contrary to Minn. Stat. § 13.84' or similar language, and adopt its own proposed modifications described earlier [i.e., regarding client and records], then the subpart as modified does not violate any substantive provision of the law and has been shown to be needed and reasonable."

7200.4900 CLIENT WELFARE. Subpart 2.H. Statement of competence; clients' rights.

Because of the modifications made to part 7200.4900, subpart 1a, it is necessary to also modify item H. of subpart 2. The modification refers back to subpart 1a as well as the statutory citation already in the clause. The modification is needed for consistency and is reasonable because it does not alter the intended meaning of item H.

Dated: February 9, 1989



LOIS E. MIZUNO
Executive Director
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