

✓ 1/14/91

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF PSYCHOLOGY

In the Matter of the  
Proposed Adoption of  
Rules of the Minnesota  
Board of Psychology  
Relating to Fees Assessed  
Against Licensees

STATEMENT OF NEED  
AND REASONABLENESS

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**MINNESOTA BOARD OF PSYCHOLOGY**

December 14, 1990

**STATEMENT OF NEED AND REASONABLENESS**

**INTRODUCTION**

The Minnesota Board of Psychology is proposing an amendment to existing rules which adds a new part, part 7200.6150, establishing a one-time fee of \$40 to be assessed against every licensee who holds a valid license issued prior to the effective date of the rule.

The purpose of the proposed rule is to generate sufficient revenue to cover unanticipated legal fees which are expected to be incurred in F.Y. 1991, as is required by Minn. Stat. S 214.06, subd. 1.

No internal references will be affected by the proposed change.

Small business considerations are addressed in the section following the Statement of the Board's Authority, which is in turn followed by the Statement of Need and Reasonableness.

**STATEMENT OF THE BOARD'S STATUTORY AUTHORITY**

The Board's statutory authority to adopt and amend rules relating to licensure fees is set forth in Minn. Stat. SS 148.90, subd. 2(4) and subd. 3; 148.91, subd. 3; and 214.06, subds. 1 and 2 (1990). Section 148.90, subdivision 2(4) grants the Board the authority to prescribe rules as may be necessary to effectuate the provisions of the licensing law. Section 148.90, subdivision 3 requires that the setting of board fees shall be as provided in Chapter 214. Section 148.91, subdivision 3 authorizes the Board to set application and renewal fees. Section 214.06, subdivision 1 requires each regulatory board to promulgate rules providing for the adjustment of fees so that the total fees collected will as closely as possible equal anticipated expenditures during the fiscal biennium. Section 214.06, subdivision 2 requires each regulatory board to promulgate rules providing for the renewal of licenses. Under these statutes, the Board has the authority to amend its rules relating to fees.

**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. It is the Board's opinion that Minn. Stat. Section 14.115 does not apply to this proposed rule amendment.

However, in the event of disagreement with the Board's position, 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 this proposed rule amendment.

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, this proposed amendment is 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 amendment *does 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 rule. Under the Board's view that this proposed rule amendment does not in any way regulate the business operation of psychologists, there are no rule requirements from which to exempt small businesses. However, if this proposed amendment is 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 amendment 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 rules relating to psychology practice 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 amendment will not affect small businesses, and certainly does 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 amendment 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 this rule for the Board to exempt one group of psychologists - indeed, the majority of psychologists - from the requirements of this rule. Similarly, the Board believes it would be unwise and contrary to its statutory mandate for the Board to adopt one set of licensure requirements for those psychologists who work in a large business setting and adopt another, less stringent, set of licensure requirements to be applied to those psychologists who practice in a solo or small clinic practice. It is the Board's view that this rule amendment must apply equally to all psychologists, if the public whom they serve is to be adequately protected.

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STATEMENT OF NEED AND REASONABLENESS

Statement of Need

As a result of two extremely serious disciplinary matters which have not been amenable to resolution by negotiation, two contested cases must be initiated in F.Y. 1991. In addition, the director of the health board division of the Attorney General's office has indicated that the number of complaints handled by his office in calendar year 1990 is exceeding the number handled in calendar year 1989 by 25 percent. Indeed, the first quarter report for F.Y. 1991 indicates the Board has spent over \$34,000 on services provided by the Attorney General's office. Projecting a constant rate for the whole of F.Y. 1991, the total (excluding services related to the two contested cases) would be approximately \$136,000, or \$34,000 over the amount allocated.

While it is not possible to predict exactly how much the contested case hearings will cost, recent cases of comparable complexity have cost in excess of \$20,000, not including attorneys' fees. It is likely that attorneys' fees could approach \$10,000 for each case.

The need for generating the revenue to cover the amount arises from the requirement in Minn. Stat. S 214.06, subd. 1 that total fees collected in a biennium must equal expenditures.

The projected additional costs are summarized in Table I.

TABLE I	
Expenditure Category	Anticipated Amount
Attorney General's Fees Budgeted \$102,000 Anticipated \$136,000	Net \$34,000
Hearing Costs (2 hearings) Hearing, Expert Witnesses, AG's fees, etc.	60,000
Allowance for cost over-runs	6,000
TOTAL	100,000

It should be noted here that Attorney General's fees are not included in the appropriations made to regulatory boards. They are "extra budget", that is, not subject to expenditure limits, but still must be covered by revenue generated from fees. A regulatory board has little or no control over these expenses: they are largely governed by the number and seriousness of the complaints of unethical practice received by the Board.

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Statement of Reasonableness

Given that Minn. Stat. S 214.06, subd. 1 requires fees to equal expenditures within a biennium, and given that revenue can only be raised by fees assessed against persons regulated by the board, the question is: what is a reasonable method of assessing fees?

The Board holds that it is reasonable to assess the needed fees against persons already licensed (and not against applicants) because the number of licensees is a known and stable quantity (necessary for an accurate prediction of revenue to be generated) and because almost all of the persons disciplined by the Board are licensees rather than applicants for licensure.

Table II indicates the fee amount necessary to generate \$100,000 using two different methods of assessing fees against licensees.

Table II		
Method	# Persons Paying in F.Y. 1991	Fee Amount
Raise Renewal Fee	maximum - 252*	\$400
Assess All Licensees	2500 - 2600**	40

\* May renewals - 67, June renewals - 185; if only June renewals are affected because of a later effective date, the fee would be \$540.

\*\* 2548 licensed as of 12/14/90; may increase/decrease as a result of new licenses, terminations.

The Board holds that a \$400 fee is excessive and, therefore unreasonable. Increasing renewal fees is also unreasonable because the increase would continue beyond the biennium and generate far more revenue than needed to meet expenses in F.Y. 1992 and 1993. The Board further holds that an across-the-board assessment for all licensees is reasonable because all share equally in the burden of paying for expenses related to disciplinary matters and the burden for the individual is not excessive, given the total amount of revenue to be generated.

The Board could avoid raising additional revenue through fees only by allowing licensees to continue in practice

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undisciplined despite evidence of their having egregiously violated the ethics of practice. Because to do so has the serious potential for harming clients, that option is not feasible. A regulatory board's reason for being is protection of the public from unethical and/or unprofessional practice. The Board would be derelict in its duty were it to opt for this solution to the problem.

The Board also holds that it is reasonable to impose a small monetary penalty (\$10) and withholding of the license or renewal certificate for failure to pay by the deadline because of the necessity to ensure that the revenue is raised before the end of the biennium. The late fee is not excessive relative to the fee. The penalty of withholding renewal certificates is also reasonable because it is comparable to the penalty imposed on licensed persons by the Revenue Department for failure to pay taxes: licensing boards must withhold the right to practice until the taxes have been paid.

On the basis of the above, the Board holds that the fee per individual, the method of assessment, and the penalty for failure to pay on time are reasonable.

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Lois E. Mizuno  
Executive Director

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Date

*Note: The Board has received verbal approval of the fee from Finance. Written approval will be attached later. LM*