

LCRARR



**Legislative Commission**

**to Review Administrative Rules**

**Representative Peter Rodosovich**  
Chair

**Senator Phil Riveness**  
Vice Chair

55 State Office Building  
St. Paul, Minnesota 55155-1201  
Telephone 612/296-1143

**Maryanne V. Hruby, Director**

July 19, 1991

*proposed 5/6/91*  
*received 7/24/91*

Lois E. Mizuno, Executive Director  
Board of Podiatric Medicine  
2700 University Avenue W.  
St. Paul, Minnesota 55114-1095

Dear Ms. Mizuno:

I write to request a copy of the Board of Podiatric Medicine's Statement of Need and Reasonableness (SONAR) for recently published rules relating to training and licensing.

As you may know, Minnesota Statutes, sections 14.131 and 14.23 now require state agencies to provide copies of SONAR's to the LCRAR when they become available for public review.

If you have not already done so, please send a copy of the SONAR for these proposed rules to:

The Legislative Commission to Review Administrative Rules  
Maryanne Hruby, Director  
55 State Office Building  
St. Paul, Minnesota 55155

Please contact me at 296-1143 if you have any questions.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Michele Swanson".

Michele Swanson  
Commission Secretary



**MINNESOTA BOARD OF PODIATRIC MEDICINE**

January 28, 1991

**STATEMENT OF NEED AND REASONABLENESS**

**I. INTRODUCTION**

The existing rules were adopted to implement the new podiatric medicine practice act which became law in 1987, and have been in effect since November, 1988. On the whole the existing rules have served fairly well in providing a needed and reasonable means of implementing the licensure law.

However, experience over the past two and a half years has revealed some areas in which clarity may be lacking. The proposed rules attempt to make the provisions easier to understand. In addition, in an effort to ease the renewal process for both licensees and the Board, the proposed rules provide for a two year renewal period to replace the one year period currently in effect. Companion provisions are proposed to phase in half the licensees in odd numbered years and half in even numbered years, address the problems inherent in the initial licensure period due to its being shorter than the standard renewal period, and equate continuing education requirements and renewal fees to the two year cycle so that the amount of each required per year remains the same. The Board has also found that the existing rules lack the needed flexibility to cope with unusual and unexpected circumstances and has added a proposed waiver and variance rule, the provisions of which have withstood the test of time for another health-related board.

As part of the objective to provide greater clarity, all the proposed provisions related to the one year of graduate training mandated by the law as a requirement for licensure are consolidated into one rule part. The proposed rules also provide greater clarity in the provisions relating to temporary permits, consolidate into one rule part the provisions relating to disciplinary action currently in two widely separated parts, and simplify the provisions relating to compliance with continuing education requirements.

The statement of need and reasonableness follows the statement of the Board's statutory authority and the section on small business considerations.

**II. 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 153.02; 153.16, subds 1(f) and 3, and 214.06, subds. 1 and 2

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(1990). Section 153.02 grants the Board the authority to adopt rules as may be necessary to carry out the purposes of the licensing law. Section 153.16 subdivision 1(f) requires a licensure fee established by rule. Section 153.16 subdivision 3 authorizes a temporary permit fee established according to Board rule. 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.

**III. SMALL BUSINESS CONSIDERATIONS**

Minn. Stat. S 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 these proposed rule amendments.

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.

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1. It would not be feasible to incorporate any of the five 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, the the Board finds that it would be unworkable to lessen the requirements for those podiatrists who practice in a solo or clinic setting of fewer than 50 employees, since that would include the vast majority of podiatrists. 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 does not in any way regulate the business operation of podiatrists, 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 podiatrists, then it would hardly make sense for the Board to exempt from its rules those podiatrists who practice in a solo or clinic setting with fewer than 50 employees, since they constitute the vast majority of podiatrists. 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 podiatrists.

Pursuant to the Minnesota licensing law for podiatrists, Minn. Stat. SS 153.01 to 153.25, the Board was created for the purpose of establishing requirements for licensure and adopting ethical standards governing appropriate practices or behavior for podiatrists. Pursuant to Minn. Stat. S 153.02, the Board is specifically empowered to "adopt rules as necessary to carry out the purpose" of the Minnesota licensing law for podiatrists. Given these statutory mandates, it is the Board's duty to establish rules relating to the practice of podiatric medicine 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

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podiatrists 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 podiatrist or a group of podiatrists, 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 podiatrists - indeed, the majority of podiatrists - 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 licensure requirements for those podiatrists who work in a large business setting and adopt another, less stringent, set of licensure requirements to be applied to those podiatrists who practice in a solo or small clinic practice. It is the Board's view that these rule amendments must apply equally to all podiatrists, if the public whom they serve is to be adequately protected.

### IV. STATEMENT OF NEED AND REASONABLENESS

#### 6900.0010, Definitions

**Subpart 1a.** is a proposed new subpart which defines "acceptable graduate training". The definition is needed to avoid repetition of the elements of the definition throughout the rules. The definition is reasonable because it includes the time period (12 consecutive months) for the post graduate training already prescribed for and common to each of the three types of training described in existing rules, and because the three types of training remain unchanged from existing rules. It is reasonable to pull together the three types of graduate training to make it easier to understand what graduate training is acceptable for meeting the requirements for licensure.

**Subparts 2 and 3.** In the proposed amendment subparts 2 and 3 are repealed because the substance of the definitions of "clinical residency" and "preceptorship" are transferred to part 6900.0020, subparts 5, 6, and 7. The repeal and transfer are needed to ensure that all information about each type of graduate training is included in one place to avoid incomplete interpretation or misinterpretation of the elements of acceptable graduate training. In existing rules, elements of "clinical residency" and "preceptorship" are separated from "other graduate training", which makes matters confusing for the reader. The repeal of the subparts and transfer of the text are reasonable because the change improves the clarity of the provisions and the intent of the definitions is not altered: clinical residency and preceptorship requirements remain essentially the same.

**Subparts 4 and 5** remain unchanged.

**Subpart 6.** The proposed amendment provides that in the definition of "suspend a license" the term "licensee's" is changed to

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"podiatrist's" (right to practice). The change is needed to conform with usage in subpart 5 and throughout the rules: "podiatrist" is used to describe a person granted a license or temporary permit to practice podiatric medicine. The change is reasonable because the terms are essentially interchangeable: a person cannot engage in the independent practice of podiatric medicine without being licensed to do so.

**Subpart 7** remains unchanged.

**Subpart 8** is a proposed new subpart that defines "initial licensure period". The definition is needed to avoid repeating the elements of the definition in other parts of the rules. It is also needed because, while the renewal period spans a definite time period (two years, June 30 to July 1), the time period between the licensure date and the beginning of a renewal period is indefinite: the date of licensure can occur at any board meeting during the year. The definition is also needed to ensure that the initial licensure period ends at the beginning of a renewal period so that licensee's renewal coincides with the renewal period without any omitted or overlapped days. The definition is reasonable because it describes accurately and economically a variable time period and ensures that the time period will never exceed two years, the length of a renewal period.

### **6900.0020 Licensure Requirements**

**Subparts 1, 2, and 3** remain unchanged.

**Subpart 4.** In the subpart concerning who must complete graduate training, the proposed amendment deletes the words "a clinical residency, preceptorship, or other" and adds the word "acceptable" so that the text agrees with other parts in which the term "other graduate training" occurs. The amendment is needed to reduce duplication of phrases and increase clarity. The change is reasonable because it uses a term now defined (in subpart 1a) in an appropriate and logical manner.

**Subpart 5.** The proposed amendment to the description of "clinical residency" includes the text from repealed part 6900.0010, subpart 2, with minor changes to conform with the style of this part, and deletes duplicated text. The amendment is needed to ensure that all the elements of a clinical residency are located in the same place in the rules in order to avoid incomplete interpretation or misinterpretation of the elements. The amendment is reasonable because it retains all the existing elements of a clinical residency and does not impose any additional elements.

**Subpart 6.** The proposed amendment to the description of "preceptorship" includes the text from repealed part 6900.0010, subpart 3, and deletes duplicated text. The amendment is needed to ensure that all the elements of a preceptorship are located in the same place in the rules in order to avoid incomplete interpretation or misinterpretation of the elements. The amendment is reasonable be-

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cause it retains all the existing elements of a preceptorship and does not impose any additional elements.

**Subpart 7.** There are only two proposed changes to preceptor requirements: (1) the sentence in Item A - "The care of children and adults must be included." - is moved from its location after the list of surgeries to the beginning of the subpart, changing the sentence to a phrase, and alter the punctuation; and (2) the word "college" in Item B is changed to the words "podiatric medical school". The change in Item A is needed to ensure that the care of children and adults is an integral part of the training rather than an afterthought. The change in Item B is needed to ensure that the supervisor must hold an appointment at a podiatric medical school, not at a college with undergraduate programs devoted to other professions. The changes are reasonable because they clarify but do not alter the meaning of the subpart.

**Subpart 8.** The proposed amendments to other graduate training requirements eliminate duplication of provisions common to both preceptorships and other graduate training by including by reference the applicable provisions in subpart 7 and deleting the duplicated text. The change is needed to reduce duplicative provisions which because of their repetition become confusing, and to ensure that the similarity between a preceptorship and other graduate training is recognized. The amendment is reasonable because it ensures that other graduate training is as comparable to a preceptorship as possible and provides as comprehensive a preparation for licensure.

The proposed amendment includes the following additional requirement for other graduate training: Item B., requiring Board approval for the proposed training before the training begins. The addition is needed to ensure that the training meets prevailing standards in the absence of oversight by a podiatric medical school or a hospital sponsoring a residency program. The addition is reasonable because it permits any licensee to serve as a supervisor of graduate training if his proposal is approved by the Board.

The proposed amendments to Item D. are needed to clarify the item's meaning and to provide uniformity in terminology. The change in clause four (4) is needed to clarify that a supervising podiatrist is not limited to supervising two unlicensed podiatrists during his or her entire professional career. The changes are reasonable because they aid comprehension without imposing new requirements.

**Subpart 9.** The proposed amendments to the personal appearance requirements delete the provision that the board may waive the personal appearance if a board member has personal knowledge of the application's accuracy, and substitutes the provision that in the personal appearance the applicant may be required to respond satisfactorily to questions regarding ethics of practice. The amendment is needed to avoid the appearance that the board could grant licensure on any basis other than an applicant's having met the requirements for licensure. It is needed also to implement the provision of

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Minnesota Statute S153.16, subdivision 1, clause (e), permitting the board to establish procedures for the personal appearance. The amendment is reasonable because it ensures that applicants will perceive they are being treated fairly and equitably, and because applicants for licensure are expected to understand professional ethics in order to practice within the law and according to community standards.

**Subpart 10.** The proposed amendment to the requirements for verification of an applicant's licensure in other states only changes the wording to clarify the text without altering its meaning. The amendment is needed to ensure that verification is received from the state of original licensure and from each state granting licensure within the five years preceding application in Minnesota. The change is reasonable because it does not add any verification requirements to the existing rule.

**6900.0160, Temporary Permits**

**Subpart 1.** The proposed amendment to the prerequisites for being granted a temporary permit requires the applicant to submit an application for a temporary permit as well as an application for licensure and to pay the temporary permit fee. The amendment is needed to inform applicants that both applications must be submitted but that only the fee for a temporary permit must be paid. The amendment is also needed because the board must be able to readily differentiate between an application for a temporary permit and an application for licensure. The amendment is reasonable because it eliminates the need for paying both the temporary permit fee and the licensure fee at a time when the podiatrist is least able to pay.

**Subpart 2.** The proposed amendment to the term of permit text clarifies that the permit to engage in graduate training begins on the first day of training and lasts for twelve months (the required amount of graduate training for Minnesota licensure) and provides that the permit may be renewed once if evidence is submitted that the training was interrupted by circumstances beyond the control of the applicant and the sponsor agrees to the extension. The proposed amendment also deletes the requirement that training must be completed within 18 months. The amendment is needed to ensure that a permit holder has the opportunity to continue the graduate training beyond a year if interrupted by such factors as illness, active duty in the armed services, etc., even if the training must extend beyond 18 months in order to ensure 12 months of training altogether. The amendment is reasonable because it provides sufficient flexibility to accommodate training to unforeseen circumstances while assuring the Board that the extension is approved by the sponsor and is, therefore, not being requested for frivolous or capricious reasons.

**Subpart 2a.** The proposed amendment moves the permit revocation provisions of subpart 2 to subpart 2a, deletes the phrase "a permit expires when an applicant is licensed" and provides that a permit is revoked for conduct that would constitute grounds for denial of



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licensure or disciplinary action. The amendment is needed to clarify that revocation of a permit results from conduct constituting grounds disciplinary action under Minn. Stat. S 153.19. The amendment is reasonable because it deletes language which does not aid comprehension and imposes no additional burden on the permit holder: the grounds listed in Minn. Stat. S 153.19 are the basis for both denial of licensure or [other] disciplinary action.

**Subpart 3.** The proposed amendment to the scope of practice text substitutes "acceptable" graduate training for the reference to the different types of graduate training. The amendment is needed so that the text agrees with and makes use of the definition in part 6900.010, subpart 1a. The amendment is reasonable because it shortens the text without changing its meaning.

**6900.0200, License Renewal**

**Subpart 1.** The proposed amendments to the license renewal period change the period from 12 months to 24 months, provide that renewals in odd and even years correspond to odd and even license numbers, provide a one year renewal period for the 1991 renewal only for licensees with even numbered licenses, with half the renewal fee required, and provide for the proration of the first renewal fee for persons licensed after the effective date of the rules.

The amendment providing for a two-year renewal period is needed to lessen the paper work for both licensees and board staff. A two year renewal period means that licensees will have to complete the renewal process only half as many times as they must under existing rules, and the staff will have, after the first year, only half the number of renewal applications to process. The amendment is reasonable because it imposes no additional renewal requirements on licensees.

The provision that the renewal period beginning July 1, 1991 is one year for licensees with even numbered licenses is needed to ensure that such licensees will have a two year renewal cycle beginning in an even-numbered year (1992). The amendment is reasonable because the renewal fee is proportionate to the shortened renewal period.

The provision which prorates the fee for the first renewal period after the initial licensure period is needed to ensure that the fees for obtaining and maintaining a license, taken together, are proportional to the amount of time the person is licensed. The initial licensure fee cannot be prorated because the varying amount of time between the date of application and the date of licensure makes proration before the fact impossible. The provision is reasonable because the new licensee is not required to pay a disproportionately high fee for a license that is in effect for less than two years.

**Subpart 2** remains unchanged.

**Subpart 3.** The proposed amendments to the renewal notice text

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make the text conform to the proposed two year renewal cycle, delete words which are redundant because they repeat provisions in subpart 1, and substitute for the deletions reference to the provisions of subpart 1. The amendments are needed to reduce confusion and clarify meaning. The amendments are reasonable because they do not impose any additional renewal requirements on licensees.

**Subpart 4.** The proposed amendment to this subpart has the same configuration and purpose as the amendments to subpart 3. The need and reasonableness of the amendment are, therefore, the same.

**Subpart 5** remains unchanged.

**Subpart 6.** The proposed amendment to subpart 6 combines the text of part 6900.0300, subpart 5, with this part, deleting duplication language and integrating the texts to ensure that all the existing provisions of the two subparts are preserved. The first half of the amendment relates to the provisions of part 6900.0300, subpart 5, and the second half clarifies the provisions of this subpart. The amendment is needed to reduce the confusion inherent in two widely separate subparts dealing with essentially the same subject matter--the right of the board to initiate disciplinary action against a licensee for failure to submit fees or documentation of completion of continuing education requirements, and to add such failure to other grounds in a contested case proceeding. The amendment is reasonable because it preserves the meaning of the separate subparts but does not impose any additional burden on licensees.

**Subpart 7.** The proposed amendment to the name and address change provisions substitutes the word "must" for the word "shall". The amendment is needed to bring the text into conformance with standard usage. The amendment is reasonable because it does not alter the meaning of the text.

**6900.0210, Reinstatement of License**

**Subpart 1.** The proposed amendment to requirements for reinstatement of licensure substitutes the word "podiatrist's" for the word "applicant", the word "requesting" for the words "desiring the", and the word "must" for the word "shall". The amendment is needed to clarify that it is podiatrists' license reinstatement at issue (reserving the word "applicant" only for a person not yet licensed), and to bring the text into conformance with standard usage. The amendment is reasonable because it imposes no additional requirements for reinstatement of a license.

The proposed amendment to Item A substitutes the words "relicensure fee" for the words "license renewal fee" and "late renewal fee". The amendment is needed to ensure that all former licensees, regardless of when reinstatement is requested, must pay the same fee. (See part 0900.0250 for the relicensure fee, which equals the renewal fee plus the late fee.) The amendment is reasonable because it corrects an unintentional disparity in the ex-

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isting subpart: persons reinstating within 12 months pay the late fee; persons reinstating after 12 months do not.

Items B through E remain unchanged.

**Subpart 2.** The proposed amendment substitutes the words "former licensee" for the words "applicant for reinstatement". The change is needed, as stated earlier, to reserve the word "applicant" only for a person who is not yet licensed. The amendment is reasonable because it does not alter the meaning of the text.

**Subpart 3** remains unchanged.

**6900.0250, Fees**

**Subpart 1.** The proposed amendment doubles the amounts of renewal and late fees, makes the licensure fee equal to the renewal fee, deletes the "reexamination by the board under an original application for licensure" fee, and establishes a fee for relicensure.

Doubling of the renewal fee and late renewal fee is needed because the time period of the renewal is doubled; leaving the fees as they are in existing rules would cut the revenue of the board in half, which would not permit the board to carry out its duties. Making the licensure fee equal to the renewal fee is needed because the fee serves the same purpose as the renewal fee (bearing in mind, of course, that the first renewal fee is prorated to take into account the fact that the initial licensure period is always less than the renewal period of two years). Deletion of the "reexamination" fee is needed because it serves no useful purpose (and is not imposed) in the administration of the application process. The initial licensure fee, paid at the time of application, covers the application process, regardless of whether the applicant passes the PMLexis (national exam) on the first try. A separate relicensure fee is needed because of the reference made to the fee in the preceding subpart.

The proposed renewal and late renewal fees are reasonable because they are exactly equivalent to the existing fees, being double for a doubled time period. The proposed licensure fee is reasonable because the proration provision in an amendment to a preceding rule part ensures that the licensure fee and renewal fee taken together are proportional to the actual period in which the license is valid. The deletion of the "reexamination" fee is reasonable because leaving a fee in the rules which is not used is confusing to the reader. The relicensure fee is reasonable because its amount is equivalent to the total of the renewal fee and late renewal fee. In the case of each proposed fee listed the amount of the fee is reasonable because no added financial burden is imposed on podiatrists.

**Subpart 2.** The proposed amendment deletes the provision that personal checks are not acceptable for payment of a license fee or temporary permit fee. The amendment is needed because requiring a

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certified check or money order in payment is an added financial burden on the applicant without serving a useful purpose. There is a sufficient time period between application for a temporary permit or licensure and the granting of the permit or license to catch a personal check which is not backed by sufficient funds and hold up the permit or license until the fee is paid. The amendment is reasonable because it eases the application process without hampering the board's ability to control the process.

**6900.0300, Continuing Education**

**Subpart 1.** The proposed amendment changes the required amount of continuing education from 15 clock hours in a one year renewal period to 30 clock hours in a two-year renewal period and provides for prorating the number of clock hours required in the initial license period to match the length of the initial licensure period. The amendment is needed to ensure that the required amount of continuing education hours per year remains the same. The amendment is reasonable because it imposes no additional continuing hours on licensees, and, in fact, provides a greater degree of flexibility in obtaining continuing education hours than does the existing rule.

**Subpart 2.** The proposed amendment, which substitutes the words "acceptable graduate training" for the words "a clinical residency, preceptorship, or graduate training" as one way to obtain continuing education hours is needed to provide conformity with other references to acceptable graduate training in the proposed rules. The amendment is reasonable because it uses fewer words without altering the meaning of the text.

**Subpart 3.** The proposed amendment to the introductory paragraph regarding continuing education program approval deletes confusing and redundant terminology. Deleting the words "that the licensee desires to use" and using the word "used" in their place is needed to clarify the meaning. Using the word "must" in place of the word "shall" is needed to have the text conform with standard usage. Providing that the continuing education program must be approved by the board before it is accepted as meeting requirements is needed because it is less confusing than the words which are deleted, and has the same meaning: whether the program is approved before the licensee registers for the program or afterward, (as provided in the existing rule) so long as the option to do it either way exists, all that ultimately matters is that the board must approve the program before the licensee can claim the hours. The amendment is reasonable because it clarifies the text while leaving the meaning intact.

In item A the proposed amendment deletes the words "risk management" from the list of program subjects which are not acceptable, which has the effect of permitting programs (or parts of programs) on risk management to be approved. The amendment is needed because risk management in medical practice in the last decade of the 20th century is an integral part of patient care. Knowledge of ethical steps to reduce risk, both to the patient and to the podiatrist,

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is just as essential to good, safe practice as keeping current on the scientific aspects of practice. The amendment is reasonable because it permits podiatrists to receive credit for a subject that bears directly on the quality of patient care.

In item C the proposed amendment requires that in the written statement of attendance provided to the attending podiatrist, the sponsor (of the continuing education program) must include the number of continuing education hours approved by the board if prior approval has been sought. The amendment is needed so that the licensee will know at the time the attendance verification is received how many acceptable hours have been completed. If the number of acceptable hours is less than the number of hours claimed by the sponsor but the podiatrist is not so informed, the podiatrist could erroneously assume that he or she has completed enough continuing education to meet renewal requirements, with serious consequences for the podiatrist. The amendment is reasonable because sponsors routinely list the varying number of hours accepted by the various states. No additional burden is imposed by the amendment.

**Subpart 3a.** The proposed amendment changes the word "podiatrist" to the word "licensee" and in item C requires that the subject or content of each item on the continuing education program and the time devoted to it must be included in the information submitted to the board for approval. The amendment is needed so that the board is able to separate out those items on a program, such as practice management, which are not acceptable to meet renewal requirements, and count only the time devoted to acceptable subjects. The amendment is reasonable because as a practical matter, regular sponsors of continuing education programs in podiatric medicine routinely include a detailed breakdown of the subjects and time allotted in their program brochures.

**Subpart 4.** The proposed amendment changes the timing for submitting proof of attendance at continuing education programs to the board from "at renewal" to "within the renewal period in which it was attended". Although the change is slight, it is needed to encourage licensees to submit the proof of attendance soon after attending the program, to avoid misplacing the proof so that it cannot be found at the time of submitting the renewal form and fee. The amendment is reasonable, however, because the licensee is not required to submit the proof of attendance soon after attending the program, and may submit the proofs of attendance with the renewal form, provided the renewal form is submitted by the last day of the renewal period.

**Subpart 5** is repealed because its content is incorporated into part 6900.0200, subpart 6. Repeal of the subpart is needed to avoid duplication of provisions. It is reasonable to repeal the subpart because redundancy is confusing to the reader.

### **6900.0500, Waivers and Variances**

The proposed amendment, which is identical with a rule of the

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Board of Psychology that has been in effect for over eight years, creates a whole new rule part providing for the Board to grant a waiver of a rule or a variance from a rule under certain circumstances. Because it is virtually impossible to draft a set of rules which anticipates every need with respect to equitably implementing the law, a waiver and variance rule is needed for a board to have authority to cope with unexpected circumstances in a rational and structured manner. For example, a licensee after having completed 10 continuing education hours suffers a heart attack halfway through a renewal period, perhaps undergoes triple bypass surgery, and cannot practice or attend continuing education programs for the remainder of the renewal period. The licensee expects to return to active practice and wishes to retain his license. The waiver provisions would permit the licensee to petition for relief from completing the remaining 20 hours within the renewal period.

The amendment as a whole is reasonable because it provides relief from rigid compliance with a particular rule when compliance would impose an undue burden on an applicant or licensee and when the public welfare would not be adversely affected if the rule is not adhered to.

**Subpart 1.** The proposed amendment provides that a licensee or applicant may petition for a time limited waiver of any rule except that part of a rule which incorporates a statutory requirement. The amendment is needed to ensure that a waiver is not granted indefinitely and that a statutory provision is not inadvertently waived. The provision is reasonable because it alerts both the petitioner and the board to the fact that a waiver is for a finite period and that some provisions cannot be waived.

The proposed amendment provides the conditions which must be met for waiver to be granted. The conditions are needed to ensure that the needs and welfare of the public are addressed before the waiver is granted, because the function of a regulatory board is to protect the public, and to ensure it is determined that adherence to the rule would impose a greater burden on the petitioner than on others in the same category. The conditions are reasonable because they address fairly and equitably both the public interest and the specific problem of the petitioner.

**Subpart 2.** The proposed subpart provides for renewal of a time-limited waiver upon reapplication if the circumstances which justified its granting continue to exist. It also requires the petitioner who is granted a waiver to notify the Board in writing of a material change in the circumstances which justified its granting, in which case the waiver must be revoked. The reapplication and revocation provisions are needed to ensure that waivers that are justified can be continued and those that are no longer justified are stopped. The provisions are reasonable because they provide an uncomplicated procedure for continuing a justifiable waiver and clear directions to the petitioner regarding his/her responsibility to report if the justification for the waiver no longer exists.

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**Subpart 3.** The proposed amendment provides the procedure for a variance petition and the guidelines for granting the petition. As in the waiver provisions in subpart 1, a variance is time-limited and cannot be applied to a part of a rule incorporating a statutory provision. The need for and reasonableness of the subpart parallels the need for and reasonableness of the provisions of subpart 1. The only differences between the two subparts are (1) that waivers exempt petitioners from compliance with a rule while variances permit petitioners to comply with a rule in an alternate manner, and (2) that the conditions to be met for a variance to be granted require the petitioner to demonstrate that the proposed alternative meets or exceeds the rationale for the rule. These provisions are needed to ensure that a granted variance is based on a rational and credible alternative that fulfills the purpose of the rule. The provisions are reasonable because they allow licensees and applicants a degree of flexibility when circumstances prevent rigid compliance, without impairing the protection provided to the public by the rules.

**Subpart 4.** The proposed subpart requires a petitioner granted a variance to adhere to the alternative practices or measures specified in the application for a variance. The provision is needed to ensure that the petitioner complies with the terms of the variance. The provision is reasonable because it imposes no additional conditions on the petitioner beyond those proposed by the petitioner in the variance request.

**Subpart 5.** This subpart is identical with respect to variances as subpart 2 is to waivers. Therefore, the need for and reasonableness of its provisions parallel those cited for subpart 2.

**Subpart 6.** This proposed subpart provides that the burden of proof is upon the petitioner for a waiver or variance to demonstrate that he or she has met the requirements in subpart 1 or 3, whichever applies. The provision is needed to make it clear that it is the petitioner's responsibility, not the Board's, to prove that the petition meets the listed conditions. The provision is reasonable because the petitioner is the person in possession of the facts supporting the petition, and therefore the logical person to be responsible for the proof.

**Subpart 7.** This subpart requires board meeting minutes to include the reason for the Board's granting, denying, renewing, or revoking a waiver or variance. The provision is needed to ensure that an official written record of each action with respect to waivers and variances is maintained and is available to the public. The provision is reasonable because a written record of the reasons for the Board's actions serves as an aid to the Board in maintaining consistency over time, and to the public (including licensees and applicants) in providing a foundation for rational expectations of future Board decisions based on patterns established as this rule part is utilized.

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**Repealers**

**6900.0010, subparts 2 and 3.** The need for this repealer is addressed on page 4.

**6900.0030.** Application Nullification. This rule part is repealed because fees paid for applications that are not completed are not refundable under Minn. Stat. S 153.16, subdivision, clause f. Therefore, the provision of subpart 2 (that the fees are forfeited) is not needed. In addition, an applicant who fails to complete an application for licensure is not granted licensure. Therefore, nullification of the application is not needed in order to protect the public from incompetent or unprofessional practice. It is reasonable to repeal unnecessary rules because unused/unnecessary rules confuse the reader.

**6900.0300, subpart 5.** The need for this repealer is addressed on pages 9 and 12.

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Lois E. Mizuno  
Executive Director

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Date



DEPARTMENT : of Finance

STATE OF MINNESOTA

## Office Memorandum

DATE : February 2, 1991

TO : Lois E. Mizuno, Executive Director  
Board of Podiatric MedicineFROM : Bruce J. Reddemann, Director *BJR*  
Budget Operations and Support

PHONE : 296-5188

SUBJECT : Proposed Fee Schedule

The following fee schedule is approved as proposed to fund Board activities as submitted per your letter of January 23, 1991.

FEES FOR PODIATRISTS

<u>FEE</u>	<u>PRESENT AMOUNT</u>	<u>APPROVED PROPOSED AMOUNT</u>
Temporary Permit	\$ 200	\$ 200
License Application	200	450
License Renewal	225	450
Late Renewal	50	100
Corporation Registration	100	100
Corporation Re-registration	25	25

cc: Anne Barry  
Pamula Wheelock  
Glenn Olson