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STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA
BOARD OF PSYCHOLOGY

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Board of Psychology Relating to
Housekeeping Amendments for the
Purpose of Providing Conformity
with Minn. Stat. SS 148.88 to
148.98 (1991 Supplement)

STATEMENT OF NEED
AND REASONABLENESS

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MINNESOTA BOARD OF PSYCHOLOGY

November 2, 1992

STATEMENT OF NEED AND REASONABLENESS

I. GENERAL INTRODUCTION

In 1991 the Legislature passed a new psychology act, superseding the existing practice that became law in 1973. The new practice act became Laws of Minnesota 1991, Chapter 255.

The new practice act imposed additional duties on the Board of Psychology, instituted a new licensure category, phased out independent licensure for master's level psychologists, and mandated continuing education as a requirement for renewal of license. The practice act was further amended in Laws of Minnesota 1992, Chapter 513, Article 6, Sections 29-33, and appropriations for the purpose of implementing the practice act were provided in Article 5, Section 8.

The Statement of Need and Reasonableness which follows the Statement of the Board's Statutory Authority and Small Business Considerations addresses rules proposed to correct existing rules so that they conform to the changes made in the statutes by the new psychology practice act.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt and amend rules relating to licensure requirements, fees, and professional conduct is set forth in Minn. Stat. SS 148.905, subds. 1(1), (2), (7) and (9), and 2 (1991 Supplement); and 214.06, subds. 1 and 2 (1990). Section 148.905, subd. 1(1) grants the Board the authority to adopt and enforce rules for licensing psychologists and for regulating their professional conduct. Subd. 1(2) grants the Board the authority to adopt rules that provide for examinations and establish a code of professional ethics and requirements for continuing education. Subd. 1(7) grants the Board the authority to establish reasonable fees for the issuance and renewal of licenses and other services of the Board. The fees must defray the costs of administering the provisions of SS 148.88 to 148.98 including applications, examinations, enforcement, and the cost of maintaining the operations of the board. Subd. 1(9) grants the Board the authority to establish or approve programs that qualify for professional psychology continuing educational credit. Subd. 2 grants the Board the authority to adopt rules as necessary to define standards or to carry out the provisions of SS 148.88 to 148.98. 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.

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.

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, 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. SS 148.88 to 148.98, the Board was created for the purpose of establishing requirements for licensure and adopting ethical standards governing appropriate practices or behavior for psychologists. Pursuant to Minn. Stat. S 148.905, subd. 2, the Board is specifically empowered to "adopt rules necessary to define standards or to carry out the provisions" of the Minnesota licensing law for psychologists. Given these statutory mandates, it is the Board's duty to establish rules relating to the practice of psychology 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 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 a 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 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 these rule amendments must apply equally to all psychologists, if the public whom they serve is to be adequately protected.

IV. STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Passage of the new Psychology Practice Act in 1991 resulted in many of the Board's existing rules being rendered obsolete or contradictory to the law. It should be noted that rules to implement Minn. Stat. S. 148.905, subd. 1(10) (certification of competencies in speciality areas) are not included in the Housekeeping changes. Anyone wishing for an explanation regarding why they are not included should request a copy of the memo to the Governor on this issue from the Board office. Most of the proposed housekeeping amendments seek to correct the rules so affected by the new law. A few amendments do not directly relate to the purpose of bringing the rules into agreement with the provisions of the new law. The statement of need and reasonableness will indicate whether the proposed amendment is needed because of the new law.

Clearly, the amendments which bring the rules into agreement with the law are needed because without the changes, a reading of both law and rules would result in confusion. A reading of only the rules could result in wrong decisions or actions based on misinformation. The need for and reasonableness of the specific way each rule part brings the rules into agreement with the law is addressed in the following.

7200.0100 DEFINITIONS.

Subpart 3a. Client. The amendment to this rule changes the statutory subdivision reference from "1" to "5". The change is needed because the description of psychological services now appears in Minn. Stat. S. 148.89, subd. 5, instead of subd. 1. It is reasonable to make the change because it promotes correct cross-referencing between rules and law.

Subpart 4. This subpart, which is proposed to be repealed, defines "collaboration". It is necessary to repeal the subpart because the new law has repealed the requirement that master's level psychologists must have a collaborator who is a doctoral level psychologist. The repeal is reasonable because the definition no longer serves a purpose.

Subpart 6. The amendment to this subpart changes the definition of "licensee" by deleting "licensed consulting psychologist" and adding "psychological practitioner". The amendment is needed because under the new law there is no longer a category of licensure entitled "licensed consulting psychologist" and a new category entitled "psychological practitioner" has been created. The title "licensed psychologist" now applies to both psychologists with doctorates (formerly licensed consulting psychologists) and psychologists with masters' degrees who are in independent practice by virtue of the waiver provisions of Minn. Stat. S. 148.921. The amendment is also needed to make it clear that both licensed psychologists and psychological practitioners are

licensees of the board when that fact is not readily apparent from one of the titles. The amendment is reasonable because it facilitates comprehension of the meaning of the term "licensee", which occurs frequently throughout the rules.

Subpart 10. This subpart, which is proposed to be repealed, defined "supervision" because it was not defined in the pre-1991 law. The repeal is needed because "supervision" is now defined in Minn. Stat. S. 148.89, subd. 8 of the new law, and that definition is materially different from the definition in subpart 10. The repeal is reasonable because it removes confusing and conflicting text from the rules.

7200.0600 REQUIREMENTS FOR LICENSURE.

Items C and D are amended to indicate that the requirement for supervised employment applies only to applicants for licensure as licensed psychologists. The amendment is needed because under the new law psychological practitioners need no pre-licensure supervised employment, and because the remaining items apply to applicants for licensure as psychological practitioners as well as licensed psychologists. The amendment is reasonable because it does not impose any additional licensure requirements beyond what is required in the new law.

Item D is further amended by adding a reference to the new statutory section relating to supervision. The amendment is needed to ensure that an applicant's supervised employment meets both the statutory and rule requirements. The amendment is reasonable because it informs an applicant of all of the references to the supervised employment requirements so the applicant can locate statutes and rules which apply to his or her application.

Item E is amended only by adding the work "and". The amendment is needed to make the rule part grammatically correct as a result of deleting Item G.

Item F is amended by deleting a reference to clause (2) of Minn. Stat. S. 148.91, subd. 4, and to delete the "and" at the end of the paragraph. The amendment is needed because clause 2 no longer exists and because Item G is deleted.

Item G, which required an applicant for licensure as a licensed psychologist to file a collaboration agreement, is deleted because collaboration is no longer required by law. The deletion is necessary to avoid confusion.

7200.0700 CONCURRENT APPLICATIONS.

This part is amended to more accurately reflect the intent of the part: to permit applicants to submit both the application for admission to examination and the application for licensure if all licensure requirements are completed except the examination. The amendment is needed because the part applies to applications for licensure as a licensed psychologist or as a psychological practitioner, and psychological practitioners do not need to meet employment requirements in order to be licensed. The amendment is reasonable because it more clearly advises the applicant under what conditions the applications may be submitted together.

7200.0800 SUPERVISED EMPLOYMENT.

The amendment to this part, which sets forth the supervised employment data required on the application for licensure, adds the phrase "as a licensed psychologist." The amendment is needed because psychological practitioners do not need to have any supervised employment before becoming licensed. The amendment is reasonable because it makes clear which type of application needs to have the supervised employment data included.

The amendment also deletes the text relating to stating the applicant's field of practice and areas of competence on the application for licensure (and moves the text to a new part). The amendment is needed to avoid duplication of text, because the deleted text relates to information required for both types of licensure. The amendment is reasonable because it results in a rule part that unambiguously applies to only one type of licensure.

7200.0810 FIELD OF PRACTICE, AREAS OF COMPETENCE.

This is a new subpart which incorporates the deleted text from part 7200.0800 and applies it to the application for licensure as a licensed psychologist and as a psychological practitioner. The amendment is both needed and reasonable as it avoids duplication of text, as explained above.

7200.1300 EDUCATION REQUIREMENT FOR LICENSURE.

Subpart 1 is amended by deleting the word "consulting" from "licensed consulting psychologist". The amendment is needed so that the rule reflects the change in title in the new law regarding psychologists licensed for independent practice. The amendment is reasonable because it does not alter the meaning of the subpart.

Subpart 2 is amended by adding text which indicates that a master's degree is the education requirement for persons licensed according to the waiver provisions of Minn. Stat. S. 148.921, sub. 2. The amendment is needed because without it the subpart would not be in accord with the licensure requirements of the new law. The amendment is reasonable because it clarifies the meaning of the subpart.

Subpart 4., item B is amended by adding three subitems. New subitems (5) and (6) are not corrections to make the rules conform to the new law.

Subitem (5) prohibits offering one course to meet more than one requirement of subitems (1) to (4). The need for this amendment became apparent when the first transcripts to which subpart 4 applies were reviewed and evaluated by the Board. The subitem is needed to clarify the meaning of the subpart and to ensure that the minimum number of academic credits has been completed for each core area or applied psychology course listed in the items, so that the minimum number of total academic credits is not less than 33 quarter credits or their equivalent. For example, an applicant could not claim to have

earned three quarter credits each in "biological bases of behavior" and "personality theory" by passing a three quarter credit course titled "Biological bases of human development". The applicant could choose one core area or the other and would have to offer a different course for the core area not chosen. The amendment is reasonable because it states explicitly what is implicit in the item.

Subitem 6 provides for heads of psychology departments to categorize their courses according to subitems (1) to (4) and to subdivide course among more than one core area, provided the pieces of subdivided courses making up one core area add up to at least three quarter credits or their equivalent. The amendment is needed to accommodate graduate programs which are not designed specifically to fit the core areas listed in subitem (1). For example, in the hypothetical course discussed above, the department head could assign one credit to "biological bases of behavior" and two credits to "personality theory and human development" (provided the percentages in the course matched that division). However, the department head's list would have to include one or more other courses also subdivided in such a manner that both core areas would have three quarter credits or their equivalent. The amendment is reasonable because it permits some flexibility in assigning courses to core areas without doing violence to the basic concept that a well rounded, broadbased, graduate psychology program is needed for generic licensure.

Subitem (7) clarifies how applicants meet the statutory requirement of having entered a master's program by November 1, 1991, in order to qualify for licensure as a licensed psychologist under the waiver provision of Minn. Stat. S. 148.921, subd. 2, (1). The subitem is needed because the term "entered" is subject to more than one interpretation, as was made clear from the many calls to the Board office on this matter since the new law took effect. It is reasonable to consider "entered" as meaning "accepted into" because a student cannot begin formal graduate studies until the institution has accepted him or her into the graduate program.

The subitem also makes it clear that transferring from one graduate program to another, after entering the first program by the deadline, does not nullify the applicant's having met the deadline. The subitem is needed to permit transfers in cases in which one school's program does not meet the career needs of the student. It is reasonable to allow transfers from one graduate program to another, provided both programs meet the requirements of this rule part, because course credits earned in one program at one school are generally accepted--wholly or in part--toward meeting degree requirements in a program in another school. It is also reasonable because the statutory time period for completing all licensure requirements (seven years including employment) is short enough to preclude a student from entering a program by the deadline, then dropping out of school for an extended period, then getting into another program. Because of the statutory requirement to complete all licensure requirements by December 31, 1998, the master's degree cannot be completed any later than December 31, 1996. In most cases however, the degree must be earned by a much earlier date, because of the difficulty in finding full time employment prior to licensure.

7200.1900 EMPLOYMENT REQUIREMENTS FOR LICENSURE AS A LICENSED PSYCHOLOGIST.

This part, which states that the employment rules pertain only to applicants for licensure as a licensed psychologist, is needed to clarify that the employment rules do not apply to applicants for licensure as a psychological practitioner. The part is reasonable because there is no pre-licensure employment requirement for licensure as a psychological practitioner.

7200.2000 PROFESSIONAL EMPLOYMENT REQUIREMENTS.

Item A is amended by deleting the language which restated the definition of what constituted the private-practice of psychology in the pre-1991 law, and adding a reference to the new statutory definition of the practice of psychology. The amendment is needed because without it the rules would be contradictory and confusing. The amendment is reasonable because substituting a reference to the new definition rather than the definition itself keeps the item short and concise without changing its meaning.

Item B is amended by deleting the qualifications of the supervision of pre-licensure employment and substituting a reference to the supervision requirements in the new law. The amendment is needed because the qualifications as previously stated do not exactly match those in the new law. It is reasonable to include the reference to the new statutory requirements (rather than delete the item entirely) because the reference serves as a logical lead-in to supervised employment requirements in the remainder of the item.

The amendment, which also replaces "independent" practice for "private" practice, is needed to reflect the similar change in the law, and is reasonable because it avoids a confusion of terms.

The amendment, which also deletes language that referred to licensed psychologists preparing for licensure as licensed consulting psychologists, is needed because there are no longer two types of independent practice licensure. The amendment is reasonable because redundant and obsolete text, if left in, adds to the confusion and serves no useful purpose.

The amendment, which also states that independent practice is not allowed before licensure and is not credited toward employment requirements for licensure, is needed to alert applicants that independent practice is not supervised employment for licensure purposes. The need for this amendment became apparent from conversations with many applicants who erroneously believe supervised independent practice is supervised employment. The amendment is reasonable because it makes the statutory prohibition on practicing without a license clear and unequivocal.

The amendment to Item C deletes the language which spelled out supervision requirements. The deletion is needed because the requirements as stated do not exactly match the supervision requirements in the new law. The deletion is reasonable because the statutory requirements will now be referenced in item B.

The amendment also adds a list of specific types of work related tasks that count as qualifying for licensure. The list is needed because many applicants in the past erroneously assumed that only client contact hours counted and unnecessarily delayed their licensure because of it. The list is reasonable because it reflects the normal psychological activities that are part of providing psychological services.

7200.2300 EXPERIENCES REQUIRED FOR A DEGREE.

The amendment, which deletes the words "either level of", is needed because there are no longer two types of licensure for private practice. The amendment is reasonable because it removes obsolete and confusing language.

7200.2500 TIME REQUIREMENT.

The amendment, which adds a reference to the statutory supervision requirements, is needed because part 7200.2000 alone does not completely describe supervision requirements. The amendment is reasonable because it reinforces for the applicant the requirements which must be met in order to become licensed.

7200.3620 PRACTICING WITHOUT A LICENSE.

The amendment, which deletes "private" and adds "independent" to modify the word practice, is needed to reflect the statutory change, and is reasonable because it avoids the confusion of using different terms in the rules and law.

The amendment also changes the order of the possible penalties for practicing independently after termination of license. The amendment is needed because the phrase "denial of licensure at the time the new license is granted" is illogical and contradictory. The amendment is reasonable because it does not alter the meaning of the text yet removes the illogical construction.

7200.4500 RULES OF CONDUCT.

The amendment to subpart 4, which substitutes "1992" for "1981" regarding the revision of the Ethical Principles of Psychologists, is needed because the most recent revision is dated 1992. The amendment is reasonable because psychologists who are members of the American Psychological Association are expected, by the Association, to be familiar with the latest version of the code, and because 1989 is the latest revision, it is more likely to reflect current consensus on ethics of practice from the association's perspective than the version dated eight years earlier.

7200.4900 CLIENT WELFARE.

The amendment to subpart 2, which changes the address of the board in the client bill of rights, is needed so that client's who wish to file complaints will have the board's correct address. The amendment is reasonable because it contributes to the accuracy and clarity of information made available to clients.

7200.5100 PUBLIC STATEMENTS.

The amendment adds the term "Doctor" to the titles which may not be used by licensees whose licensure is based on a master's degree and who have doctoral degrees that do not meet licensure requirements. The amendment is needed because without the inclusion of "Doctor" such a licensee could not be disciplined for using the deceptive title, as the licensee could for using the title "PhD", "PsyD", or "EdD". The amendment is reasonable because the term "Doctor" is generic and can be substituted for any or all of the other terms already in the part.

7200.5300. AIDING AND ABETTING UNLICENSED PRACTICE.

The amendment, which prohibits aiding/abetting a psychological practitioner from engaging in independent practice, is needed because psychological practitioners by law may not engage in independent practice. The amendment is reasonable because aiding a psychological practitioner in doing so is as unethical as aiding an unlicensed person in doing so.

The amendment, which also changes "private" practice to "independent" practice is needed as set forth in the justification for amendments to rule part 7200.2000, Item B, page 5.

The amendment, which also adds supervision of a psychological practitioner preparing for licensure as a licensed psychologist as an exemption from the prohibition, is needed because the new law requires psychological practitioners to be supervised in their practice, and by definition in the new law, independent practice means unsupervised practice. The amendment is reasonable because it eliminates the possibility of a supervising psychologist being disciplined for performing legal functions under the law.

7200.6000 WAIVERS AND VARIANCES.

Before justifying the need and reasonableness of the amendments to this rule part, an explanation of how the amendments were developed may help to clarify the reasons for them.

In 1991, the Board of Podiatric Medicine proposed several amendments to its rules, among them the inclusion of a waiver and variance rule that was an exact copy of the rule of the Board of Psychology. Prior to the final adoption, the Administrative Law Judge assigned to the hearing if one were necessary suggested that the Board could accomplish the same end by consolidating the

separate waiver and variance provisions and eliminating a great deal of duplicate text. The Board agreed, and the amendments as shown here were the result. The Board of Psychology then borrowed in return the amendments adopted by the Board of Podiatric Medicine.

The amendment, which, of course is not proposed or needed to comply with the new law, is needed to help petitioners for a waiver or variance to better understand how to justify the need for the waiver or variance, and what circumstances justify the board's action in revoking the waiver or variance. The amendment is reasonable because it essentially keeps the text intact, with one exception. The exception is found in Subpart 1, Item A, and its need and reasonable is discussed separately below.

The text is consolidated as follows:

Subpart 1. "Variance" is included with "waiver" throughout the subpart; and subpart 3, dealing separately with variances, is correspondingly repealed.

Item A is deleted. The deletion is needed because it is not and has not been a requirement for granting a variance, and because a waiver should be granted only if the granting will not adversely affect the public welfare. The relative significance of the problem addressed by the waiver, to the public as opposed to the petitioner, is immaterial. If waiving a rule would be harmful to the public welfare, it should not be waived, regardless of whether the significance of the waiver to the petitioner is materially greater than the significance to the public. The deletion is reasonable because the public protection issue is addressed in new item B (old item C).

New item C includes the text from subpart 3, item A, so that the rule part concerning variances remains unchanged.

Subpart 2. "Variance" is included with "waiver" in the renewal, reporting, and revocation text. The corresponding text in subpart 5 is repealed. Also, in the sentence regarding grounds for revocation, failure to comply with the alternative practices or measures specified in the variance petition is added. The corresponding text in subpart 4 is repealed. The inclusion of this phrase is needed to inform petitioners that failure to comply with the specified practices or measures means the conditions justifying the granting of the variance no longer exist. While such failure is implied in the unamended text, it is reasonable to clarify for petitioners, the board, and the public that such failure is ground for revocation.

The remaining changes to the rule part correct the subpart numbers and internal references needed because of repealing subparts 3, 4, and 5.

REPEALERS.

Repeal of part 7200.0100, subparts 4 and 10 is discussed on pages 4 and 5. Repeal of part 7200.6000, subparts 3, 4, and 5 is discussed on page 11. Repeal of part 7200.3900 is needed because the text sets forth rules regarding collaboration. As discussed in part 7200.0100 subpart 4 (also repealed), rules regarding collaboration are no longer needed because collaboration has been repealed in the new practice act. It is reasonable to repeal the part to avoid confusion.