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STATE OF MINNESOTA

BEFORE THE MINNESOTA BOARD

COUNTY OF RAMSEY

OF PSYCHOLOGY

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Board of Psychology Relating to
a Special Fee for the Purpose of
Funding Non-recurring Expenses
of the Board of Psychology

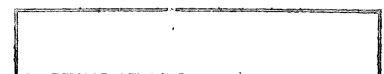
STATEMENT OF NEED
AND REASONABLENESS

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The Legislative Commission to
Review Administrative Rules

NOV 19 1992



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 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 rule 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, 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 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 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 it regulates psychologists, then it would hardly make sense for the Board to exempt from its rule 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. 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 amendment will not affect small businesses, and certainly does 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 amendment 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 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.

IV. STATEMENT OF NEED AND RESONABLENESS

Statement of Need

When a new psychology practice act became law on August 1, 1991, it became evident that the existing staff complement, office space, and equipment would be inadequate to cope with the duties and responsibilities added by the provisions of the act to the board's workload. Because no appropriation was included in the practice act, the board in 1992 sought sufficient additional spending authority to cover anticipated costs. The sum of \$185,000 for FY 1993 was appropriated to the board for this purpose. Minn. Stat. SS. 16A.128, subd. 2a requires fees not fixed by law to be adopted through rule pursuant to Minn. Stat. Ch. 14.

Because regulatory boards must, under the provision of Minn. Stat. S. 214.06, subd. 1, raise sufficient revenue through fees to cover expenditures, the need for this fee is established.

Statement of Reasonableness

Some of the anticipated additional expenditures are for one-time, non-recurring purposes. A fee paid by all licensees to cover one-time expenditures that are also non-recurring is more reasonable than increasing renewal fees (the only other feasible alternative) which are ongoing. It is more reasonable because: (a) it does not result in excess revenues in fiscal years beyond the fiscal year in which it is levied; (b) it is borne by all licensees instead of only by licensees who renew in this fiscal year; and (c) it is assessed against all licensees, so that the cost per licensee is considerably smaller.

It is anticipated that of the \$185,000 appropriated, \$95,000 are needed for such purposes as installing a local area network computer system for the whole staff, with accompanying programming; furniture and other equipment for an increased staff (two additional employees), and rulemaking costs such as printing, mailing notices, hearing, attorney's fees.

To raise sufficient revenue to cover these anticipated expenditures, a one-time fee for the board's 2750 licensees would be \$35. If an increase in renewal fees were used as an alternative, and if it is assumed that the fee rule would be in effect by January 1, 1993, approximately one-fourth, or 700 licensees would pay the increase in FY 1993. The increase would amount to four times \$35, or \$140. More to the point, \$380,000 would be raised in each succeeding fiscal year from that revenue source--far in excess of anticipated needs.

The need for and reasonableness of proposed fees to cover the remaining \$90,000 in anticipated expenditures, which will be ongoing, are addressed in the Statement of Need and Reasonableness for the rules regarding licensure of psychological practitioners.

The special fee has been approved by the Department of Finance, as required by Minn. Stat. S. 16A.128, subd. 1a. A copy of the approval notice is attached.

Proper notification of the Board's intent to adopt this fee rule has been sent to the chairs of the House Appropriation Committee, the Senate Finance Committee, and the Legislative Commission to Review Agency Rules, as required by Minn. Stat. S 16A.128, subd. 2a.

Office Memorandum

Department: of Finance

Date: October 6, 1992

To: Lois E. Mizuno, Interim Executive Director
Board of Psychology

From: Bruce J. Reddemann, Director *BJR*
Budget Operations

Phone: 296-5188

Subject: Fee Request for Approval



I have received your requested fee approval, dated September 30, 1992, for the the Special one time fee and have reviewed the request with your assigned Executive Budget Officer.

I hereby approve the following fee:

■ Special Fee \$35.00

cc: Josie Ashton
Glenn Olson