

5/3/93

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF OPTOMETRY

In the Matter of Proposed Rule
Amendments of Rules of the
Minnesota Board of Optometry
Relating to Applications,
Fees, Examination Requirements,
Examination Scheduling, Scoring
of Examination.

STATEMENT OF NEED AND
REASONABLENESS

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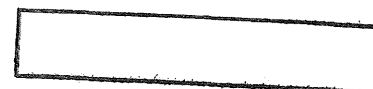
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**The Legislative Commission to
Review Administrative Rules**

APR 14 1993



BOARD OF OPTOMETRY

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

Laws of Minnesota, 1992, chapter 419, section 1, amending Minn. Stat. 148.57, Subd. 1, provides the Board of Optometry the option to use a nationally standardized or a Board administered clinical practical examination to "thoroughly test the fitness of the candidate to practice in this state."

In October 1988, Pennsylvania contracted for the development, administration, scoring, and reporting of a practical examination for licensure. This was stimulated by the Pennsylvania legislature prohibiting state boards from administering their own examination. Based on the success of this examination for Pennsylvania, the State of Connecticut elected to accept the examination in 1990, and the States of Delaware and Missouri elected to accept the examination presented in January 1991, in lieu of their own practical.

In June of 1991 the National Board of Examiners in Optometry (NBE0) presented the examination of clinical skills, on a national level, administered in regional locations with the cooperation of 10 state boards that would utilize the results of this examination in lieu of administering their own practical examination. Four additional states made the decision to accept the results of the refined and expanded clinical skills examination in 1992, bringing the total number of states to 15. It is anticipated that 25 states will be participating in the NBE0 examination in 1993.

Under the existing rules governing applications and examinations, the law as amended in chapter 419, 1992 could not be implemented. The current rules provide only for a state board constructed examination.

Part II addresses the Board's statutory authority to adopt rules; Part III addresses small business considerations; and Part IV provides a detailed statement of the need and reasonableness of the proposed rules regarding the optional use of a nationally standardized examination for the testing of clinical practical procedures.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

Minn. Stat. 148.53 (1992) grants the Board power to make any rules which it may deem necessary for the effective enforcement of sections 148.52 to 148.62. The purpose of the licensing law for optometrists is clearly the protection of the public from incompetent, unprofessional, and/or unethical practice.

III. 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. 14.115 does not apply to this proposed rule amendment, as it should have no impact on small businesses.

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 requirement, (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 optometrists

who practice in a solo or clinic setting of fewer than 50 employees, since that would include the vast majority of optometrists. 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 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 optometrists, 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 optometrists, then it would hardly make sense for the Board to exempt from its rule those optometrists who practice in a solo or clinic setting with fewer than 50 employees, since they constitute the vast majority of optometrists. 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 optometrists.

Pursuant to the Minnesota licensing law for optometrists, Minn. Stat. Chapter 148, the Board was created for the purpose of establishing requirements for licensure and adopting ethical standards governing appropriate practices or behavior for optometrists. Pursuant to Minn. Stat. S 148.53, the Board is empowered to "make any rulesfor the effective enforcement" of the Minnesota licensing law for optometrists. Given these statutory mandates, it is the Board's duty to establish rules relating to the practice of optometry 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 optometrists 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 an optometrist or a group of optometrists, 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 optometrists - indeed, the majority of optometrists - 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 optometrists who work in a large business setting and adopt another, less stringent, set of licensure

requirements to be applied to those optometrists who practice in a solo or small clinic practice. It is the Board's view that this rule amendment must apply equally to all optometrists, if the public whom they serve is to be adequately protected.

IV. STATEMENT OF NEED AND REASONABLENESS

The Minnesota Optometry Board has elected to utilize the results of the newly named Part III, Patient Care examination of the NBEO in 1993. Part III, Patient Care, includes three separate sections, Clinical Skills, Visual Recognition and Interpretation of Clinical Signs (VRICS), and Patient Management Problems.

It is necessary to amend each of the following optometry rules to utilize a nationally standardized examination of clinical practical optometric procedures. The existing rules need to be amended to accommodate both state and nationally administered examinations. The existing rules provide only for a Board administered examination, therefore the need for subparts within each rule.

RULE 6500.1800 APPLICATION FEES

Application fees are used to cover the administrative expenses of the Board in the processing of applications. The fee assignment is determined by the amount of board staff time used to process a candidate application.

Subpart 1 addresses a board administered examination, where the candidate application process includes a review of the application for completeness, and scheduling of an examination date and time. Additional staff time is required when a candidate fails the examination and requests scheduling for re-examination. This requires the board staff to process supplemental candidate applications. The changes under this subpart are merely "housekeeping".

Subpart 2 introduces the use of a nationally administered examination, which requires Board staff to review each application for completeness, and to verify that examination results received from a national testing agency meet the requirements of the Minnesota Board of Optometry.

It is reasonable to have two separate fees for a Board administered examination since a candidate may file numerous applications in their attempt to successfully complete the examination. In a nationally administered examination situation, only one application need be filed by the candidate. It is then a matter of receiving national examination results meeting the requirements of the Board. The fees currently being assessed are not being changed only the assignment of the fee to the situation. The \$75 fee required under subpart 2 has been

approved by the Department of Finance as required in Minnesota Statute 16A.128. See attached memo, dated April 2, 1993.

RULE 6500.2300

Subpart 1 of this rule sets the areas of required subject matter for the clinical practical examination. The requirements remain unchanged and are consistent with either a Board or nationally administered examination. Therefore, the changes in this subpart are for 'housekeeping' purposes only.

Subpart 2, section A, has 'housekeeping' changes to the pass-fail scoring found in current law, without any substantive changes.

Subpart 2, section B, where a national standardized clinical practical examination is used to determine the proficiency of an applicant for licensure, the Board will utilize the pass-fail standards set by the testing agency. This procedure is expressly authorized under Minnesota Statute 148.57, subd. 1 (1992).

Under each scoring methodology, candidates do not compete against each other, but rather, against the standard. It is reasonable, therefore, that each testing mechanism have their specific pass-fail mechanism.

RULE 6500.2400

Subpart 1 includes language of a 'housekeeping' nature only, as to the requirement of a jurisprudence examination, and the Board's jurisprudence re-examination policy.

Subpart 2 of this rule provides greater flexibility for the applicants for licensure. At a time when individuals are making plans for the future of their professional career flexibility may be the key to their choice of practice location. Flexibility in scheduling a jurisprudence examination is a reasonable concession on the part of the Board.

When the national testing agency proctors the state jurisprudence examination for the Board, it is necessary for the Board to notify the testing agency of those who will be taking the examination, and provide the appropriate number of examination packets. For this reason the Board finds it necessary to set a deadline for application 30 days prior to the national examination date.

Date: April 14, 1993

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