

Minnesota Board of Chiropractic Examiners

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Continuing Education for Full-time Faculty

Notice is hereby given that the Minnesota Board of Chiropractic Examiners is seeking information or opinions from sources outside the agency in preparing to propose the adoption of a rule governing continuing education credit for fulltime faculty. The adoption of this rule is authorized by Minnesota Statutes, section 148.08, which permits the agency to promulgate rules in order to administer sections 148.01 to 148.105.

The Minnesota Board of Chiropractic Examiners requests information and opinions concerning the granting of continuing education hours to licensees who are fulltime faculty for time spent teaching and/or preparing coursework. Interested persons or groups may submit data or views on the subject matter of concern in writing. Written statements should be addressed to:


Rules Committee

Minnesota Board of Chiropractic Examiners

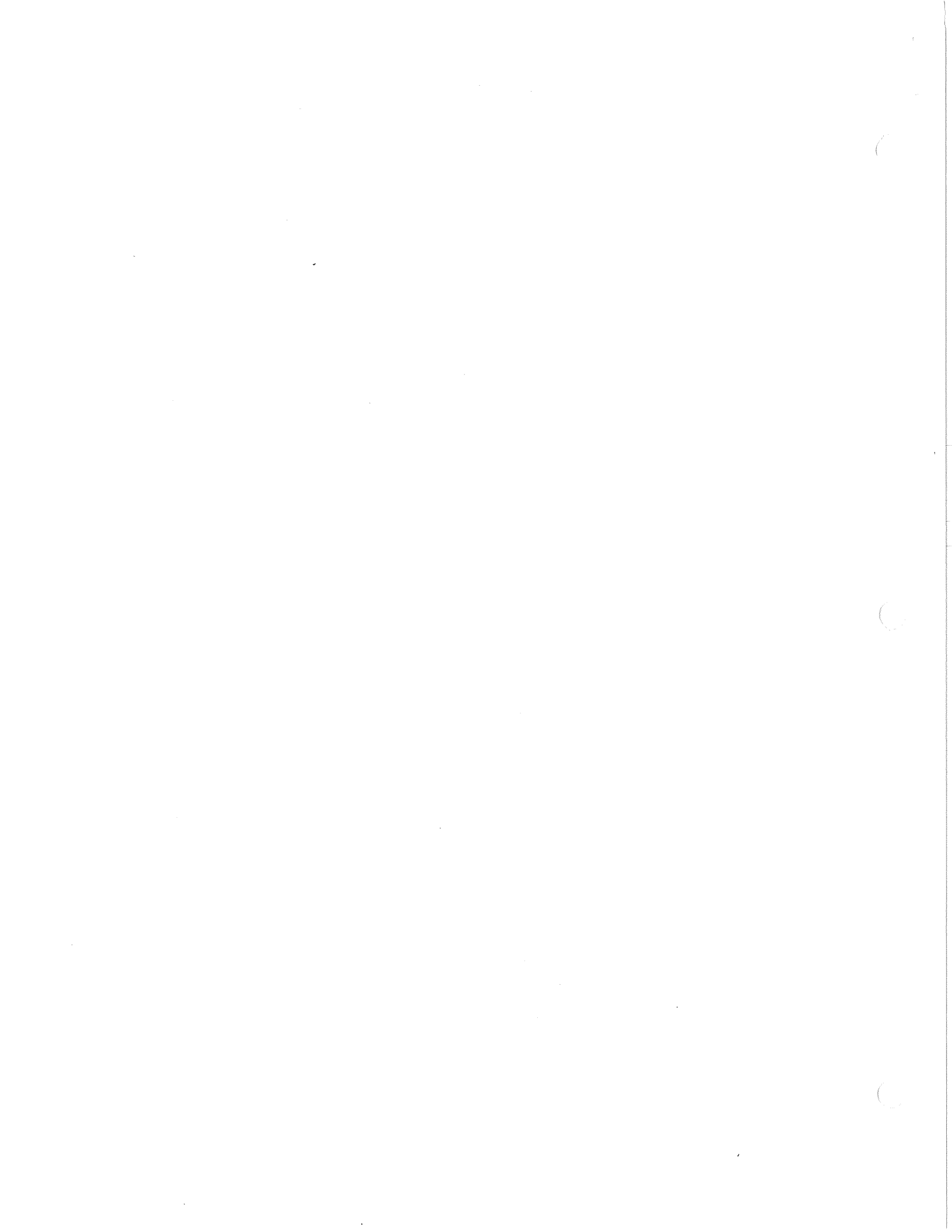
2700 University Avenue West, Suite 20

St. Paul, MN 55114

All statements of information and opinions shall be accepted until August 10, 1994. Any written material received by the Minnesota Board of Chiropractic Examiners shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.


Larry A. Spicer, DC
Executive Director

6/21/94
Date



STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE THE MINNESOTA BOARD
OF CHIROPRACTIC EXAMINERS

**In the Matter of Proposed Permanent
Rule of the Minnesota Board of
Chiropractic Examiners Governing
Professional Designations**

NOTICE IS HEREBY GIVEN that a public hearing in the above-captioned matter will be held pursuant to *Minnesota Statutes* section 14.131 to 14.20 in Conference Room A, Colonial Office Park, 2700 University Avenue West, St. Paul, MN 55114-1089, on August 18, 1994, commencing at 9:00 a.m.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to:

The Honorable Howard Kaibel
Administrative Law Judge
Office of Administrative Hearings
1700 100 Washington Square
Minneapolis, MN 55401
Telephone: (612) 341-7608

Unless a longer period not to exceed 20 calendar days is ordered by the administrative law judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. Written material received during this period will be available for review at the Office of Administrative Hearings. The Board and

interested persons may respond in writing within five business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by *Minnesota Statutes* Section 14.131 to 14.20 and by *Minnesota Rules* Parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the administrative law judge.

If adopted, the proposed rule would establish professional designations which may be used by Minnesota licensed chiropractors.

A free copy of the rule is attached and will be published in the *State Register* issue of July 11, 1994. Additional copies of the rule may be obtained from the Board by writing or telephoning the Board at the following address or telephone number.

Lori A. Campbell, Administrative Secretary
Minnesota Board of Chiropractic Examiners
2700 University Avenue W, #20
St. Paul, MN 55114-1089
(612) 642-0591

The statutory authority to adopt the rule is contained in *Minnesota Statutes* 148.08, subdivision 3.

The proposed rule may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed rule are therefore advised to participate in the process.

Minnesota Statutes Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after she or he commences lobbying. A lobbyist is defined in *Minnesota Statutes* section 10A.01, subdivision 11 as any individual:

a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

b) who spends more than \$250, not including his/her own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, MN 55101, telephone number (612) 296-5615.

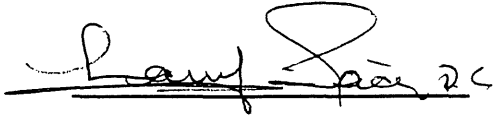
NOTICE IS HEREBY GIVEN THAT A STATEMENT OF NEED AND REASONABLENESS is now available for review at the Board and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence which the Board anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule.

Copies of the Statement of Need and Reasonableness may be reviewed at the Board or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

PLEASE NOTE that any person may request notification of the date on which the administrative law judge's report will be available, after which date the Board may not take any final action on the rule for a period of five working days. If you want to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rule was adopted and filed with the Secretary of State. The notice must be mailed on the same day the rule is filed. If you want to be so notified, you may indicate at the hearing or send a request in writing to the Board at any time prior to the filing of the rule with the Secretary of State.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land. The Board's evaluation of the applicability of the methods contained in *Minnesota Statutes* section 14.115, subdivision 2 for reducing the impact of the proposed rule on small businesses, should it be determined that the

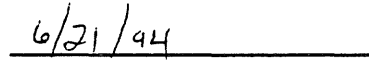
Board is governed by section 14.115, are addressed in the Statement of Need and Reasonableness.

A handwritten signature in black ink, appearing to read "Larry Spicer D.C.", written over a horizontal line.

Larry A. Spicer, D.C.

Executive Director

Minnesota Board of Chiropractic Examiners

A handwritten date "6/21/94" written in black ink above a horizontal line.

Date

1 Board of Chiropractic Examiners

2

3 Proposed Permanent Rules Relating to Professional Designations

4

5 Rules as Proposed (all new material)

6 2500.0550 PROFESSIONAL DESIGNATIONS.

7 A licensee must in all forms of professional reference

8 include one or more of the following designations: doctor of

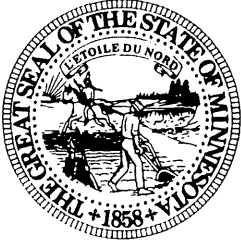
9 chiropractic, D.C., chiropractor, and chiropractic physician.

10 The designation shall be in an emphasis, whether written or

11 verbal, equal to the emphasis of the written or verbal material

12 which contains the designation.





Minnesota Board of Chiropractic Examiners

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of the
Proposed rules or
Amendments to rules of the
Board of Chiropractic Examiners
relating to professional designations.

STATEMENT OF NEED AND REASONABLNESS

Pursuant to Minn. Stat. 14.23 (1992) the Minnesota Board of Chiropractic Examiners (hereinafter "Board") hereby affirmatively presents the need for, and facts establishing the need for, and reasonableness of, a proposed addition to Minnesota Rules, chapter 2500, relating to the professional designations which may be used by doctors of chiropractic.

In order to adopt the proposed rules or amendments to the rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. Those requirements are as follows: 1) there is statutory authority to adopt or amend the rules; 2) the rules or amendments are needed and are reasonable; 3) all necessary procedural steps have been taken; and 4) any additional requirements imposed by law have been satisfied. This Statement demonstrates that the Board has met these requirements.

Minnesota Board of Chiropractic Examiners
S.O.N.A.R.- Professional Designations

2700 University Avenue West, Suite 20, St. Paul, Minnesota 55114-1089 Telephone (612) 642-0591 Fax (612) 643-3535

TDD Relay Service 297-5353 (Twin Cities) or 1-800-627-3529 (Greater Minnesota)

AN EQUAL OPPORTUNITY EMPLOYER

1. STATUTORY AUTHORITY

The statutory authority of the Board to adopt or amend these rules is as follows:

Minnesota Statutes, section 148.08 (1992) authorizes the Board to "promulgate rules necessary to administer sections 148.01 to 148.105 to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic, and defining any terms, whether or not used in sections 148.01 to 148.105, if the definitions are not inconsistent with the provisions of 148.01 to 148.105."

2. STATEMENT OF NEED AND REASONABLENESS

It is important for the public to be cognizant of the qualifications of professionals they engage to attend to their health care needs. All licensed health care professionals are required to acquire a specific amount of education and/or training prior to being licensed by the state to provide services which may impact the health care of the clientele they serve. The public entrusts the state with the responsibility of ensuring compliance with appropriate standards of licensure. The public's primary means of determining the form in which the health care will be delivered, as well as the qualifications of the professional so providing, is through the legal designation of the professional. These professional designations must be reasonably recognized by the public and others, as an established standard which can be consistently relied upon. The board has received complaints in the past, regarding a doctor of chiropractic who, in some form of advertising, referred to themselves simply as "doctor" leading the reader/consumer to believe they were qualified as a medical doctor. The proposed rule

requires, that at any time a doctor of chiropractic makes any professional reference to her/himself, that s/he must specify that professional status as "D.C.", "Doctor of Chiropractic", "Chiropractor", or "Chiropractic Physician". The latter of these designations has generated requests for hearing, and will, therefore, be a focus of discussion in this instrument. The other three options do not appear to have generated any controversy.

It might be argued by some that utilization of the term "physician" in any form, should be confined exclusively to the province of medical doctors. This question should be discussed from two perspectives: historical and legal.

From an historical viewpoint, the term physician should not be considered the private domain of the medical profession. A review of many dictionaries, and books of etymology disclose such definitions as "a student of natural science or physics"¹; "One who practices the healing art including medicine and surgery"²; "a healer: one who cures moral, spiritual, or political maladies or infirmities"³ "a person who heals or exerts a healing influence"⁴; "one who practices the healing art"⁵; "any person or thing that heals, relieves, or comforts."⁶ Therefore, from the historical perspective, the term "physician" has not been confined to medical doctors, but largely to any person exerting some form of healing influence, which has traditionally and appropriately included medical doctors. Based on the above citations, however, it should be understood that reserving the term "physician" for the sovereignty of medical doctors proves a

disservice to the public who view their doctor of chiropractic's ministrations to be consistent with the above definitions. In consideration of these definitions, it would seem that there should be no impediment to the use of the term "physician" standing alone. However, the MBCE's position is that doctors of chiropractic should be specific about the type of healing care being provided, in order not to mislead the public. Therefore the use of the term "chiropractic physician" is specific, denotes the type of healing care that is offered, makes this designation separate and distinct, and is not in violation of Minnesota statutes.

From a legal perspective, the evidence and precedence in favor of allowing the use of the term "chiropractic physician" is substantial and convincing. To begin with, Minnesota Statutes (MS) Chapter 148.10, § 1 (1) permits the MBCE to take disciplinary action against any practitioner for any "advertising that is false or misleading ...". The MBCE has never received a complaint by a member of the public, indicating that they felt they were misled by any doctor of chiropractic who presented themselves as a chiropractic physician (by any form of presentation or advertising) into believing they had any credential, qualification, expertise, or professional capacity other than that of a doctor of chiropractic. Therefore it is the position of the board that a doctor of chiropractic using the term chiropractic physician is not in violation of the aforementioned statutory citation.

Secondly, the medical practice act, MS 147.081, § 3, (6) , specifies the terms or phrases that may be used by medical doctors in reference to their professional designations. More specifically, the statute is written to designate those terms or phrases which other professions or persons are expressly forbidden from using. The statute states, in part, "[A] person ... is "practicing medicine" or engaged in the "practice of medicine" if the person does any of the following: ... uses in the conduct of any occupation or profession pertaining to the diagnosis of human disease or conditions, the designation "doctor of medicine," "medical doctor," "doctor of osteopathy," "osteopath," "osteopathic physician," "physician," "surgeon," "M.D.," "D.O. or any combination of these designations." Each prohibited term or phrase is encased in quotes, giving more weight to the specific intent with which it was written by the legislature. It is of note, that the phrase "chiropractic physician" is not contained in this list of prohibited terms and phrases. The second portion of this statement which states "or any combination of these designations" may be used to argue against utilization of a phrase concerning the term "physician". However, if this exclusion were to be applied in this manner, it would prohibit the use of such phrases as doctor of chiropractic or chiropractic doctor which are accepted standards and have not been the subject of dispute. It would seem, therefore, that use of the designation "chiropractic physician" is not inconsistent with legislative intent nor public policy.

Third, are federal citations which utilize the designation of physician in conjunction with chiropractic. According to a fact sheet put out by the U.S. department of Labor, discusses the 1974 ammendments, and that the statute "provides that the term 'physician' includes chiropractors . . ."⁷ Additionally, 42 U.S.C.A. § 1395x(r) states 'The term "physician", when used in connection with the performance of any function or action, means . . .(5) a chiropractor who is licensed as such . . ."⁸ The MBCE believes these positions to be consistent with the current legal, economic, and political, and consumer health care climate.

Finally, in preparing materials for the promulgation of this rule, the MBCE sent a survey to the other forty nine of the United States, receiving responses from a significant majority of them. One of the questions posed on the survey, was whether or not their state legally allowed for use of the term "chiropractic physician". The overwhelming majority of respondents do allow for use of the designation "chiropractic physician."^{9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35}

In addition to these states noted above, the term "chiropractic physician" already exists in administrative rules previously established by the board.³⁶ Therefore, allowing the use of the designation "chiropractic physician" is consistent with prevailling national standard. As a result, persons moving from one jurisdiction to another, will experience and appreciate the consistency afforded by this standard.

In summary, since 1) statutory authority allows rules promulgation to define terms; 2) consistency in terminology is compatible with public need and policy; 3) historically, the term physician was not intended (except by medical doctors) to become the exclusive domain of the medical profession; 4) there is no evidence that the public is in any way misled by use of the designation "chiropractic physician"; 5) the medical practice act does not prohibit the use of the designation "chiropractic physician"; 6) there is significant federal and state precedence for allowing the use of the designation "chiropractic physician"; and 7) this designation already exists in the text of some administrative rules, this rule is needed and reasonable.

3. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Minnesota Statutes, sections 14.05-14.12 and 14.22-14.28, specify certain procedures which must be followed when an agency adopts or amends rules. Procedures applicable to all rules, Minnesota Statutes, sections 14.05-14.12 as well as 14.22-14.28 are being complied with by the Board as noted below.

The adoption of, or amendments to, these rules will not require the expenditure of public money by local public bodies, nor do the rules have any impact on agricultural land. **See** Minn. Stat. 14.11. The adoption of these rules would have no effect on small business as discussed below. **See** Minn. Stat. 14.115.

Pursuant to Minnesota Statutes, section 14.23, the Board has prepared this Statement of Need and Reasonableness which is available to the public.

The Board will publish a Notice of Intent to Amend or Adopt the Rules With a Public Hearing in the **State Register** and mail copies of the Notice and proposed amendment to persons registered with the Minnesota Board of Chiropractic Examiners pursuant to Minnesota Statutes, section 14.14, subdivision 1a. As required by Minn. Stat. 14.22, and M.R. 2010.0300, the notice will include the following information: a) that the public has 30 days in which to submit comments in support of, or in opposition to, the rule; b) a statement that if 25 or more persons submit a written request for a public hearing within the 30 day comment period, a hearing will be held; c) giving information on the manner in which persons may submit comments; d) that the rule may be modified if modifications are supported by data and the views submitted; and e) that notice of the date of submission of the proposed amendment to the Attorney General for review will be mailed to any person requesting to receive the notice, and giving information on how to request the notice.

The Board will submit the proposed amendment and notice as published, the amendment as proposed for adoption, any written comments which have been received, and this Statement of Need and Reasonableness to the Attorney General for approval of the amendment as to the legality and form.

These rules will become effective five working days after publication of a notice of adoption in the **State Register**.

4. ADDITIONAL REQUIREMENTS

Approval of the Commissioner of Finance. Pursuant to Minnesota Statutes, Section 16A.128, subdivision 1, if a fee is to be fixed by rule, the Commissioner of Finance must approve the fee, and the Commissioner's approval must be in the Statement of Need and Reasonableness. Since there is no fee considered as part of this rule, the Commissioner's approval of the proposed fee is not required, and has not been sought.

Small Business Considerations. In preparing to propose these amendments and/or adoptions, the Board considered the methods for reducing the impact of amendments on small business as set forth in Minnesota Statutes, section 14.115, subdivision 2 (1992). The Board noted that the suggested methods for reducing the impact of the rules on small business concern compliance and reporting requirements and performance standards. After review, it has been determined that there is essentially no impact on business of an adverse nature. Nevertheless, any small business which believes they may be affected by the proposed amendments will have opportunity to participate in the rulemaking procedure. Further, a notice of the proposed rule will be mailed to the Minnesota Chiropractic Association, an organization which will likely represent small businesses affected by the amendments.

Dated: _____, 1994 **STATE OF MINNESOTA**

BOARD OF CHIROPRACTIC EXAMINERS

Larry A. Spicer, D.C.
Executive Director

1. The Oxford English Dictionary, Second Ed., Vol. XI. Clarendon Press, Oxford. 1989. p746
2. ibid
3. ibid
4. The American Heritage Dictionary of the English Language, Third Edition. Houghton Mifflin Company. Boston. 1992. p1367
5. The Oxford Dictionary of English Etymology. C.T. Onions. Clarendon Press. Oxford. 1966. p677
6. Webster's New World Dictionary. Third College Edition. Simon and Schuster. Cleveland. 1988. p 1019.
7. U.S. Department of Labor. Employment Standards Administration. OWCP Fact Sheet Number 2 re: Federal Employees Compensation Act (FECA). Rules on Chiropractors.
8. Medicare Administration Act. 42 U.S.C.A. §1395x(r)
9. State of Alabama, Statutes and Administrative Rules, #190-x-5-.04(3)(i). 7/30/93
10. State of Arizona, Administrative Code. R4-7-101. September 30, 1993.
11. State of Arkansas, Rules of Procedures, Part Three. D.
12. State of Connecticut. Statutes. Chapter 372, Section 20-24. Definitions. p11.
13. State of Florida. Statutes. Chapter 460.403, (3)(b). Definitions.
14. State of Idaho. Idaho Code. 54-705 (3).
15. State of Indiana. Statutes. 846 IAC 1-3-2. Code of Professional Conduct. Sec. 2 (c)
16. State of Maine. Revised Statutes 1964. Title 32. Chapter 9. Sec. 454.
17. State of Massachusetts. Statutes. Section 95. p5.
18. State of Michigan, Statutes and Administrative rules. Part 164. 333.16401,(1)(a). p 105 .

19. State of Missouri. Statutes. 331.030(2)(e). p8.
20. State of Nebraska. Submission by State Board of Chiropractic Examiners.
21. State of Nevada. Statutes. NRS 634.120 (2).
22. State of New Mexico. Statutes. 64-1-2 (C).
23. State of North Carolina. Statutes. §90-154.(4)
24. State of North Dakota. Statutes. 43-06-11. p6.
25. State of Ohio. Statutes or administrative rules. 4734.09. p6
26. State of Ohio. ACA/FYI. Court of Appeals Rules D.C.'s Are Physicians. May, 1994
27. State of Oklahoma. Attorney General's Opinion. Letter from Susan B. Loving, Attorney General, to The Honorable Cal Hobson, State Senator. October 6, 1993. p4.
28. State of Oregon. Administrative Rules. Division 10. 811-10-005 (1).
29. State of Rhode Island. Chiropractic Practice Act, with associated rules and regulations. Letter from Russell J. Spaight, Administrator, Professional Regulation. 11 May 1994.
30. State of South Carolina. Chiropractic Practic Act. 25-4, (F) (1) and (2). p5.
31. State of South Dakota. Codified laws. 36-5-2. July, 1986. p2.
32. State of Texas. Statutes. Chapter 80.2 (a)(5). Also note the Opinion of the Attorney General. December 28, 1990, p6859.
33. State of Vermont. §521 (3)
34. State of Virginia. Laws of Virginia Relating to Medicine and Other Healing Arts. Department of Health Professions. 54.1-2903. 1993.

35. State of Washington. RCW 18.25.090.

36. State of Minnesota. Administrative Rules, Chapter 2500.2500 § 7 and 8. State of Minnesota.
1992