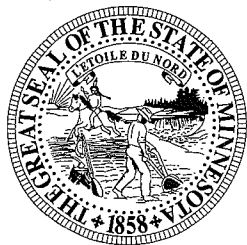


4-24-2006



Minnesota Board of Chiropractic Examiners

April 3, 2006

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Rules Of The State Board Of Chiropractic Examiners Relating To Inactive Acupuncture Registration status.

Dear Librarian:

The Minnesota Board of Chiropractic Examiners intends to adopt rules relating to Inactive Acupuncture Registration status. We published a Notice Of Intent To Adopt Rules Without A Public Hearing on February 21, 2006 in the State Register. It was an oversight that we failed to submit this SONAR at the time we mailed our Notice of Intent to Adopt Rules to the official rulemaking mailing list and other affected parties.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, and in an attempt to remedy the above oversight, the Board is sending the Library a copy of the Statement of Need and Reasonableness.

If you have any questions, please contact me at 612-617-2226.

Yours very truly,

Micki King
Micki King
Health Program Representative

Enclosure: Statement of Need and Reasonableness

STATE OF MINNESOTA

APPROVED

BOARD OF CHIROPRACTIC EXAMINERS

Proposed Permanent Rules Relating to
Inactive Acupuncture Registration

STATEMENT OF NEED
AND REASONABLENESS

1. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (Hereinafter "Statement") can be made available in an alternative format, such as large print, Braille, or Cassette tape. To make a request, contact the Board at:

**Minnesota Board of Chiropractic Examiners
2829 University Ave. SE, Suite 300
Minneapolis, MN 55414-3220
Phone: 612-617-2222
Fax: 612-617-2224
TTY: 1-800-627-3529**

2. INTRODUCTION

The Minnesota Board of Chiropractic Examiners (hereinafter "Board") is the regulatory agency empowered with the responsibility of regulating doctors of chiropractic in the State of Minnesota. The Board was codified originally in 1919, but the rule making authority by which these rules are promulgated originates in the 1983 legislative session. Pursuant to Minn. Stat. §14.23 (2004) the Board hereby affirmatively presents the facts establishing the need for, and reasonableness of the establishment of an Inactive Acupuncture Registration.

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.

3. STATUTORY AUTHORITY

The general statutory authority of the Board to adopt or amend rules is codified in Minn. Stat. § 148.08 (2004) which 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." Research indicates that this authority was originally established in Session Laws Chapter 346, section 4 (Subd. 3) amending 1982 Statutes, Section 148.08. To date, this authority has not expired.

4. STATEMENT OF NEED AND REASONABLENESS

In June of 2004, the Board adopted rules which modified the registration provisions for those licensed doctors of chiropractic who also wished to register to perform acupuncture services for their patients. Among the provisions were included criteria for late renewal of acupuncture registrations. Specifically, the Board included provisions which state:

Any registrant who fails to renew registration for more than 30 days after the due date for renewal, and who wishes to renew registration, must reapply for registration prior to providing acupuncture services, pay the initial registration fee, and pay the penalty fees in part 2500.1150.

Any registrant who fails to renew registration for more than one year but less than five years, and who wishes to renew registration, must reapply for registration prior to providing acupuncture services, pay the initial registration fee, pay the penalty fees in part 2500.1150, and complete ten hours of

acupuncture-related continuing education for each year the registration was not renewed.

Any registrant who fails to renew registration for a period of more than five years and who wishes to renew registration, must reapply for registration prior to providing acupuncture services, pay the initial registration fee, pay the penalty fees in part 2500.1150, and successfully complete either the National Board of Chiropractic Examiners Acupuncture Examination or the NCCAOM Examination. [Emphasis added]

It is this third section which provided the most concern, for those doctors who may be relocating to another jurisdiction for a period of time, and who may ultimately wish to relocate to Minnesota. The board has provided for an expedient method of managing this doctors chiropractic license which would allow for reduction in annual renewal fees, and a deferral in the requirement for showing compliance with continuing education. In this case, the doctor is only required to show compliance with interim continuing education requirements when they applied for reinstatement of their Minnesota License. However, no such provision exists for the acupuncture registration.

Prior to the promulgation of the above described rule, there were no "consequences" for allowing an acupuncture registration to remain unrenewed for any length of time. Additionally, there were no continuing education requirements, particularly for those who may have relocated and may not even be utilizing acupuncture.¹ This, then, provided confusion as to what alternatives exist for a licensee who wishes to relocate to another state, and convert their license status to Inactive, but who may also have an acupuncture registration to deal with.

It has always been the position of the Board that having any type of registration under the Board, (Including an acupuncture registration) was subordinate to having a license in the first place. However, for a licensee who relocates for a period greater than 5 years and wishes to return, they can do so fairly easily with regard to their license. Not so, with regard to their acupuncture registration. It would now seem that the licensee/registrant would be obligated (based on the language stated above) to reapply, including paying penalty fees, and taking a national examination for re-registration. The only alternative is to allow a licensee to have an inactive license with an active acupuncture registration. Either of these is counterintuitive and contrary to the Board's original intent.

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In a separate promulgation proceeding, the Board is establishing a requirement for continuing education for those practitioners who are also registered to perform acupuncture. The requirement in that proceeding is consistent with what's being promulgated in this proceeding.

The Board concluded that the most efficient way to remedy this vacuum is to create an inactive registration that nearly parallel's the Inactive License Status. Therefore, doctors who are relocating and have an acupuncture registration, can convert both the license and the acupuncture registration to an inactive status. Generally speaking this status can remain in place for an indeterminate length of time at the discretion of the licensee. In order to reinstate the licensee must merely show they have kept current with continuing education requirements for both their chiropractic license and their acupuncture registration. In this case, reinstatement is a fairly expedient and painless process. This document will now detail the provisions under consideration.

2500.XXXX INACTIVE ACUPUNCTURE REGISTRATION

This rule parallels the inactive license registration established in M.R. 2500.2020. It first establishes several requirements, specifically that the Minnesota licensee convert their license status to Inactive, and that they be actively practicing elsewhere. By requiring this, the Board is assured that this practitioner is keeping their skills current both through practice, and through the continuing education requirement established by their current licensure state. It also formally establishes the Inactive registration as the appropriate alternative for a licensee/registrant who relocates.

2500.XXXX ANNUAL RENEWAL OF INACTIVE ACUPUNCTURE REGISTRATION

This rule theoretically parallels the inactive license renewal requirements established in M.R. 2500.2030. This is a qualified statement since the fee for renewal of the inactive license was previously established by rule at 75% of the license renewal fee. Since that time, the rules promulgation with regard to fees has been shifted to the Legislature. Accordingly, the Board has already started the process of establishing the fee for renewal through legislative action. It is anticipated that the annual renewal fee will be a modest \$25.00. This fee will help to defray the attendant administrative costs of maintaining and managing registration records. This provision also requires that the applicant complete an annual renewal application, which will serve to produce an annual update of the licensee's records with address and other contact information.

2500.XXXX REINSTATEMENT OF INACTIVE ACUPUNCTURE REGISTRATION

This rule parallels the inactive to active license reinstatement requirements established in 2500.2040. It is this provision where the "rubber meets the road" on the inactive acupuncture registration. Until such time as the licensee intends to relocate to Minnesota, the registration is essentially held in abeyance. However, when a licensee decides to return to Minnesota, they usually wish to be "up and running" in fairly short order. This

provision requires that the licensee submit a reinstatement application which will, again, give the Board an opportunity to get updated information, including discipline information (if any) and license status information from their current licensure Board. This section also contains a provision for a reinstatement fee to defray the cost of the additional paperwork and staff time necessary to accomplish the reinstatement provision. Such an application will be filtered through at least four divisions (as is currently done with a license reinstatement) in the Board office.¹ Interestingly, while this seems bureaucratically top-heavy, in fact the average time from receipt of a completed application to conversion is in the neighborhood of 1-2 days. As previously described, the establishment of a fee is accomplished through the legislative process, and the Board is currently anticipating a reinstatement fee of \$50.

This provision also establishes the requirement that the licensee show evidence of having acquired ongoing continuing education in the practice of acupuncture. This concept, as well as the number of hours is consistent with the rule being promulgated through a separate procedure. It should also be noted here that this requirement may be part of, rather than in addition to, the regular CE requirement the licensee has to comply with in their state prior to reinstatement in Minnesota.

Finally, this section affirmatively states that a person maintaining this inactive registration will not be required to take the nationalized exams required of M.R.2500.3000 Subp. 2 for the purposes of reinstatement.

5. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Pursuant to Minn. Stat. §14.23, (2004) and in accordance with the requirements established in Minn. Stat. §14.131 (2004), 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 Without a Public Hearing in the **State Register** and mail copies of the Notice and proposed amendment(s) to persons registered with the Minnesota Board of Chiropractic Examiners pursuant to Minn. Stat. § 14.22, subdivision 1, and § 14.14, subdivision 1a. As required by Minn. Stat. §14.22, and M. R. 2010.0300, the notice will include the following information: 1) that the public has 30 days in which to submit comments in support of, or in opposition to, the proposed rule(s) and that comment is encouraged; 2) that each comment should identify the portion of the

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The support division receiving and processing the application and payment, the disciplinary division to review for any adverse history, the Executive Director for review and approval, and the licensing division to complete all necessary data entry for the license conversion.

proposed rule addressed, the reason for the comment, and any change proposed; 3) that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held; 4) the manner in which persons shall request a public hearing on the proposed rule; 5) the requirements contained in section 14.25 relating to a written request required for a public hearing, and that the requester is encouraged to propose any change desired; 6) that the proposed rule(s) may be modified if modifications are supported by the data and views submitted; and 7) that if a hearing is not required, notice of the date of submission of the proposed rule to the Chief Administrative Law Judge for review will be mailed to any person requesting to receive the notice. Further, in connection with clauses (1) and (3) above, the notice will also include the dates on which the comment period ends.

The Board will then 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 Administrative Law Judge for approval of the proposed rules or amendments as to their legality and form.

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

6. RULE DEVELOPMENT PROCESS

The development of rules follows action by the full Board in which an authorizing resolution is adopted. The proposed rule is then submitted to the rules committee for language development, and the Request for Comments is published. The rules committee consists of three Board members, (at least one of which is a member of the executive committee) and the executive director. At this point, the rules follow the rest of the statutory requirements established in the Administrative Procedures Act. In addition, the Board established an ad hoc committee for the purpose of reviewing the impact of rules previously adopted. In essence, this committee evaluates the rules to determine whether the rules have accomplished their intended purpose, or to determine if some elements of adopted rules create more problems than they solve. Some rules promulgation may derive from the recommendations of this committee. However, this amendment was not subject to this process.

7. DESCRIPTION OF CLASSES OF PERSONS PROBABLY AFFECTED BY RULE

Minnesota Statute §14.131 (1) (2004) requires that the SONAR include a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule. It is the Board's position that the class(es) of persons that will be affected by the rule(s) will be currently licensed doctors of chiropractic who are also registered in acupuncture, and who may be seeking relocation to other jurisdictions for extended periods of time, and who will may seek re-licensure in the State of Minnesota in the distant future.

8. PROBABLE COSTS TO AGENCY(IES) OF IMPLEMENTATION AND ENFORCEMENT

Minnesota Statute §14.131 (2) (2004) requires that the agency promulgating the rule include any information ascertained regarding the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule(s) and any anticipated effect on state revenues. The Board has an annual budget of \$125,000 to be used for Attorney General's costs, utilized in its efforts at enforcement. Therefore, costs for enforcement would be unable to exceed that amount plus any amounts required of staff time. However, the nature of the rule(s) proposed are such, that it is expected that the costs required to enforce these requirements would be minimal. There are no other state agencies responsible for implementing or enforcing the Board's rules. Therefore the Board does not believe other state agencies will incur any costs if these rules are adopted. These proposed rules will have no impact on the State's general fund, since the Board's entire budget is administered through the Special Revenue Fund, rather than the General Fund.

9. DETERMINATION OF LESS COSTLY/INTRUSIVE METHODS FOR ACHIEVING PURPOSE

Minnesota Statute §14.131 (3) (2004) requires that the agency promulgating the rule include any information ascertained as to whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule(s). The Board submitted the rules to the scrutiny of the "Request for Comments", as well as publishing information in the Board newsletter. Furthermore, the professional association representing the professional interests of the licensees receives all rules

promulgation mailings. To date, no information has been presented which suggests less costly or intrusive methods for accomplishing the purposes of the proposed rule. Additionally, there will be a Notice of Intent to Adopt published in the State Register as part of the normal process of promulgation. This will allow another opportunity for interested parties to make such comments which will become part of the record, and which will be reviewed by the full Board before final adoption. The Board will have the opportunity to submit the proposed rule(s) to additional changes if comments suggest less costly or intrusive methods to accomplish the task. Finally, the Board will consider final adoption at a public Board meeting, allowing a third opportunity for comment and modification if necessary. Nevertheless, the Board does not believe there are any less costly or intrusive methods for achieving this purpose.

10. DESCRIPTION OF ALTERNATIVE METHODS CONSIDERED

Minnesota Statute §14.131 (4) (2004) requires that the agency promulgating the rule include any information ascertained regarding a description of any alternative methods for achieving the purpose of the proposed rule that were considered by the agency, and why they were rejected in favor of the proposed rule. There were no other methods considered for achieving the purpose of the proposed rule(s). This stems from the fact that the Board is consistently advised by the Attorney General's office of the Board's limitations in establishing enforceable policies by any method other than rule. While the objectives of some of the rules may be achieved by education to the profession, experience has shown that the outcomes of these attempts to educate the profession through such vehicles as the Board newsletter, are not consistent, and cannot be relied upon. Moreover, efforts such as this are costly, and do not have the force and effect of law. Therefore, there is no motivation for the licensees to comply even if they do become aware of the policy(ies). In order for the Board to establish standards by which the public can feel protected, and by which the licensees can measure their behavior, such policies must be the subject of rule or statute. Administrative rule making is the vehicle granted by the legislature to the agency to establish such policy(ies). The only other vehicle currently available to the Board to achieve these goals, is to utilize the Boards Rules Waivers

authority. However, the Board uses this authority sparingly and not, typically, for an ongoing experience. The use of the Variance rule is typically utilized to address unanticipated situations. Accordingly, the Board believes rule making is the most appropriate vehicle to accomplish this goal.

11. PROBABLE COST OF COMPLIANCE WITH RULE

Minnesota Statute §14.131 (5) (2004) requires that the agency promulgating the rule include any information ascertained regarding the probable costs of complying with the proposed rule(s), as well as "including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals." Additionally, Minnesota Statute §14.127 (Session Laws 2005) requires that an agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full time employees; or (2) any statutory or home rule charter city that has less than ten full time employees. The Board anticipates minimal costs will be associated in complying with this rule to any affected party. It is not anticipated that the Board's total revenue derived from this rule would reach \$1000 annually for at least the next 5 years.

12. PROBABLE COST OF NOT ADOPTING PROPOSED RULES

Minnesota Statute §14.131 (6) (2004) requires that the agency promulgating the rule include any information describing the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals. As stated in paragraph 10, the Board does have a variance rule which could be utilized on a case by case basis. However, this does impose some costs on the part of the candidate for licensure as well as the Board. There is a process an individual must go through to acquire a rule variance, which includes the filing of a written request. Such requests are considered by the Executive Committee, which is composed of three

Board members, the Executive Director, and a staff person. Accordingly, there would be the costs of per diem's, mileage, staffing and copying costs associated with each request.

13. EVALUATION BY COMMISSIONER OF FINANCE

Minnesota Statute §14.131 (6) (2004) requires that the agency promulgating the rule must consult with the Commissioner of Finance to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government. Pursuant to a memorandum from the Commissioner of Finance dated December 12, 2005, the Department of Finance has concluded that the "rules do not have a fiscal impact on local units of government," and that "the Board has adequately considered the impact of the proposed rules on local government."

14. ASSESSMENT OF CONFLICT WITH FEDERAL REGULATIONS

Minnesota Statute §14.131 (7) (2004) requires that the agency promulgating the rule include any information ascertained regarding an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference. Since the federal government is not involved in the licensure of doctors of chiropractic, it is believed that the rule(s) herein proposed offer no conflict with federal regulations.

15. DESCRIPTION OF ADDITIONAL EFFORTS TO NOTIFY

Minnesota Statute §14.131 (2004) requires that the agency promulgating the rule(s) include any information ascertained regarding additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made. The Board provides a newsletter mailed at no charge to all licensees as well as other persons, organizations, or agencies indicating interest in acquiring the newsletter. Notices regarding rule subject matter and invitations to acquire information on rules being promulgated are a standard part of the newsletter. Additionally, the Board maintains a current list of all persons or organizations indicating an interest in

the Board's rules promulgation activity. The Board mails separate notification to all persons or organizations on this list. It is known that the professional association which represents the interests of the profession at large is a recipient of the newsletter, and is also maintained on the active rules notification list. Finally, beginning in October of 1998, the Board established a web site (www.mn-chiroboard.state.mn.us). Since that date, all statutorily required postings also appear on the Board's web site. The Board diligently attempts to make the profession and the public aware of the Board's web site. Beyond this, the primary affected parties to this rule, are currently licensed doctors of chiropractic who are also registered in acupuncture, and who may be seeking relocation to other jurisdictions for extended periods of time, and who may seek re-licensure in the State of Minnesota in the distant future. It is the Board's intention to send a direct mailing of the Notice of Intent to Adopt this rule at the same time this notice is posted in the State Register, to all persons who are currently registered to perform acupuncture. In addition, the Board made direct contact with officials at Northwestern Health Sciences University (NWHHSU), to be assured that they were aware of the rulemaking effort and had an opportunity to have early stage input. This was done because of a previous experience with NWHHSU, in which they elected not to engage the Board during the promulgation process, and forced the rulemaking to a hearing.¹ In order to avoid this the Board proactively made contact to determine the views of the institution. It appears they have no objection to this promulgation.

16. STATE REGULATORY POLICY

Minnesota Statute §14.131 (2004) requires that this Statement describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002 (2004). Minnesota Statute §14.002 states that whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals. The Board believes that this proposed

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This institution has a school of acupuncture associated with it, and this particular dispute was also related to acupuncture. Therefore, the Board felt it wise to affirmatively make contact to avoid this with regard to this effort.


amendment meets both of these goals. This rule establishes flexibility by setting up criteria by which a licensee and acupuncture registrant can place their acupuncture registration in an inactive status while not using it in Minnesota. This allows for a reduced renewal fee and no requirements to address continuing education unless, and until the practitioner wishes to reinstate. Moreover, it affirmatively states the licensee/registrant will not be required to take the national examination when the time comes for them to reinstate. The Board contends that this stresses the issue of maximum flexibility. At the same time, this rule establishes a reinstatement provision which requires a certain amount of continuing education prior to such reinstatement. The Board believes this considers the issue of superior performance.

17. CONCLUSION

Based on the information contained herein, the Board has demonstrated that these proposed rules are both needed and reasonable to enable the Board to fulfill its regulatory and enforcement duties in accordance with current statutes and rules, and provide necessary and important services to applicants, licensees, and the public. Accordingly, the Board hereby respectfully submits this Statement of Need and Reasonableness.

Dated: January 25, 2006

**STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS**



Larry A. Spicer, D.C.
Executive Director