

STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

**Proposed Permanent Rules Relating to
Animal Chiropractic Registration and
Procedures.**

**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: 651-201-2850
Fax: 651-201-2851
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 general rule making authority by which rules are promulgated originates in the 1983 legislative session. Pursuant to Minn. Stat. §14.23 (2006) the Board hereby affirmatively presents the facts establishing the need for, and reasonableness of the establishment of rules related to the practice of chiropractic on non-human vertebrates (animals.)

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 (2006) 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. Additionally, due to the unique nature of these rules, they are additionally authorized under the provision set forth at MS § 148.01, Subd. 1b. This provision was codified in the 2008 Legislative session, and provides that "The Board shall consult with the State Board of Veterinary Medicine (MBVM) in preparing proposed rules on animal chiropractic." [Initials added] The Board hereby affirmatively asserts that it has met the requirements of this provision, by advising the MBVM of, and inviting them to, all scheduled Rules committee meetings in which animal chiropractic was discussed; providing the MBVM with all proposed rules language immediately after such discussion resulted in modifications, and through direct and regular consultations by and between the Executive Directors of both Boards in person and/or via email or phone. It is also of note that many of the rules contained in this proposal were modeled directly from the Veterinary practice act where applicable.

Finally, for the purposes of the rest of this missive, the reader is directed to assume that this document as well as these proposed rules apply ONLY to doctors of chiropractic performing animal

chiropractic, and NOT to doctors of veterinary medicine who may be similarly authorized and governed by the MBVM to perform such procedures.

4. STATEMENT OF NEED AND REASONABLENESS

General Discussion

In the 2008 session, the Legislature enacted statutes authorizing doctors of chiropractic (DC's, or chiropractors), under appropriate conditions, to practice chiropractic on "non-human vertebrates (hereinafter "animals.") This statute was codified as MS §148.01, Subd 1(1a-d); (2); MS §148.032; MS §148.033; and MS §148.035. (All were effective immediately upon enactment.) Generally speaking, these statutes set forth the following:

- ▶ The authority of chiropractor's to provide chiropractic care to animals;
- ▶ A requirement to be registered with the Board before delivering such care;
- ▶ A requirement that animals so treated must be referred by a veterinarian;
- ▶ The requirements for such registration to include an active chiropractic license, requisite education/training, continuing education requirements, and rulemaking authority;
- ▶ Establishment of title authority;
- ▶ Minimum requirements for content of education or training
- ▶ Requirements for certain conditions in facilities where human and animal treatment may co-exist.

Definitions:

The term "animal chiropractor" is clarified to mean that the chiropractor must be licensed by the State of Minnesota, and is separately registered to perform animal chiropractic according to the Statute and these rules.

The phrase "animal rehabilitative therapy" is a phrase derived in part from M.R. 2500.0100, Subp. 11 (Rehabilitative Therapy), and constitutes those therapies which may serve to support the chiropractic adjustments provided to the animals. In general it constitutes most of those therapies which may also be applied to humans with some specific exceptions. For example, it is believed that

the performance of acupuncture on animals by chiropractors would not be permitted at this time, given the current language. Accordingly, "meridian therapy" is clarified for this purpose. Additionally, it was determined that specifying "therapeutic" ultrasound to distinguish it from "diagnostic" ultrasound was important. Further it was determined that the use of electrical forces would not be permitted.

The term "veterinarian" was defined for a specific purpose. The Legislature required that the animal chiropractor be obligated to acquire a veterinarian referral, and the assumption, of course, is that this be from a licensed veterinarian. However, based on the silence of the language, it was determined that this not necessarily be a veterinarian licensed in Minnesota. Accordingly, it is entirely possible that an animal chiropractor could receive a patient and veterinary referral from a South Dakota or Wisconsin licensed veterinarian. Therefore, the language was formulated to allow for that circumstance.

Registration

These proposed rules clarify that an animal chiropractor first be registered with the Board, and it sets forth the requirements for the registration. It clarifies the Board's general practice of receiving certifying credentials directly from the primary source (that is the educational institution providing the education.) Additionally, it is believed that in the not too far distant future the Legislature will set a nominal fee for such registrations and renewals, and so the language was constructed to allow for that. The renewal requirements are also clarified, requiring an application, renewal of the chiropractor's license, and verification of the additional CE requirements established by the Legislature. (Further discussed below.)

Documentation of Referral

The Legislature required that such treatment should be subject to the initial referral of a veterinarian, but did not define how such referral should be managed. Accordingly the Board recognizes that such referrals may be in some written form, but may also come in other forms such as a phone referral. Therefore the Board seeks to require some form of memorializing this referral. Any written referral can be maintained in the patient's record, while others can simply be memorialized and maintained in the patient's record by the chiropractor receiving the referral. There is also certain information required in such a document which will then serve to validate the referral,

such as the veterinarians name, practice address and phone number. This form also allows for additional information which the referring veterinarian feels pertinent to the care of the animal. Finally, this rule allows for communication between the chiropractor and the veterinarian, such that the chiropractor can furnish the referring veterinarian information about the care given by the chiropractor, provided that the chiropractor is not prohibited by the owner or authorized agent from offering such information.

Patient Records

This provision establishes the requirement that records generated pursuant to the care of the animal, must be maintained for 3 years. This is consistent with the records retention requirement in the Veterinary practice act. This provision also clarifies who is to maintain ownership or control of such records, and provides for copies of the records to be transferred to the owner or designated agent following a properly executed request. This provision also allows for a reasonable charge to be made when copying/mailling such records, and establishes an appropriate standard for doing so. Finally, this provisions establishes the requirement for the content of the patient records. This language is an amalgam of the requirements contained in both the veterinary and chiropractic practice acts.

Continuing Education

The Statute requires that the animal chiropractor must take 6 hours of continuing education in animal chiropractic diagnosis and treatment. [SEE MS §148.033] The statute further provides that this be IN ADDITION to the previously established requirements for chiropractors. With the proposed rules, the Board seeks to clarify that such hours must be distinct from those taken for the purposes of human treatment, and further clarifies that such hours be taken for the express purpose of enhancing the academic knowledge or clinical skills of the animal chiropractor (as opposed to practice management for example.) Finally, this provision seeks to incorporate by reference the same requirements for program approval, sponsorship of programs, verification of attendance, program quality, approaches to presentations, prohibited programs, and failure to comply with requirements as established for chiropractors obtaining traditional credits for human care.

Disciplinary Procedures

The Board recognizes the groundbreaking authority provided by the Legislature. However, in so doing, the Board also recognizes that there are very few people currently trained in this subject (although that is expected to change substantially over the years.) Accordingly, the Board members currently have no formal training in this area. Nevertheless, should the Board receive a complaint alleging some issue of incompetence regarding the care delivered by an animal chiropractor, they are obligated to properly and appropriately resolve the complaint. Therefore it seems prudent to make provisions for assistance from the MBVM, and allow for persons who may have expertise particularly in clinically related subjects or even in disciplinary experience, to provide consultation to the Board in the resolution of such cases. Certainly these representatives would be held to the same standards as any Board member in the treatment of such material or information, and would be required to do so in compliance with the Minnesota Data Practices act. The propose rules also provide for the establishment of written procedures to fulfill this requirement for the purposes of establishing a consistent process.

The Board also seeks to incorporate by reference those provisions in the Boards disciplinary act for the purposes of complaint resolution. The Board also seeks to incorporate those relevant provisions which can be found in the Veterinary practice act. Some examples would include the unauthorized dispensing of controlled substances, refusing inspections, failing to report known or reasonably suspected inhumane treatment of animals, etc.

Inactive Animal Chiropractic Registration,

This will serve to combine this section as well as the annual renewal, and the reinstatement of an inactive registration. At times, chiropractors relocate to other jurisdictions for various reasons, such as family considerations, practice opportunities, etc. For this purpose the Board established an Inactive License status to allow for a fairly expedient reinstatement should they wish to return to practice in Minnesota. Since all separate registrations are subordinate to the DC license, these registrations should reasonably become inactive as well, and subject to similar reinstatement procedures as pertains to the license. The Board has done this for other registrations such as

acupuncture, and seeks to do so with the animal chiropractic as well. It first requires that the chiropractor has also applied for inactive status of the chiropractic license, which is ONLY available for a chiropractor practicing in another state or jurisdiction. [SEE 2500.2020]. Again, as stated previously, the Board may seek legislation to impose a modest fee. Therefore a provision is established for that purpose. The reinstatement provision requires the showing of continuing education in the area of animal chiropractic in order to assure that skills have been maintained in the duration.

For the Reasons stated above, the Board believes these rules to be needed and reasonable.

5. COMPLIANCE WITH PROCEDURAL RULEMAKING REQUIREMENTS

Pursuant to Minn. Stat. §14.23, (2006) and in accordance with the requirements established in Minn. Stat. §14.131 (2006), 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 or 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 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; 8) that if a hearing is required, the time, date and location of the hearing. 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 public member) 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 ex post facto 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) (2006) 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 doctors of chiropractic who may wish to perform animal chiropractic. This rule may also affect veterinarians who may refer animal patients to animal chiropractors, although such veterinarians will not be subject to the rule. This rule will also affect animal owners, who would also not be subject to the rule.

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

Minnesota Statute §14.131 (2) (2006) 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 \$160,000 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. However, as stated previously, the MBVM may, on occasion, make a representative available to the Board for the purposes of complaint resolution. However this is not likely to result in any significant cost to that agency, as were any significant costs to be incurred, they would likely be managed through an interagency agreement and funded by the Chiropractic Board. 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) (2006) 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. Moreover, given the language of the statute, it is implicit that the Legislature expected the Board to engage efforts to refine the statutory intent.

10. DESCRIPTION OF ALTERNATIVE METHODS CONSIDERED

Minnesota Statute §14.131 (4) (2006) 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 Rules promulgation 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 Waiver authority. However, the Board uses this authority sparingly and not, typically, for an ongoing experience. The variance rule is typically utilized to address unanticipated situations. Accordingly, the Board believes rule making is the most appropriate vehicle to accomplish its goal.

11. PROBABLE COST OF COMPLIANCE WITH RULE

Minnesota Statute §14.131 (5) (2006) 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 2006) 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 amendment to any affected party and certainly no costs would meet those thresholds.

12. PROBABLE COST OF NOT ADOPTING PROPOSED RULES

Minnesota Statute §14.131 (6) (2006) 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. While it is unlikely that there would be any associated costs to the agency for *not* adopting the proposed rules, still, the possibility cannot

be entirely ruled out. For example, should the failure to promulgate such rules ultimately result in injury or death to an animal that has corporate value (such as a racehorse, or show animal) then the costs could be significant if Board liability were somehow determined. However, this is considered to be a remote likelihood.

13. EVALUATION BY COMMISSIONER OF FINANCE

Minnesota Statute §14.131 (6) (2006) 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. It is anticipated that fees will be imposed for the initial registration of animal chiropractors, as well as the annual renewal of animal chiropractors. Currently, there are only 5 persons so registered. Even at an initial registration of \$100, this would represent approximately 0.1% of the total budget. Additionally, it is not anticipated for there to be any more than approximately 5 persons per year applying for initial registration until some unknown saturation is reached. Accordingly, in the short term, the impact on the budget is reasonably characterized as negligible, while the long term impact is more correctly characterized as marginal. Pursuant to a memorandum from the Minnesota Office of Management and Budget, the Department of Finance has concluded "?????" (See Attached.)

14. ASSESSMENT OF CONFLICT WITH FEDERAL REGULATIONS

Minnesota Statute §14.131 (7) (2006) 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 (2006) 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 doctors of chiropractic who may wish to perform animal chiropractic, veterinarians who may refer animal patients to animal chiropractors, and animal owners. To that end, the Board has established, and had approved, an additional notice plan which was approved on October 27, 2008, and which is attached and incorporated by reference herein.

16. STATE REGULATORY POLICY

Minnesota Statute §14.131 (2006) 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 (2006). 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. By this rule, the Board attempts to set a standard process by which properly credentialed chiropractors can provide neuromusculoskeletal chiropractic care to help relieve ailing animals. Therefore, the Board believes that this proposed amendment meets both of these goals.

17. EFFECT ON LOCAL GOVERNMENTS

Minnesota Statutes §14.128 (2009 Minn. Laws. Ch. 152, s.1) requires that an agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. Promulgation of this rule appears to have no such effect on any division of local government, which would require the adoption or amendment of an ordinance or other regulation.

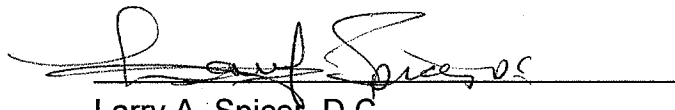
18. CONCLUSION

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 and former licensees. Accordingly, the Board hereby respectfully submits this Statement of Need and Reasonableness.

Dated: __ September 8, 2009

STATE OF MINNESOTA

BOARD OF CHIROPRACTIC EXAMINERS



Larry A. Spicer, D.C.

Executive Director

Attachments: Memorandum; Minnesota Office of Management and Budget
Additional Notice Plan, Approved October 27, 2008