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October 24, 2012

VIA EMAIL ONLY

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Re: In The Matter of the Proposed Amendments to and Repeal of the Medical Services Review Board and Rehabilitation Review Panel's Joint Rules of Procedure; Revisor's ID Number RD4083

Dear Librarian:

The Medical Services Review Board (Board) and Rehabilitation Review Panel (Panel) intend to adopt changes to their joint rules of procedure. The Board and Panel plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the October 29, 2012 State Register.

The Board and Panel have prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board and Panel are sending the Library an electronic copy of the Statement of Need and Reasonableness via email at the same time they are mailing the Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 284-5432.

Sincerely,

A handwritten signature in black ink that reads "Laura Zajac". The signature is fluid and cursive.

Laura Zajac  
General Counsel  
Department of Labor & Industry

Enclosure: Statement of Need and Reasonableness

cc: Dr. Joseph Sweere, D.C., Chair, Rehabilitation Review Panel (via email)  
Mr. Reed Pollack, Rules Liaison, Medical Services Review Board (via email)

## **Minnesota Rehabilitation Review Panel and Medical Services Review Board**

### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendment to and Repeal of Joint Rules of Procedure; (Medical and Rehabilitation: Reviews); *Minnesota Rules*, 5217.0300 to 5217.1000**

### **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, braille, or audio. To make such a request, contact Laura Alsides at the Department of Labor & Industry, 443 Lafayette Road N., St. Paul, MN 55155; phone: (651) 284-5006; FAX: (651) 284-5725; E-mail: [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us). TTY/TDD users may call the Board or Panel through the Department of Labor & Industry at (651) 297-4198.

### **STATUTORY AUTHORITY AND INTRODUCTION**

#### Background Information

The Rehabilitation Review Panel (RRP or Panel) and Medical Services Review Board (MSRB or Board) are independent entities that are administratively and financially supported by the Department of Labor & Industry (Department). The RRP and MSRB each play a role in the Minnesota workers' compensation system by providing expertise to the Department in their respective areas and by resolving certain types of disputes.

Rehabilitation in this context refers to the vocational rehabilitation of injured employees or the surviving spouses of deceased employees. The goal of vocational rehabilitation is "to restore the injured employee so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability."<sup>1</sup> Rehabilitation services are a type of workers' compensation benefits paid for by workers' compensation insurers and regulated by the Department. The services are provided by rehabilitation providers approved by the Department. Registered rehabilitation providers approved by the Department are qualified rehabilitation consultants (QRCs); qualified rehabilitation consultant interns; qualified rehabilitation consultant firms; and registered rehabilitation vendors. In 1979, the Minnesota Legislature created the RRP to: "(a) review and make a determination with respect to appeals regarding rehabilitation plans; (b) hold revocation of certification approval hearings; (c) continuously study rehabilitation; and (d) recommend rehabilitation rules as necessary to the commissioner of labor and industry."<sup>2</sup>

In 1987, the Minnesota Legislature amended the Board and Panel's governing statutes, redefining their functions and authority. Under the current version of Minnesota Statutes, section 176.102, the RRP has the authority to:

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1. Minn. Stat. § 176.102, subd. 1(b) (2010).

2. Laws of Minnesota 1979, Extra Session, Chapter 3, section 36, p. 1279 at: <https://www.revisor.mn.gov/data/revisor/law/1979/1/1979-EX-003.pdf>.

- Review and make a determination with respect to appeals from orders of the Commissioner of the Department of Labor & Industry (Commissioner) regarding certification approval of QRCs and rehabilitation vendors. These decisions are appealable to the Workers' Compensation Court of Appeals. (Minn. Stat. § 176.102, subd. 3)
- Discipline QRCs and vendors and impose a penalty or suspend or revoke certification. The Panel shall make the final decision following receipt of the report of an administrative law judge after the Commissioner initiates a contested case proceeding against a QRC. The decision of the Panel is appealable to the Workers' Compensation Court of Appeals. (Minn. Stat. § 176.102, subd. 3a)
- Study rehabilitation services and delivery, develop and recommend rehabilitation rules to the Commissioner, and assist the Commissioner in accomplishing public education. (Minn. Stat. § 176.102, subd. 3a)

The RRP is composed of two members each from employers, insurers, and rehabilitation, two licensed or registered health care providers, one chiropractor, and four members representing labor, all of whom are appointed by the Commissioner.<sup>3</sup> The Commissioner may also appoint alternates to serve as a member when a member is unavailable. The number of alternates shall not exceed one labor member, one employer or insurer member, and one member representing a licensed or registered health care provider, chiropractic, or rehabilitation.<sup>4</sup>

The MSRB was established by Minnesota Statutes, section 176.103 in 1983. Under the current version of Minnesota Statutes, section 176.103, the MSRB advises the Department about workers' compensation medical issues and acts as a liaison between the Department and the medical-provider community. Under Minnesota Statutes, section 176.103, subd. 3, the MSRB has the authority to:

- Review clinical results for adequacy, considering (1) the clinical effectiveness of the treatment; (2) the clinical cost of the treatment; and (3) the length of time of treatment, and recommend to the Commissioner scales for disabilities and apportionment.
- Review and recommend to the Commissioner rates for individual clinical procedures and aggregate costs. The Board shall assist the Commissioner in accomplishing public education.
- Advise the Commissioner on the adoption of rules regarding all aspects of medical care and services provided to injured employees.
- Sanction a health care provider if a provider has violated a workers' compensation law or rule, or if there has been a pattern of, or an egregious case of, inappropriate, unnecessary, or excessive treatment by a health care provider. The Board shall make the final decision upon petition from the Commissioner and after a hearing, following receipt of the

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3. Minn. Stat. § 176.102, subd. 3. A list of current RRP members is at <http://www.dli.mn.gov/Rrp.asp>.

4. Minn. Stat. § 176.102, subd. 3a.

recommendation of the administrative law judge. The Board's decision is appealable to the Workers' Compensation Court of Appeals.

The MSRB is composed of two chiropractic representatives, one hospital representative, one registered nurse, one physical therapist, six physicians of different specialties, one employee representative, one employer/insurer representative, and one occupational therapist, all of whom are appointed by the Commissioner.<sup>5</sup> The Commissioner may also appoint alternates to serve as a member when a member is unavailable. The number of alternates shall not exceed one chiropractor, one physical therapist, one registered nurse, one hospital representative, three physicians, one employee representative, one employer or insurer representative, and one occupational therapist.

#### Statutory Authority

The Board and Panel's statutory authorities for this rulemaking are stated in Minnesota Statutes, sections 176.102 and 176.103, which authorize the Panel and Board to adopt joint rules of procedure. Minnesota Statutes, section 176.102 provides in subdivision 3b: "The panel may adopt rules of procedure which may be joint rules with the Medical Services Review Board." Minnesota Statutes, section 176.103 provides in subdivision 3 (g): "The board may adopt rules of procedure. The rules may be joint rules with the rehabilitation review panel." These provisions have been used by both the RRP and MSRB since they were enacted in Laws of Minnesota 1984, Chapter 432, Article 2, sections 13 and 15.<sup>6</sup>

The Board and Panel jointly promulgated rules in November of 1984, pursuant to the above authorities. This rulemaking is therefore an amendment of rules for which the Legislature has not revised the statutory authority since, and so Minnesota Statutes, section 14.125 does not apply.

Under these statutes, the Board and Panel have the necessary statutory authority to adopt the proposed rules.

#### Rules History and Overview

Due to the changes made to the Board and Panel's functions in 1987, the rules previously enacted in 1984 became obsolete. The obsolete rules were repealed,<sup>7</sup> and a notice of adoption of new rules was printed in the State Register on February 25, 1991.<sup>8</sup> The joint rules of procedure have not been updated since that time. The Board and Panel intend to amend their rules of procedure to reflect changes since 1991 and improve their procedures. The amendments: correct errors in the current rules; clarify what constitutes a quorum of the Board or Panel; change the time of year in which officer elections are held; modify the frequency of regular Board and Panel meetings; define the duties of Board and Panel officers; and provide for the formation of Board and Panel work groups.

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5. A list of current MSRB members is at <http://www.dli.mn.gov/msrb.asp>. The membership of the MSRB was amended effective May 13, 2009 by changing a person representing "hospital administrators" to a person representing "hospitals" and by changing a person representing the "general public" to an "occupational therapist." See Minnesota Laws 2009, Chapter 75 at:

<https://www.revisor.leg.state.mn.us/laws/?view=session&year=2009&type=0>.

6. Available at: <https://www.revisor.mn.gov/laws/?id=432&year=1984&type=0>.

7. *State Register*, Volume 14, page 1969 (14 SR 1969).

8. *State Register*, Volume 15, page 1877 (15 SR 1877).

In the December 27, 2011 edition of the State Register (Volume 36, Number 23), the Board and Panel published a Request for Comments for Possible Amendment or Repeal of Joint Rules of Procedure, (Medical and Rehabilitation: Reviews); *Minnesota Rules*, 5217.0300 to 5217.1000.<sup>9</sup> To date, the Board and Panel have not received any comments regarding their joint rules of procedure. The proposed amendments to the rules were discussed and recommended for promulgation by the Board and Panel at regularly scheduled public meetings held quarterly between October 2011 and October 2012.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the Statement of Need and Reasonableness. Paragraphs (1) through (8) below quote these factors and then give the Board and Panel's response.

**“(1) 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”**

Those who would probably be affected by the proposed rules include members of the public who attend Board and Panel meetings or are interested in medical or vocational rehabilitation services provided to employees with workers' compensation injuries. For example, interested parties may include injured employees, employers, labor organizations, workers' compensation insurers and other payers, QRCs, rehabilitation vendors, workers' compensation attorneys, and health care providers who treat injured employees, such as physicians, chiropractors, physical therapists, and hospitals.

All of the above-named classes of persons will benefit from the rule amendments proposed because the rules seek to clarify the Board and Panel's current procedures and enhance their effectiveness. Board and Panel meeting attendees and the public will benefit from the proposed rules because the rules will more accurately define how the Board and Panel perform their duties and functions. The updated rules will enhance interested parties' understanding of Board and Panel operations.

There are no classes of persons that will bear increased costs because of the proposed rules. The proposed rules decrease the frequency of the Board and Panel's regular meetings from monthly to quarterly. However, there will be no negative impact on the quality of services that the Board and Panel provide to workers' compensation stakeholders because the Board and Panel will have the ability to call a special meeting if necessary to accomplish their work. Currently, the Board and Panel are meeting on a quarterly basis.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

No effect on state revenues is anticipated as a result of the proposed rule amendments. No costs to the Board, Panel, Department of Labor & Industry, or any other agency are anticipated for the

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9. *State Register*, Volume 36, page 742 (36 SR 742).

implementation and enforcement of the proposed rules, because the rules will update the current rules to match the Board and Panel's existing practices. The rule amendments do not impose any new requirements on regulated parties. Therefore, no enforcement or implementation is necessary. The proposed rules direct the Board and Panel to schedule quarterly meetings instead of monthly meetings, resulting in a savings to the Department in staff time and administrative costs.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

The purpose of the rule amendments is to: correct errors in the current rules; clarify what constitutes a quorum of the Board or Panel; change the time of year in which officer elections are held; modify the frequency of regular Board and Panel meetings; more clearly define the duties of Board and Panel officers; and provide for the Board and Panel to form work groups.

No less costly or less intrusive methods were identified that would achieve the above purposes. The Board and Panel have determined that the proposed rules will be no more costly or intrusive than their current rules of procedure.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

The Board and Panel have not identified any alternative methods for achieving the purpose of the proposed amendments. One option discussed was to continue to schedule monthly Board and Panel meetings, but cancel them in order to meet on a quarterly basis. The Board and Panel determined this method is not helpful to members of the public who may want to attend meetings or otherwise track the Board and Panel's work.

**“(5) the probable costs of complying with the proposed rule, 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”**

The Board and Panel have not identified any probable costs of complying with the proposed rules. The proposed amendments are to rules governing the Board and Panel's internal operations. The Board, Panel, and Department are not expected to incur any increased costs as a result of the rule amendments. The Department will continue to incur the typical administrative costs associated with hosting Board and Panel meetings, such as copy costs, staff time, and the cost of meeting space.

The rule amendments are procedural and do not regulate any affected parties. The rule subparts concerning contested case proceedings before the MSRB or RRP are not being amended.

**“(6) 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”**

The consequence of not adopting the proposed rules is that the Board and Panel’s rules of procedure will contain errors and in some instances remain unclear and not reflective of the entities’ current practices. Additionally, if the proposed rules are not adopted the Board and Panel will continue to hold their officer elections in the summer, when attendance at meetings is lower than the rest of the year. This may mean that Board or Panel members or members of the public who are interested in officer elections will be unable to attend.

**“(7) 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”**

Workers’ compensation is a state-created and state-regulated program. There are no known federal regulations related to any of these proposed rule amendments.

**“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule”**

The purpose of the rules is to update and improve the RRP and MSRB rules of procedure consistent with current practice. There are no known federal regulations related to any of these proposed rule amendments. The Board and Panel’s rules of procedure are the only federal or state regulations that relate to the specific purpose of these rules. The Board and Panel remain subject to other state regulations that apply to the procedures of all state agencies, including state boards, such as the Open Meeting Law, the Data Practices Act, and record retention laws. The proposed rules, when combined with these other state laws, do not increase the cumulative impact of regulations on regulated parties, but instead ensure transparency, clarity and consistency in Board and Panel procedures. Therefore, the proposed rules do not increase the cumulative impact of federal and state regulations related to the purpose of the rules.

## **PERFORMANCE-BASED RULES**

Minnesota Statutes, sections 14.002 and 14.131, require that the Statement of Need and Reasonableness describe how the Board and Panel, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the Board and Panel’s regulatory objectives and maximum flexibility for the regulated party and the Board and Panel in meeting those goals.

The Board and Panel’s joint rules of procedure govern the operations of the Board and Panel. These procedural rules cannot be performance-based and do not regulate parties that appear before the Board or Panel. No regulatory standards are included in the Board and Panel’s rules of procedures.

## ADDITIONAL NOTICE

Minnesota Statutes, sections 14.131 and 14.23, require that the Statement of Need and Reasonableness contain a description of the Board and Panel's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made.

The Board and Panel have identified persons and organizations that represent those most likely to be affected by or interested in the rule amendments. The Notice of Intent to Adopt the proposed amendments will be mailed or e-mailed to all of the following:

1. The members of the Workers' Compensation Advisory Council, which consists of labor, employer, and legislative representatives established pursuant to Minn. Stat. § 176.007, and persons who have requested to receive notice of WCAC meetings;
2. Members of the Workers' Compensation Insurers Task Force, an ad hoc group of workers' compensation payers who meet at the Department of Labor and Industry several times a year to learn about and discuss workers' compensation issues with the Department. The WCITF consists of 19 representatives of workers' compensation insurers, self-insured employers, and third-party administrators. Persons who have requested to receive notice of the WCTIF meetings will also be provided with the Notice;
3. Persons who have requested to receive notice of MSRB meetings;
4. Persons who have requested to receive notice of RRP meetings;
5. Persons and organizations who have requested to be on the electronic mailing list for *CompAct*, the Department of Labor & Industry's quarterly workers' compensation publication;
6. Persons and organizations who are on the Department's e-mail list for health care providers;
7. Persons and organizations who are on the Department's e-mail list for workers' compensation insurers;
8. Persons and organizations who are on the Department's e-mail list for vocational rehabilitation matters;
9. Attorneys on the Office of Administrative Hearing's e-mail list for workers' compensation attorneys;
10. All currently registered rehabilitation vendors, QRCs, and QRC firms;
11. The following professional associations: the Minnesota Medical Association; the Minnesota Chiropractic Association; the Minnesota Nurses Association; the Minnesota



Chapter of the American Physical Therapy Association; the Minnesota Occupational Therapy Association; the Minnesota Pharmacy Association; the Minnesota Association of Rehabilitation Providers; the Minnesota Rehabilitation Counseling Association; the Minnesota Association of Service Providers in Private Rehabilitation; the Case Management Society of America; and the Association of Rehabilitation Nurses;

12. The three workers' compensation managed care plans certified under Minn. Stat. § 176.1351;
13. The League of Minnesota Cities; the Association of Minnesota Counties; the University of Minnesota workers' compensation department; and the Minnesota Department of Finance, Employee Relations division; and
14. Those who have requested a copy of the draft amendments since the Request for Comments was published in the *State Register* on December 27, 2011.

The Board and Panel have also posted the proposed rules and the Notice of Intent to Adopt the proposed rules on their rule docket on the Department of Labor & Industry's website at: [http://www.dli.mn.gov/PDF/docket/5217\\_docket.pdf](http://www.dli.mn.gov/PDF/docket/5217_docket.pdf). The Statement of Need and Reasonableness and Notice of Intent to Adopt Rules will also be posted at this location.

The Board and Panel's Notice Plan also includes giving notice required by statute. The proposed rules and Notice of Intent to Adopt will be mailed or emailed to everyone who has registered to be on the Department of Labor & Industry's workers' compensation and "all agency" rulemaking mailing lists maintained under Minnesota Statutes, section 14.14, subdivision 1a. Notice will also be given to the Legislature and the Legislative Coordinating Commission per Minnesota Statutes, section 14.116, as amended by Laws of Minnesota 2012, chapter 238, section 1.<sup>10</sup> Since the statutory authority for promulgating the rules has not been enacted or amended in the past two years, notice to authors under Minnesota Statutes, section 14.116 is not required.

The Board and Panel's Notice Plan does not include notifying the Commissioner of Agriculture because the rules do not have a significant effect on farming operations per Minnesota Statutes, section 14.111.

The Board and Panel will not submit the rules to the state Council on Affairs of Chicano/Latino People per Minnesota Statutes, section 3.922 because the rules will not have their primary effect on Chicano/Latino people.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

Minnesota Statutes, section 14.131, requires the Board and Panel to consult with Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and benefits of proposed rules on local governments. In a memo dated October 2, 2012, Susan Melchionne, Executive Budget Officer at the Office of Management and Budget, opined that these rules changes will not have a fiscal impact on local governments.

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10. Available at: <https://www.revisor.mn.gov/laws/?id=238&year=2012&type=0>.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

Minnesota Statutes, section 14.128 requires the Board and Panel to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed Board and Panel rule and submit this determination for ALJ approval. No local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rules because the rules do not regulate local government procedures and do not require local governments to take any action in response to the rules.<sup>11</sup> Therefore, no ordinance or regulation is required to implement these rules.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

### **Board/Panel Determination of Cost**

As required by Minnesota Statutes, section 14.127, the Board and Panel have considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city.<sup>12</sup>

The cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. This is based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this Statement of Need and Reasonableness on pages 4 through 6.

Small businesses affected by RRP and MSRB rules would most likely be small health care providers or small vocational rehabilitation providers subject to potential sanctions by the Board or Panel. However, the proposed rule amendments do not amend the contested case hearing procedures found in Chapter 5217 and do not regulate health care providers or vocational rehabilitation providers. Therefore, there are no anticipated costs of complying with the proposed rules for these small businesses.

Small businesses and small cities may also be employers of injured workers. Again, however, the proposed rules will not result in any compliance costs for small employers, as the rules do not regulate employers and will not increase the costs of the workers' compensation system generally. Therefore, there are no anticipated costs of complying with the proposed rules for small businesses and small cities.

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11. Moreover, local governments are required to comply with the workers compensation law as set forth in Minnesota Statutes, chapter 176. Minn. Stat. § 176.021, subd. 1 provides that the workers' compensation law applies to all employers unless excluded by chapter 176. Under Minn. Stat. § 176.011, subd. 10, the definition of "employer" includes counties, towns, cities, school districts, and governmental subdivisions. Minn. Stat. § 176.021, subd. 6 requires home rule charter cities to pay the compensation provided under Minn. Stat. chapter 176, although the charter may provide for compensation that exceeds the amount an employee is entitled to under chapter 176.

12. A small business is "a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative." A small city is a "statutory or home rule charter city that has less than ten full-time employees." See Minn. Stat. § 14.127, subd. 1.

## **RULE-BY-RULE ANALYSIS**

### **Part 5217.0300. Definitions.**

Subpart 3. Chair. An expansion of the definition of “chair” is necessary to clarify the duties of the Board and Panel’s chairs and their roles in corresponding with the public and the Department. This definition is reasonable because it describes the functions that the current chairs of the Board and Panel have undertaken and are performing. As is customary in most state boards, a board chair typically presides at meetings and corresponds with the public and the board’s supporting state agency. Without the chairs performing these duties, the Board and Panel would not have the necessary leadership to conduct official business.

Subpart 4. Commissioner. The repeal of the definition of “Commissioner” corrects a drafting error. The term “Commissioner” is not referred to in Minnesota Rules, Chapter 5217, so no definition of the term is needed. This correction is intended to alleviate reader confusion.

Subpart 10. Quorum. The definitions of “Quorum” and “Voting Members” in the rules together establish how many members of the Panel or Board must be present for official MSRB or RRP business to be conducted and which persons shall have voting powers to conduct official business.

Members of the RRP and MSRB include physicians, QRCs, and other members of the community who do not have definite, predictable schedules and are sometimes unable to attend all Board and Panel meetings. The definition of “Voting Members” in Subpart 11 of this part of the rules states that alternates shall become voting members: 1) when a member of the Board or Panel is absent, or 2) if a vacancy exists. The proposed amendment to subpart 10 is intended to clarify that when an alternate becomes a voting member for a particular meeting because a regular Board or Panel member is absent/unavailable, the presence of that alternate shall count towards attainment of a quorum. The Board and Panel cannot conduct business without a quorum present pursuant to part 5217.0400 of their rules of procedure. Allowing an alternate to count towards meeting this quorum requirement helps to ensure that the Board and Panel can conduct official business even when some regular members are unavailable. This clarification is reasonable because it reflects the current practices of the Board and Panel, as anticipated by the statutory function of alternates in Minnesota Statutes sections 176.102 and 176.103. Minnesota Statutes sections 176.102, subdivision 3a and 176.103, subdivision 3 state: “The commissioner may appoint alternates for one-year terms to serve as a member when a member is unavailable.” The Board and Panel have been successful at conducting their business in this manner in the past.

Subpart 10a. Vice-chair. This definition is needed because the term “vice-chair” is currently undefined in the rules. This elected position is referred to in part 5217.0500 of these rules, yet no description of the office exists. This definition informs the vice-chair, as well as the public, of his or her duties to the Board or Panel. Under the definition, the vice-chair

assumes the duties of the chair in his or her absence, which is in accordance with the Board and Panel's current practices. The Board and Panel need leadership to conduct their business when a chair is unavailable.

Subpart 11. Voting members. The proposed change to subpart 11 corrects a drafting error. All of the procedural rules in chapter 5217 are meant apply to both the MSRB and RRP. Elsewhere in the rules, it is clear that the rules of procedure apply to both entities as both the Board and the Panel are mentioned when either entity is referenced. In subpart 11, the rules erroneously refer to solely "board alternates," though the original intent was that the rule would apply to both board and panel alternates. The proposed change would correct this error to alleviate any reader confusion.

**Part 5217.0500. Officers.** The proposed rule amendment would reschedule when the Board and Panel hold officer elections. Currently, the rule states that officer elections must be held on the first meeting after the last day of April of each year. In recent years, the Board and Panel have had quarterly regular meetings in January, April, July, and October. Therefore, the current rule requires that officer elections be held in July. July typically has the lowest attendance rate of the regularly scheduled meetings, and a quorum is not always met. The amended rule would require officer elections to be held at the first meeting after the last day of July. Under the Board and Panel's current schedule, officer elections would generally be held in October, unless a special or emergency meeting is called. Holding officer elections later in the year will increase the likelihood that a quorum is present for the elections. Additionally, it is more likely that would-be candidates for chair and vice-chair would be able to attend the elections if they are held later in the year.

**Part 5217.0600. Meetings.** Under the current rules, the Board and Panel must schedule monthly meetings. The Board and Panel usually have enough agenda items to meet on a quarterly basis. This rule should be updated to reflect the Board and Panel's current practices and inform the public of the same. The proposed rule provides for quarterly regular meetings, but refers to the Board and Panel's ability to call additional meetings so long as they comply with the notice provisions required by the Open Meeting Law, Minnesota Statutes, section 13D.04. This flexibility is needed to ensure that the Board and Panel are able to meet more frequently than quarterly if necessary to perform their statutory obligations. Additionally, the proposed rule provides that the Board and Panel may cancel regular meetings for lack of quorum or with the approval of the chair, so long as the Board and Panel meet a minimum of once every twelve months. These provisions are reasonable because they allow the Board and Panel to cancel meetings, for example, in the event of a weather emergency or for lack of agenda items, but will also ensure that the Board and Panel do not expire.<sup>13</sup>


**Part 5217.0610. Work Groups.** The current rules do not specifically authorize the RRP or MSRB to meet in smaller work groups to address issues before them. Due to the busy schedules of Board and Panel members, it may be beneficial to schedule smaller meetings to utilize the expertise of certain members or to allow for an in depth review of a topic. The proposed rule

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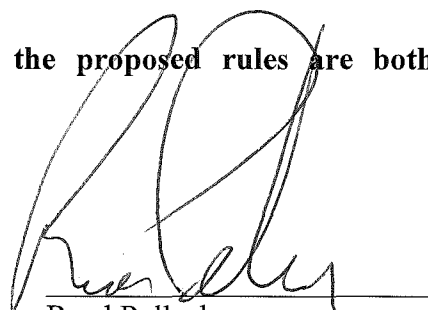
13. The RRP and MSRB will expire if the Board or Panel: no longer fulfills the purposes for which it is was established; has not met in the last 18 months; or does not comply with the registration requirements of Minn. Stat. § 15.0599, subd. 3. See Minn. Stat. §§ 176.102, subd. 3 and 176.103, subd. 3.

allows the RRP or MSRB to appoint a work group of less than a quorum of its voting members to address specific issues. The work group must report recommendations back to the Board or Panel before any official action is taken on the issue. The proposed rule will ensure that issues are given their necessary attention by those members who have expertise or special interest in a topic, who can then advise the Board or Panel accordingly.

**CONCLUSION: Based on the foregoing, the proposed rules are both needed and reasonable.**

  
Dr. Joseph Sweere, D.C.  
Chair and Rules Liaison  
Rehabilitation Review Board

Date: 10/9/12

  
Reed Pollack  
Member and Rules Liaison,  
Medical Services Review Board

Date: 10/9/12

This Statement of Need and Reasonableness was made available for public review on October 24, 2012.