

## Minnesota Board of Chiropractic Examiners

### NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

#### **Proposed Amendment to Rules Governing Continuing Education for Registrations, Minnesota Rules, 2500.1200 subp 4; Revisor's ID Number RD4209.**

**Introduction.** The Board of Chiropractic Examiners intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until January 11, 2016.

**Agency Contact Person.** You must submit comments or questions on the rules and written requests for a public hearing to the agency contact person. The agency contact person is: Micki King at the Minnesota Board of Chiropractic Examiners, 2829 University Avenue SE, suite 300, Minneapolis Minnesota 55414, 651-201-2849, [Micki.king@state.mn.us](mailto:Micki.king@state.mn.us).

**Subject of Rules and Statutory Authority.** The proposed rules are about waiving the continuing education requirement for a registration, i.e. acupuncture and/or animal chiropractic, for the calendar year in which the registration is issued. The statutory authority to adopt the rules is *Minnesota Statutes*, section 148.08 (2014). A free copy of the rules is available upon request from the agency contact person listed above and posted on the Board web site [www.mnchiroboard.com](http://www.mnchiroboard.com) under "Laws and Rules", "Rules Promulgation".

**Comments.** You have until 4:30 p.m. on Thursday, January 11, 2016, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and the agency contact person must receive it by the due date. The Board encourages comment. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the Board hold a hearing on the rules. Your request must be in writing and the agency contact person must receive it by 4:30 p.m. on January 11, 2016. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the Board will hold a public hearing unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public

hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The Board may modify the proposed rules as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Board encourages you to participate in the rulemaking process.

**Statement of Need and Reasonableness.** The statement of need and reasonableness statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person and posted on the Board web page. You may review it or obtain copies for the cost of reproduction by contacting the agency contact person.

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

**Adoption and Review of Rules.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will then submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the Department submits the rules to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

November 12, 2015  
Date

  
Larry A. Spicer, DC  
Executive Director

1.1 **Board of Chiropractic Examiners**

1.2 **Proposed Permanent Rules Governing Waiver of Continuing Education**  
1.3 **Requirements for Chiropractic License Renewal**

1.4 **2500.1200 CONTINUING EDUCATION.**

1.5 [For text of subps 1 and 2, see M.R.]

1.6 Subp. 3. [Repealed, 17 SR 1711]

1.7 Subp. 4. **Schedule of required continuing education units.** Chiropractors must  
1.8 obtain 20 continuing education units by December 31 of each calendar year.

1.9 A chiropractor is not required to obtain any continuing education units during the  
1.10 calendar year in which the chiropractor is initially licensed, nor any continuing education  
1.11 units that are required for the renewal of a registration during the calendar year in which  
1.12 that registration is issued.

1.13 Subp. 5. [Repealed, 25 SR 1916]

1.14 [For text of subp 6, see M.R.]

ORIGINAL

STATE OF MINNESOTA  
BOARD OF CHIROPRACTIC EXAMINERS

**Proposed Permanent Rules Relating to  
Continuing Education (CE) waivers for first  
year of Registrations**

**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 electronic format. 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: 651-201-2852  
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 and §14.131 (2014) the Board hereby affirmatively presents the facts establishing the need for, and reasonableness of the establishment of rules related to the waiver of continuing education

requirements, for the initial year of registrations which have a dedicated continuing education (CE) requirement.

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 (2014) 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**

#### **General Discussion**

As a general matter, it is reasonable to characterize this proposed rule amendment as "housekeeping." This rule is intended to homogenize the continuing education requirements which apply to licensure, with those that apply to subordinate registrations. This becomes necessary as there are currently two registrations which have, in recent years, become subject to CE requirements, which did not exist when the rules pertaining to continuing education for doctor of chiropractic licenses were originally promulgated. Further, it is possible that additional registrations in the future

could provoke the same issue. Accordingly, the Board seeks to promulgate a generalized rule which will address all such registrations.

Continuing education (CE) is the primary method relied upon by most professions to assure ongoing clinical competency. While there have been many arguments as to the merits of this position over the years it is, nevertheless, the current "gold standard." There are numerous approaches to CE: annual, biennial, triennial; fully classroom oriented versus alternative formats such as online, teleconferencing, or correspondence; self study, and the list goes on. However, short of regular examinations, it is still the accepted approach to ensuring that licensed health care professionals maintain and improve clinical skills.<sup>1</sup>

Prior to imposing CE requirements for any Registrations, the Board had CE requirements related only to the doctor of chiropractic license. These requirements (although they've undergone some minor changes over the years) are annual, and can be generally described as a requirement of 20 units<sup>2</sup> per calendar year, 3 of which must be in X-ray/Imaging subjects, and 1 unit which must be in the subject matter of Professional Boundaries. Moreover, and pertinent to this discussion, is that "A chiropractor is not required to obtain any continuing education requirements during the calendar year in which the chiropractor is initially licensed."<sup>3</sup> This provision is established with the reasonable belief that those acquiring the DC education/degree, and being licensed so soon afterward, were not likely to need additional CE for that calendar year for the purpose of assuring clinical competency. After all, they would have just completed their degree, and likely taken a substantial battery of exams which would support the currency of their competency. Accordingly, little else is to be gained by requiring additional education in that licensing year.

In July of 2006, the Board promulgated rules which required that those DC's who were separately registered to perform acupuncture services, must annually acquire 2 hours of continuing

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1 In fact this applies to MANY other professions as well, but this missive is confined to health care professionals, and more specifically to chiropractors.

2 Pursuant to Minn.R. 2500.0100 Subd. 4a, a Continuing Education Unit is define as a "...50 minute session..."

3 See Minn.R. 2500.1200, Subp. 4. **Schedule of Required Continuing Education units.** While the promulgation date of this provision is unclear, the undersigned avers that it has been in effect for a period of at least 22 years.

education in meridian related subject matter.<sup>1</sup> This requirement was part of the 20 hour annual requisite. During the 2008 Legislative Session, the authority of doctors of chiropractic to perform chiropractic services on animals, under specified conditions, was enacted.<sup>2</sup> Subsequent to this, Rules were promulgated which required in relevant part, that DC's who were so registered must acquire 6 hours of animal related subjects annually.<sup>3</sup> These hours were *in addition to* the 20 hour annual requirements. However, the development of these authorities as well as the rules promulgation failed to contemplate the 1<sup>st</sup> year deferment of CE which was applied to the DC license. This rule simply seeks to reconcile this discrepancy and align these requirements.

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, (2014) and in accordance with the requirements established in Minn. Stat. §14.131 (2014), 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 Subd. 1 (2014), and §14.14, Subd. 1(a)(2014). As required by Minn. Stat. §14.22 (2014), 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

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1       SEE Minn.R. 2500.1200, Subp. 2. Annual Requirement.

2       SEE Minn.Stat. § 148.01 1(a)(b) [2014]; and Minn.Stat. §148.031 through 148.035. [2014]

3       SEE Minn.R. 2500.7040

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 public member) and the executive director. At this point, the rules follow the remainder of the statutory requirements established in the Administrative Procedures Act.

## **7. DESCRIPTION OF CLASSES OF PERSONS PROBABLY AFFECTED BY RULE**

Minnesota Statute §14.131 (1) (2014) 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 are newly registered to perform acupuncture or animal chiropractic, or who may plan on

becoming registered to do so. It is also anticipated that this rule may affect Registrations contemplated in the future, however it is not possible to determine what those might be at this time.

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

Minnesota Statute §14.131 (2) (2014) 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. These proposed rules will have no impact on the State's general fund, since the Board's entire budget is administered through the State Government Special Revenue Fund, rather than the General Fund.

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

Minnesota Statute §14.131 (3) (2014) 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" in the State Register, as well as publishing information on the Board web site. 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 (without a hearing) 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) (2014) 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 Administrative Procedures act imposes limitations on State Agencies 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 web site are not consistent, and cannot be relied upon. Moreover, efforts such as this 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) (2014) 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 (2014) 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 OR CONSEQUENCES OF NOT ADOPTING PROPOSED RULES**

Minnesota Statute §14.131 (6) (2014) 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. It is not anticipated that licensee's who acquire acupuncture registrations would experience additional costs during the first year of registration, since the requirement for acupuncture CE is incorporated into the normal annual requirement for DC's anyway. However, it is believed that licensee's who acquire animal chiropractic related registrations would experience additional, unnecessary costs since they would be obligated to acquire an additional 6 hours of CE in animal related subjects over and above their normal CE requirements for the DC renewal. This rule would forestall that requirement, thus saving the additional cost to the licensee/registrant.

### **13. EVALUATION BY COMMISSIONER OF MANAGEMENT AND BUDGET**

Minnesota Statute §14.131(2014) 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 Minnesota Office of Management and Budget, Brian McLafferty, Executive Budget Officer, has concluded that there would "...be no costs or financial benefits to local governments anticipated as a result of these changes. [Exhibit 1]

### **14. ASSESSMENT OF CONFLICT WITH FEDERAL REGULATIONS**

Minnesota Statute §14.131 (7) (2014) 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. ASSESSMENT OF CUMULATIVE EFFECT WITH FEDERAL AND STATE REGULATIONS**

Minnesota Statute §14.131(8) (2014) requires that the Board make an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. This statute is vague as to what effects are contemplated. However, consistent with previous statement(s), there is no known effect, cumulative or otherwise, with state or federal regulations.

### **16. DESCRIPTION OF ADDITIONAL EFFORTS TO NOTIFY**

Minnesota Statute §14.131 (2014) 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 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 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](http://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. On June 3, 2013, the Board received approval of its Additional Notice Plan from the Honorable Ann C, O'Reilly, Administrative Law Judge with the Office of Administrative Hearings. [Exhibit 2]

#### **17. STATE REGULATORY POLICY**

Minnesota Statute §14.131 (2014) 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 (2014). 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. As a general matter, this rule is not directed toward performance related issues, but more toward relieving an unnecessary burden on licensee's with new credentials, while at the same time establishing consistency in regulatory policy. In this manner, the Board avers that this rule imposes a form of superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party.

#### **18. EFFECT ON LOCAL GOVERNMENTS**

Minnesota Statutes §14.128 (2014) 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, and if so, to specify the date of implementation. 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.

## **19. 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. Accordingly, the Board hereby respectfully submits this Statement of Need and Reasonableness.

Dated: June 30, 2015

**STATE OF MINNESOTA**

**BOARD OF CHIROPRACTIC EXAMINERS**

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

Larry A. Spicer, D.C.

Executive Director

Attachments: [Exhibit 1] Proposed Language  
[Exhibit 2] Additional Notice Plan, Approved October 18, 2013  
[Exhibit 3] Memorandum: Minnesota Office of Management and Budget  
(December 29, 2014)