

LPC/LPCC Administrative Rule Variance Request

Processing Fee: \$10.00

Note: Use this form if you are requesting a variance to a rule in Minnesota Rules Chapter 2150

Instructions

1. This form must be filled out completely and legibly for any review to take place. Incomplete forms will be returned to the requester for completion, delaying consideration of the request. Please be concise, and include all information necessary for the Board to consider your request. Attach additional sheets if necessary to fully provide the information requested.
2. If you are requesting a variance to more than one rule, you must fill out a separate form for each specific variance request.
3. The fee for consideration of a variance request is \$10.00. Requests submitted without the fee will be returned, delaying consideration of the request. This fee is **non-refundable**, and does not guarantee that the Board will grant the variance request. If you are requesting multiple rule variances, you must pay the \$10.00 fee for each request. (*see* Minnesota Statutes section 14.056, subd. 2)
4. The Board **may not** grant variances on rules incorporating statutory requirements. If you are uncertain as to whether a rule incorporates a statutory requirement, contact the Board office or visit the Board's website at www.bbht.state.mn.us for links to the statutes and rules.
5. Minnesota Statutes sections 14.055 and 14.056 explain the terms for an individual to request a variance to a rule adopted by a board or agency. You are encouraged to review these statutes to decide if you meet the criteria for submitting a variance request. If you decide to submit a request, you must explain (1) how application of the rule to you (the petitioner) would result in hardship or injustice; (2) how variance from the rule would be consistent with the public interest; and (3) that variance from the rule would not prejudice the substantial legal or economic rights of any person or entity. These 3 items are contained in subdivision 4 of Minnesota Statutes section 14.055 related to discretionary variances.
6. The Board considers variance requests at the next regularly scheduled Board meeting following receipt of the completed request. Your variance request should be submitted at least seven (7) working days before the public Board meeting at which you wish to have your request considered. You will be notified in writing within 5 days after the Board's decision to grant or deny the variance request.

Instructions for Requesting a Variance from Continuing Education Requirements

7. Requests by licensees for a six-month extension to complete continuing education requirements are reviewed on an on-going basis. The procedures for requesting a variance to the continuing education rules are defined in Minnesota Rules part 2150.2660.
8. Licensees who request a six-month extension in order to complete continuing education requirements are considered to be renewing late and are subject to the late renewal fee. Please complete and submit the Variance Request form and include the \$10 processing fee, and the late renewal fee of \$100. The variance request form and fees must be sent to the Board along with your completed license renewal application and license renewal fee.
9. The variance request must include a written plan listing the activities, including the dates and the number of hours for each, you plan to complete in order to meet the CE requirements.
10. CE hours completed after the renewal date pursuant to the written plan will count toward meeting only the requirements of the previous renewal period.
11. A variance granted under this provision expires six months after the renewal date. A licensee who is granted a variance but fails to complete the required continuing education within the six-month period may apply for a second variance by submitting a completed variance request form, the \$10 processing fee, and the late renewal fee of \$100. The second request should be received at the Board office before the first extension expires.

[NOTE: Copies of Minnesota Rules part 2150.2660; Minnesota Rules part 2150.7610; and Minnesota Statutes sections 14.055 and 14.056 are included with these instructions to assist you in preparing your request.

DO NOT SEND THE INSTRUCTIONS PAGES OR THE REGULATIONS INFORMATION PAGES TO THE BOARD OFFICE WHEN YOU SUBMIT YOUR VARIANCE REQUEST]

Send only page 3, the completed Variance Request form, and any extra pages and documents supporting your request, to the Board office:

Minnesota Board of Behavioral Health and Therapy
335 Randolph Avenue, Suite 290
St. Paul, MN 55102

Variance Request – Processing fee \$10.00

1. Personal information:

Your Name: _____

License Number with BBHT (if applicable): _____

Mailing Address: _____

Email Address: _____

Telephone Number: _____

2. Cite the specific rule (number and title) from which you are requesting the variance.

3. Describe your request for a rule variance (or describe whether you are seeking a *waiver* of the rule, or permission to comply with the rule by alternate means as explained in Minnesota Rules part 2150.7610).

4. State the reasons which you believe justify granting of your variance request (refer to item 5 in the instructions). [Attach additional pages as necessary.]

5. Name, address, and telephone number of any person you know would be adversely affected if your variance is granted.

I hereby attest that the information contained in this variance request is true and accurate.

Name/License Number (Print Legibly)

Signature of Requestor

Date

14.055 RULE VARIANCES; STANDARDS.

Subdivision 1. Authority.

A person or entity may petition an agency for a variance from a rule adopted by the agency, as it applies to the circumstances of the petitioner.

Subd. 2. General terms.

The following general terms apply to variances granted pursuant to this section:

(1) the agency may attach any conditions to the granting of a variance that the agency determines are needed to protect public health, safety, or the environment;

(2) a variance has prospective effect only;

(3) conditions attached to the granting of a variance are an enforceable part of the rule to which the variance applies; and

(4) the agency may not grant a variance from a statute or court order.

Subd. 3. Mandatory variances.

An agency shall grant a variance from a rule as applied to the particular circumstances of the petitioner, if the agency finds that the application of the rule, as applied to the circumstances of that petitioner, would not serve any of the purposes of the rule.

Subd. 4. Discretionary variances.

An agency may grant a variance if the agency finds that:

(1) application of the rule to the petitioner would result in hardship or injustice;

(2) variance from the rule would be consistent with the public interest; and

(3) variance from the rule would not prejudice the substantial legal or economic rights of any person or entity.

Subd. 5. Rules.

An agency may adopt rules under section [14.389](#) establishing general standards for granting mandatory or discretionary variances from its rules. Section [14.389, subdivision 5](#), applies to these rules. An agency also may grant variances based on standards specified in other law.

Subd. 6. When not applicable.

This section and section [14.056](#) do not apply if another state or federal law or rule authorizes or requires the granting of variances by an agency or in certain circumstances.

History:

[2001 c 179 s 2](#)

14.056 RULE VARIANCES; PROCEDURES.

Subdivision 1. Contents of variance petition.

A petition for a variance under section 14.055 must include the following information:

- (1) the name and address of the person or entity for whom a variance is being requested;
- (2) a description of and, if known, a citation to the specific rule for which a variance is requested;
- (3) the variance requested, including the scope and duration of the variance;
- (4) the reasons that the petitioner believes justify a variance, including a signed statement attesting to the accuracy of the facts asserted in the petition;
- (5) a history of the agency's action relative to the petitioner, as relates to the variance request;
- (6) information regarding the agency's treatment of similar cases, if known; and
- (7) the name, address, and telephone number of any person the petitioner knows would be adversely affected by the grant of the petition.

Subd. 2. Fees.

(a) An agency may charge a petitioner a variance fee. The fee is:

- (1) \$10, which must be submitted with the petition, and is not refundable; or
- (2) the estimated cost for the agency to process the variance petition, if the agency estimates that the cost will be more than \$20.

(b) If an agency intends to charge costs to the petitioner under paragraph (a), clause (2):

- (1) the agency and the petitioner must agree on the costs and the timing and manner of payment;
- (2) for purposes of the 60-day limit in subdivision 5, the petition is not complete until there is agreement with the petitioner on the costs and timing and manner of payment; and
- (3) if the payment made by the petitioner exceeds the agency's actual costs, the agency must refund the overpayment to the petitioner. The payment is not otherwise refundable.

(c) Proceeds from fees charged under this subdivision are appropriated to the commissioner of management and budget. The commissioner of management and budget may transfer amounts to the fund and agency that supports the program that is the subject of the variance petition when the agency makes a request for the fee proceeds and the commissioner of management and budget determines the agency needs the fee proceeds to implement this section. Annually, the commissioner of management and budget must transfer proceeds from fees that are not transferred to agencies to the general fund.

Subd. 3. **Notice.** In addition to any notice required by other law, an agency shall make reasonable efforts to ensure that persons or entities who may be affected by the variance have timely notice of the request for a variance. The agency may require the petitioner to serve notice on any other person or entity in the manner specified by the agency.

Subd. 4. **Additional information.** Before granting or denying a variance petition, an agency may request additional information from the petitioner.

Subd. 5. **Order; timing.** An agency must issue a written order granting or denying a variance and specifying the scope and period of any variance granted. The order must contain an agency statement of the relevant facts and the reasons for the agency's action. The agency shall grant or deny a variance petition as soon as practicable, and within 60 days of receipt of the completed petition, unless the petitioner agrees to a later date. Failure of the agency to act on a petition within 60 days constitutes approval of the petition.

Subd. 6. **Order; delivery.** Within five days of issuing a variance order, the agency shall send the order to the petitioner and to any other person entitled to notice under other law.

Subd. 7. **Record.** An agency shall maintain a record of all orders granting and denying variances under section 14.055. The records must be indexed by rule and be available for public inspection to the extent provided in chapter 13.

History:

2001 c 179 s 3; 2009 c 101 art 2 s 109

2150.2660 VARIANCE FROM CONTINUING EDUCATION REQUIREMENTS.

Subpart 1. **General.** If a licensee is unable to meet the continuing education requirements by the renewal date, the licensee may request a time-limited variance to fulfill the requirement after the renewal date. A licensee seeking a variance is considered to be renewing late, and is subject to the late renewal fee, regardless of when the request is received or whether the variance is granted.

Subp. 2. **Procedure.** The licensee shall submit the variance request on a form designated by the board, and include the variance fee in Minnesota Statutes, section [14.056](#), and the late fee for licensure renewal. The variance request is subject to Minnesota Statutes, section [14.055](#), subdivision 4, and must include a written plan listing the activities, including the dates and the number of hours for each, offered to meet the requirement. Hours completed after the renewal date pursuant to the written plan count toward meeting only the requirements of the previous renewal period. A variance granted under this subpart expires six months after the renewal date. A licensee who is granted a variance but fails to complete the required continuing education within the six-month period may apply for a second variance in accordance with this subpart.

Subp. 3. **Nonrenewal; suspension.** If an initial variance request is denied, the license of the licensee shall not be renewed until the licensee completes the continuing education requirements. If an initial variance is granted, and the licensee fails to complete the required continuing education within the six-month period, the license shall be administratively suspended until the licensee completes the required continuing education unless the licensee has obtained a second variance according to subpart 2.

Statutory Authority:

MS s [148B.52](#)

History:

[29 SR 1605](#)

Published Electronically:

July 25, 2007

2150.7610 WAIVERS AND VARIANCES.

Subpart 1. **Application.** A licensee or applicant for licensure may petition the board for a waiver or variance of any rule except for any part of a rule which incorporates a statutory requirement. The petition shall be on a form prescribed by the board, and shall be accompanied by the applicable fee. The waiver or variance shall be granted if:

- A. adherence to the rule would impose an undue burden on the petitioner;
- B. the granting of a waiver or variance will not adversely affect the public welfare;
and
- C. in the case of a variance, the rationale for the rule in question can be met by alternative practices or measures specified by the petitioner.

Subp. 2. **Renewal, reporting, and revocation.** A waiver or variance shall be renewed upon reapplication according to the procedure described in subpart 1 if the circumstances justifying its granting continue to exist. Any petitioner who is granted a waiver or variance shall immediately notify the board in writing of any material change in the circumstances that justify its granting. A waiver or variance shall be revoked if a material change in the circumstances that justify its granting occurs or, in the case of a variance, if the petitioner has not complied with the alternative practices or measures specified in the petition.

Subp. 3. **Burden of proof.** The burden of proof is upon the petitioner to demonstrate to the board that the requirements in subpart 1 have been met.

Subp. 4. **Statement of reasons.** The minutes of any meeting at which a waiver or variance is granted, denied, renewed, or revoked must include the reason for the action.

Statutory Authority:

MS s [148B.52](#)

History:

[30 SR 345](#)

Published Electronically:

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