

STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS

**Proposed Permanent Rules Relating to
Acupuncture Registration Initial Requirements**

**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:

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Minneapolis, MN 55414-3220**

Phone: 651-201-2850

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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 Minnesota Statute §14.23 and §14.131 (2018) the Board hereby affirmatively presents the facts establishing the need for, and reasonableness of the establishment of rules related to the initial education requirements for Acupuncture Registration.

In order to adopt the proposed rules or amendments to the rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. Those requirements are as follows: 1) there is statutory authority to adopt or amend the rules; 2) the rules or amendments are needed and are reasonable; 3) all necessary procedural steps have

been taken; and 4) any additional requirements imposed by law have been satisfied. This Statement demonstrates that the Board has met these requirements.

3. STATUTORY AUTHORITY

The general statutory authority of the Board to adopt or amend rules is codified in Minnesota Statute § 148.08 (2018) which authorizes the Board to "promulgate rules necessary to administer sections 148.01 to 148.108 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 148.108, if the definitions are not inconsistent with the provisions of 148.01 to 148.108." 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

This proposed rule amendment applies to the Acupuncture Registrations which is subordinate to the chiropractic license. This rule is intended to clarify a weakness in the original language establishing the minimum requirements for initial acupuncture registration.

This becomes necessary as the Board has become aware of two new issues that have arisen, one which was not contemplated at the time the rules were originally drafted and one in which the environment has changed and the rules must now address the new paradigm.

Current Minnesota Statute 148.01, subd (7) states "Acupuncture is permitted under section 148.01 only after registration with the board which requires *completion of a board-approved course of study* and successful completion of a board-approved national examination on acupuncture. [Emphasis added]

A. First issue: Whereas Administrative Rule 2500.3000 subd 2 states "Prior to initial registration, *the chiropractor must complete no less than 100 hours of study, in the utilization of acupuncture.* [Emphasis added]

The Board has received multiple applications for acupuncture registration in which the

education program was not completed in the manner expected. However, as the applicants were technically in compliance with the Rule requirements as currently written, and thus they had to be approved.

1. The Board received an application from more than one individual who completed the required 100-hours of study in the utilization of Acupuncture. However, a closer review of the transcripts revealed that the applicants skipped one of the seven 15-hour modules and repeated another module to make up the 100-hour total. In one instance, the applicant skipped a later more advanced module and repeated an earlier rudimentary module, thus acquiring the 100-hours necessary though lacking the more advanced entry level training and knowledge expected.

2. The Board received an application from at least one individual who began an approved acupuncture program in another state, then moved to Minnesota and completed the 100-hours in a different program. As neither program was completed in its entirety, the Board had no way of verifying that this individual completed all of the necessary components of a comprehensive program.

B. Second issue. When the Statute and Rules were originally adopted, all known programs were offered entirely in the classroom or a “hands-on” setting. Over the years, there has been an increasing move toward non-traditional alternative formats for education including online, correspondence, self-study, and tele-communication. This has also been the trend with acupuncture programs. The Board was not notified when programs, which were originally approved as 100% hands-on classroom, morphed into entirely online programs. Due to the nature of Acupuncture, including needle insertion into very specific meridian points, infection control, and communicable diseases via needle insertion, etc., the Board feels strongly that the practical components of any approved acupuncture program remain strictly through hands-on classroom training.

Accordingly, the Board seeks to amend the acupuncture rule to address both issues including the *completion of an acupuncture program* consisting of no less than 100 hours versus

completion of no less than 100 hours, consistent with the language of the Statute. And also, requiring that all approved acupuncture programs include *no less than 15 hours of classroom or hands-on practical application training*. By these modifications, the Board is establishing a clear minimum standard for initial acupuncture registration and ensuring that licensed health care professionals meet minimal entry level competency for acupuncture Registration.

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, (2018) and in accordance with the requirements established in Minn. Stat. §14.131 (2018), 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 (2018), and §14.14, Subd. 1(a)(2018). 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 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 apply for Acupuncture Registration as an adjunct to their chiropractic license. It is also anticipated that this rule will affect educational institutions and instructors that offer initial acupuncture registration programs.

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 \$170,000 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 a "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 (2018) 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 cost to any educational institution or instructor will revert back to the cost when these programs were offered primarily in a classroom setting, from which they have moved away. 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) (2018) 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 as they currently must complete the minimum 100-hours of training from an approved source prior to registration. Consequences of not adopting the proposed rules include the risk of harm to the public by licensees whose training may be lacking important components of competency and safety.

13. EVALUATION BY COMMISSIONER OF MANAGEMENT AND BUDGET

Minnesota Statute §14.131(2018) 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, Chardae Kimber, 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) (2018) 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 sends an email-blast to all licensees prior to new rulemaking, notifying them of the proposed rulemaking and inviting them to request to be added to the mailing list. The Board mails separate notification to all persons or organizations on this list. The Board intentionally includes the professional association which represents the interests of the profession at large 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.

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 (2018). 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 establishing clarity and 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

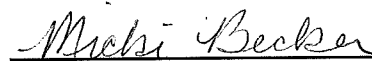
Minnesota Statutes §14.128 (2014) requires that an agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule, and if so, to specify the date of implementation. Promulgation of this rule appears to have no such 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: March 12, 2019

**STATE OF MINNESOTA
BOARD OF CHIROPRACTIC EXAMINERS**



Michelle T. Becker Executive Director

Attachments:

[Exhibit 1] Proposed Language

[Exhibit 2] Memorandum: Minnesota Office of Management and Budget (DATE)