

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF NURSING

In the Matter of the Proposed Rules of the  
Minnesota Board of Nursing, Minnesota  
Rules Chapters 6305 and 6310

**ORDER ON REVIEW OF  
RULES UNDER MINNESOTA  
STATUTES, SECTION 14.26**

The Minnesota Board of Nursing ("Agency" or "Board") has adopted the above-entitled rules pursuant to Minn. Stat. § 14.26. On June 13, 2012, the Office of Administrative Hearings received the documents filed by the Agency as required by Minn. Stat. § 14.26 and Minn. R. 1400.2310. On June 27, 2012, the Administrative Law Judge issued the Order on Review of Rules Under Minnesota Statutes, Section 14.26. As set forth in that Order, portions of the rules were disapproved.

On July 30, 2012, the Office of Administrative Hearings received the documents that must be filed under Minn. Stat. § 14.26 and Minn. R. 1400.2300.

Based upon a review of the written submissions and filings, and for the reasons set out in the Memorandum which follows,

**IT IS HEREBY ORDERED:**

1. The agency has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with all procedural requirements of Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400.
3. The following rule parts are **APPROVED** upon resubmission: rule parts 6305.0100, subp. 22; 6305.0800; 6310.2600, subp. 9d; and 6310.3800.

Dated: August 6, 2012

s/Raymond R. Krause  
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RAYMOND R. KRAUSE  
Chief Administrative Law Judge

## MEMORANDUM

In its resubmission of the proposed rules, the Board of Nursing details a clerical error which resulted in an incomplete version of its rules being published in the *State Register*. The earlier, incomplete version did not include the “uniform resource locator,” or URL, for the location on the Board’s website where it had published the materials that were incorporated by reference. The Board asserts that the failure to include the internet website address in its *State Register* publication amounts to harmless error. The Chief Administrative Law Judge agrees. This error did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.

Additionally, the Board asserts the course accreditation standards that it seeks to incorporate by reference into the final rule are “conveniently available to the public,” as those terms are used in Minn. Stat. § 14.07, subd. 4. This statute states in relevant part:

**Incorporations by reference.** (a) An agency may incorporate by reference into its rules the text from Minnesota Statutes, Minnesota Rules, United States Statutes at Large, United States Code, Laws of Minnesota, Code of Federal Regulations, the Federal Register, and other publications and documents which are determined by the revisor of statutes, to be conveniently available to the public.... When presented with a rule for certification pursuant to subdivision 2 and this subdivision, the revisor of statutes should indicate in the certification that the rule incorporates by reference text from other publications or documents. If the revisor certifies that the form of a rule is approved, that approval constitutes the revisor's finding that the publication or other document other than one listed by name in this subdivision, and which is incorporated by reference into the rules, is conveniently available to the public.

(b) For the purposes of paragraph (a), "conveniently available to the public" means available for loan or inspection and copying to a person living anywhere in Minnesota through a statewide interlibrary loan system or in a public library without charge except for reasonable copying fees and mailing costs.

In this instance the Board proposes to post the referenced material to its internet website but does not plan to circulate paper copies of these same items “through a statewide interlibrary loan system.”

Included with the Board’s submission is the Revisor’s acknowledgement that the referenced materials are “conveniently available to the public” through the Board’s internet website. As the Revisor’s Office reasons, the agency website posting satisfies the criteria of the statute because interested persons may access the referenced materials in a public library, through an internet connection at the library, without charge.

The Chief Administrative Law Judge agrees that the referenced materials are clearly identified, not subject to frequent change and conveniently available to the public. Under such circumstances, the resubmitted rules are approved.

**R. R. K.**