OAH 8-0907-22847-1
Governor's Tracking No. AR 601

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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| In the Matter of the Proposed Permanent Rules Relating to the Practice of Psychology: Definitions, Licensure, Continuing Education and Rules of Conduct, *Minnesota Rules* Chapter 7200 | **ORDER ON REVIEW OF DUAL NOTICE AND ADDITIONAL NOTICE PLAN UNDER MINNESOTA RULES 1400.2060 AND 1400.2080** |

This matter came before Administrative Law Judge Eric L. Lipman upon the Minnesota Board of Psychology's request for review of its Dual Notice and Additional Notice Plan. The Department seeks a legal review of its materials under Minn. Stat. § 14.131, and Minn. R. 1400.2060, subp. 2 and Minn. R. 1400.2080, subp. 2.

Based upon a review of the written submissions and filings made on May 30, 2012, and the additional submissions from the Board made on June 6, 2012,

**IT IS HEREBY ORDERED THAT**:

1. The Dual Notice is **APPROVED**, contingent upon a correction of the typographical error as to the second date of the hearing.

2. The Additional Notice Plan is approved, contingent upon sending the following persons either a paper or electronic copy of the Dual Notice:

   (a) The 40 commentators who submitted written comments at, or following, the Board's June 2, 2011 meeting on the proposed rules (to the extent that the Board has contact information for these commentators);

   (b) At least 100 of the approximately 3,000 persons the Board has denominated as either "Licensees and Applicants" or "General Interested Parties," and for whom it has a valid electronic mail address; and,

   (c) The four professional associations for whom the Board has a valid electronic mail address.

Dated: June 7, 2012

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

## MEMORANDUM

This matter presents itself in an unusual posture. As the Board's submissions reflect, at the Request for Comments stage of this rulemaking proceeding, the Board undertook an extensive campaign to notify potentially interested parties of its plan to revise its practice rules. The Board sent a copy of its Request for Comments to "all licensed psychologists, applicants, verification vendors [and] professional associations," impaneled a Public Advisory Committee and hosted four public meetings on the subject of the proposed rules. And this process was quite successful – as the Board received over 120 written comments on the proposed rules in calendar year 2011.

Notwithstanding the extensive public notification effort at the Request for Comment stage, however, the Board proposes to furnish a copy of its Dual Notice only to those who have formally enrolled on the agency's rulemaking list and to post a copy of the Notice on the Board's internet website. In the view of the Administrative Law Judge, this plan does not meet the requirements of Minn. Stat. §§ 14.14 and 14.22. Each of these statutes provides that the "agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected <u>by the rule</u> by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication."[1]

At the Request for Comments stage of the proceeding, the Board had not committed to adopt any particular reform.[2] This is not the case, however, after a Notice of Intent to Adopt rules. For this reason, the agency's obligation to make reasonable efforts to notify interested persons, beyond those on its official rulemaking notice list, recurs. And fulfilling that duty requires more than posting to the agency's website.

In this case, the Board's records include the names and contact information for several thousand persons "who may be significantly affected by the rule." It is reasonable therefore that, at a minimum, the Board reach out to the (nearly 150) persons and entities described in the Order above.

Lastly, mindful of the number of stakeholder comments received by the Board so far, and the fact that the Board's Dual Notice sets aside two days for a rulemaking hearing, the Board should carefully consider whether Conference Room A of its Minneapolis office is large enough to host the number of likely participants.

**E. L. L.**

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[1] *See,* Minn. Stat. §§ 14.14 and 14.22 (emphasis added).

[2] *See,* Request for Comments, 36 *State Register* 1372 (March 7, 2011) (Comments received in response to this notice will not necessarily be included in the formal rulemaking record *when a proceeding to adopt the rules is started.* The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments *after the rules are formally proposed*) (emphasis added).