

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF SOCIAL WORK

In the Matter of the Proposed Permanent  
Rules Relating to Social Work Licensure.  
Minnesota Rules Chapter 8470.

**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:00 a.m. on September 25, 1998, at Room 10, State Office Building, 100 Constitution Avenue, Saint Paul, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.31 to 14.20 (1996), to hear public comment, to determine whether the Minnesota Board of Social Work (hereafter "the Board ") has fulfilled all relevant substantive and procedural requirements of the law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable, and whether or not modifications to the rules proposed by the Board after initial publication are impermissible, substantial changes.

Sarah G. Mulligan, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Board at the hearing. Thomas M. McSteen, Executive Secretary of the Board, and many of the Board's members also attended the hearing to listen and respond to public comments.

Approximately nineteen persons attended the hearing. Fourteen persons signed the hearing register. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the proposed amendments to these rules.

The record remained open for the submission of written comments for five working days following the hearing to October 2, 1998. During the initial comment period the ALJ received one written comment from an interested person and one comment from the Board. Pursuant to Minn. Stat. § 14.15, subd. 1, five working days were allowed for the filing of responsive comments. During the responsive comment period the Board submitted comments further modifying three provisions of the proposed rule. The record closed for all purposes on October 9, 1998.

**NOTICE**

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rule(s). The Board may then adopt a final rule or modify or withdraw its proposed rule. If the Board makes changes in the rule other than those recommended in this report, it must submit the rule with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the Board must submit it to the Revisor of Statutes for a review of the form of the rule. The Board must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

#### **Procedural Requirements.**

1. On November 24, 1997, the Board published a Request for Comments on planned rule amendments to rules governing social work practice and regulation. The Request for Comments was published at 22 State Register 926.<sup>1</sup>

2. On July 14, 1998, the Board requested the scheduling of a tentative hearing date, requested approval of the Board's notice plan, and filed the following documents with the Chief Administrative Law Judge:

- (a) a copy of the proposed rules not yet certified by the Revisor of Statutes;
- (b) the Dual Notice of Hearing proposed to be issued; and
- (c) a draft of the Statement of Need and Reasonableness (SONAR).

3. The Board mailed a copy of the SONAR to the Legislative Reference Librarian on July 27, 1998.<sup>2</sup> On August 4 and 5, 1998, the Board mailed the Dual Notice of Hearing to all persons and associations who had registered their names with the agency for the purpose of receiving such notice.<sup>3</sup> The Board also mailed a copy of the proposed rules, the dual notice, and the SONAR to the persons and associations identified in the Board's notice plan.<sup>4</sup> The Board received over twenty-five signatures from persons requesting a hearing be held on this matter.<sup>5</sup> On September 10, 1998, the Board mailed a notice stating that a hearing would be held on this rulemaking to persons who requested a hearing.<sup>6</sup>

4. On August 10, 1998, a copy of the proposed rules and the Dual Notice of Hearing were published at 23 State Register 326.

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit E.

<sup>3</sup> Exhibit I.

<sup>4</sup> Exhibit J.

<sup>5</sup> See Exhibit K.

<sup>6</sup> Exhibit L.

5. On the day of the hearing, the Board placed the following additional documents into the record:

- (a) the Request for Comments published at 22 *State Register* 926 (Exhibit A);
- (b) the proposed rule, certified by the Revisor of Statutes (Exhibit B);
- (c) the SONAR (Exhibit C);
- (d) the certificate of the Board's resolution authorizing the adoption of rules by dual notice (Exhibit D);
- (e) a copy of the letter transmitting the SONAR the Legislative Reference Librarian (Exhibit E);
- (f) the Notice of Hearing as mailed (Exhibit F);
- (g) a copy of the notice of hearing and proposed rules as published in the *State Register* (Exhibit G);
- (h) the Board's certification of the mailing list as accurate and complete (Exhibit H);
- (i) the Board's Certificate of Mailing the Dual Notice (Exhibit I);
- (j) the Board's certification of giving notice according to its Notice Plan (Exhibit J);
- (k) the comments received during the public comment period (Exhibit K);
- (l) the Notice of Hearing and Certificate of Mailing that notice to commentators who requested a hearing (Exhibit L);
- (m) the Board's review of the comments received on the proposed rules (Exhibit M);
- (n) the Board's suggested changes to the proposed rules as published in the *State Register* (Exhibit N);
- (o) the Board's newsletters from January, April, and June, 1998. (Exhibit O);
- (p) copies of selected comments received prior to the comment period (Exhibit P); and
- (q) a Statement of Need and Reasonableness dated December, 1990 (Exhibit Q).

## **Nature of the Proposed Rules.**

6. This rulemaking proceeding involves amendments to the Board's rules governing the licensure of persons practicing social work and the standards required of persons engaged in that practice. The particular requirements for obtaining and renewing social work licenses, including fees charged by the Board, are being modified. The standards for persons engaged in supervised practice and the requirements for continuing education are modified in the proposed rules. The standards to be met by licensed persons for the ethical practice of social work are also modified by the proposed rules.

## **Statutory Authority**

7. The Board cites Minn. Stat. § 148B.20, subd. 1, as the source of its authority to adopt and modify rules. SONAR, at 3. Minn. Stat. § 148B.20, subd. 1, states in pertinent part:

Subdivision 1. **General.** The board of social work shall:

- (a) Adopt and enforce rules for licensure of social workers and for regulation of their professional conduct. The rules must be designed to protect the public.
- (b) Adopt rules establishing standards and methods of determining whether applicants and licensees are qualified under sections 148B.21 to 148B.23. The rules must make provision for examinations and must establish standards for professional conduct, including adoption of a code of professional ethics and requirements for continuing education.

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- (i) Evaluate its rules in order to refine the standards for licensing social workers and to improve the methods used to enforce the board's standards

8. The proposed rules are limited to the areas identified in Minn. Stat. § 148B.20, subd. 1. The Administrative Law Judge finds that the Board has the statutory authority to adopt the proposed rule amendments.

## **Rulemaking Legal Standards.**

9. Under Minn. Stat. § 14.14, subd, 2, and Minn. Rule 1400.2100, one of the determinations which must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rule by an affirmative presentation of facts. In support of a rule, the Board may rely on legislative facts,

namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.<sup>7</sup> The Board prepared a Statement of Need and Reasonableness ("SONAR") in support of the amendments of the rule. At the hearing, the Board primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments. The SONAR was supplemented by comments made by Board members and staff at the public hearing and in its written posthearing comments.

The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.<sup>8</sup> Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.<sup>9</sup> A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.<sup>10</sup> The Minnesota Supreme Court has further defined the Board's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."<sup>11</sup> The Board is entitled to make choices between possible approaches as long as the choice it makes is rational. Generally, it is not the proper role of the Administrative Law Judge to determine which policy alternative presents the "best" approach since this would invade the policy-making discretion of the Board. The question is rather whether the choice made by the Board is one that a rational person could have made.<sup>12</sup>

In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether the Board has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal, whether the rule constitutes an undue delegation of authority to another entity, or whether the proposed language is not a rule.<sup>13</sup>

Where, as here, changes have been proposed to the rule after publication of the rule language in the *State Register*, the Administrative Law Judge must determine if the new language is substantially different from that which was originally proposed.<sup>14</sup> The standards to determine if the new language is substantially different are found in Minn. Stat. § 14.05, subd. 2 (1996).

### **Impact on Farming Operations.**

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<sup>7</sup> *Manufactured Housing Institute v. Petterson*, 347 N.W.2d 238, 244 (Minn. 1984); *Mammenga v. Department of Human Services*, 442 N.W.2d 786 (Minn. 1989).

<sup>8</sup> *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 367, 43 N.W.2d 281, 284 (1950).

<sup>9</sup> *Greenhill v. Bailey*, 519 F.2d 5, 19 (8th Cir. 1975).

<sup>10</sup> *Mammenga*, 442 N.W.2d at 789-90; *Broen Memorial Home v. Minnesota Department of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

<sup>11</sup> *Manufactured Housing Institute*, 347 N.W.2d at 244.

<sup>12</sup> *Federal Security Administrator v. Quaker Oats Company*, 318 U.S. 218, 233 (1943).

<sup>13</sup> Minn. Rule 1400.2100.

<sup>14</sup> Minn. Stat. § 14.15, subd. 3 (1996).

10. Minn. Stat. § 14.111 imposes an additional notice requirement when rules are proposed that affect farming operations. The Board made no mention of the statute or whether it applies in this rulemaking. The statute states:

**14.111 Farming operations.**

Before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change to the commissioner of agriculture, no later than 30 days prior to publication of the proposed rule in the State Register.

A rule may not be invalidated for failure to comply with this section if an agency has made a good faith effort to comply.<sup>15</sup>

The proposed rules do not impose restrictions or have a direct impact on any aspect of farming operations. The Administrative Law Judge finds that the proposed rule change will not impact farming operations in Minnesota, and finds that no additional notice is required.

**Classes of Persons Affected by the Proposed Rules**

11. Minn. Stat. § 14.131 requires an agency adopting rules to include in its SONAR:

(1) 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;

(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(5) the probable costs of complying with the proposed rule; and

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<sup>15</sup> Minn. Stat. § 14.111.

(6) 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.

In its SONAR, the Board included an analysis performed to meet the requirements of this statute. The Board anticipates that costs will be increased through the increase in hours of supervision required of some licensees.<sup>16</sup> The Board is proposing new fees for duplicate licenses, licensure verification, checks returned for insufficient funds, and late-filed license renewals. The Board perceived that the rule changes were primarily of benefit to clients of licensed social workers by requiring greater oversight of licensees and clearer ethical standards.<sup>17</sup>

12. The Board suggested that the increased clarity in the rule standards would reduce the costs to licensees, by reducing the time expended to understand and apply those standards.<sup>18</sup> There were no costs identified as being incurred by the Board or any other state agency through these rules.<sup>19</sup> The Board did not identify any less costly methods to achieve the outcomes sought by the rules. No commentators indicated that any other methods could achieve the outcomes sought by the Board at lower cost.

13. The Board considered alternatives to the proposed rule for reporting continuing education compliance by licensees.<sup>20</sup> The only option determined by the Board to meet the outcome of demonstrating competency was to require examinations be passed by licensees, beyond the initial examination.<sup>21</sup> The Board concluded that continuing education was a less intrusive method of achieving the goal sought by the Board. The Board indicated that there were no federal regulations that the proposed rule might be in conflict with. The Board has met the statutory requirements for assessing the impact of the proposed rules.

## **Analysis of the Proposed Rules**

### **General**

14. This Report is limited to the discussion of the portions of the proposed rule amendments that received significant critical comment or otherwise need to be examined. Accordingly, the Report will not discuss each comment or rule part. Persons or groups who do not find their particular comments referenced in this Report should know that each and every suggestion has been carefully read and considered. Moreover, because some sections of the proposed rules were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary. The Administrative Law Judge specifically finds that the Board has demonstrated the need for and reasonableness of the provisions of the amended rules that are not discussed in this report by an affirmative presentation of the

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<sup>16</sup> SONAR, at 4.

<sup>17</sup> SONAR, at 5.

<sup>18</sup> SONAR, at 6.

<sup>19</sup> SONAR, at 6.

<sup>20</sup> SONAR, at 7.

<sup>21</sup> SONAR, at 8.

facts, that such provisions are specifically authorized by statute, and that there are no legal barriers to adoption.

15. Furthermore, where changes are made to a rule after publication in the State Register, the Administrative Law Judge must determine if the new language is substantially different from that which was originally proposed.<sup>22</sup> The standards to determine if the new language is substantially different from that which was originally proposed by the Board are found in Minn. Stat. § 14.05, subd. 2. Any changes made to the the language published in the *State Register* and not discussed are found to not constitute a substantially different rule.

### **Rule-by-Rule Discussion**

16. The comments received by letters and at the public hearing focused on the proposed amendments to the ethical standards for contact with former clients and the time required for supervising licensees. Each portion of the proposed rule amendments that was commented upon and requires discussion will be addressed individually.

### **8740.0110 – Definitions**

17. Minn. Rule 8740.0110 sets out the definitions for use throughout the rule. Some commenters objected to subpart 14, that defines "group supervision" as being limited to seven persons, including the supervisor. Joan Riebel, Executive Director of Family Alternatives, proposed that the number of supervisees be increased to between eight and ten. Ten is the size of the group for group therapy. The Board responded that its proposed seven-person limit was suggested by the Supervision Task Force in 1992.<sup>23</sup> The Board considered the size of groups for group therapy to be irrelevant to the maximum number of licensees to be supervised for group supervision. The Board's observation is reasonable. The purpose behind the definition is to ensure that each licensee is properly supervised. The Board's reliance upon the Supervision Task Force recommendation is a proper basis for adopting the maximum number of supervisees at seven. Subpart 14 is needed and reasonable, as proposed.

### **8470.0130 – Supervised Practice Requirements**

18. The standards for supervised practice are set out in proposed rule 8470.0130. Subpart 1 sets out the general provisions governing the purpose of the supervision, type of work required, and verification needed to meet the supervision standard. Supervision is required of licensees to meet the statutory requirements for the several categories of social work licensure.<sup>24</sup>

19. Subpart 1c requires plans from licensees as to how they will meet any existing supervision obligations. The initial plan is required within thirty days of beginning a social work practice position. A new supervision plan is required within 30 days of changes to the circumstances of the supervision. Kenneth L. House, LICSW,

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<sup>22</sup> Minn. Stat § 14.05, subd. 3.

<sup>23</sup> SONAR, at 13; Board Comment, at 1.

<sup>24</sup> Minn. Stat. § 148B.21.

on behalf of the Society of Social Work Leaders in Health Care (SSWLHC), suggested that the requirement that a new supervision plan be completed within thirty days of certain changes was usually unnecessary. Public Exhibit 6. SSWLHC suggested that the supervisor verify competency rather than rewrite the supervisory plan when the only change was a new supervisor.<sup>25</sup> Diane McGovern of Family Alternatives suggested the plan be required within 90 days, rather than 30.

20. The Board responded that there was a need "to verify the new supervisor's licensure and credentials, as well as verify the new supervisor's understanding of the supervised practice requirements."<sup>26</sup> The Board noted that rule was intended to allow resubmission of the supervision plan with minimal changes.<sup>27</sup> The rule language was modified at the hearing to clarify the rule language.<sup>28</sup> Immediately prior to the hearing, the Board noted that a handwritten change omitted a word and that word was added as modification.<sup>29</sup> With the variety of practice requirements and the difference in practice areas, the Board's proposed plan requirements, as modified, are needed and reasonable.

21. Subparts 3, 4, 5 and 6 set out the supervision requirements for licensed social workers, licensed graduate social workers, licensed independent social workers, and licensed independent clinical social workers. Debra K. Langer, MS, LISW, Metro Director of the Professional Association of Treatment Homes, objected to the increase in supervision hours from the current level of 50 hours to the proposed level of 75 hours.<sup>30</sup> The increased cost to social workers and agencies was the reason for the objection. The Board indicated that the increase to 75 hours was intended to move "closer to the national standard of 100 hours, as established in the American Association of State Social Work Board's Model Law."<sup>31</sup> The Board took into account the potential for increased cost and concluded that the benefit to the public derived from "increased supervision for new licensees outweighs the increased financial cost for some individuals."<sup>32</sup> Setting the standard for supervision is the sort of decision that requires an agency exercise its discretion. There has been no demonstration that the standard to be imposed is unrelated to the goal to be attained or that the impact on licensees is extraordinary. The supervision hours standard is needed and reasonable, as proposed.

### **8470.0310 – General Requirements**

22. The Board has proposed amendments to the ethical standards required of licensees under Minn. Rule 8470.0310. Subpart 1 is modified to focus the obligation of the licensee on the client's interests, including interest in self-determination. A number of commentators, both at the hearing and in prehearing comments, objected to the removal of existing language regarding reporting requirements. At the hearing, the

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<sup>25</sup> Public Exhibit 6, at 2.

<sup>26</sup> Board Comment, at 2.

<sup>27</sup> Board Comment, at 2.

<sup>28</sup> Exhibit N.

<sup>29</sup> Board Comment, at 5.

<sup>30</sup> Exhibit K, at 8.

<sup>31</sup> SONAR, at 29.

<sup>32</sup> SONAR, at 30.

Board explained that those other requirements are found in statute and the language was deleted from the rule to prevent conflicts with statutory language. The Board reiterated that there were no changes in the responsibilities of licensees. There is no defect in removing language from a rule that merely restates obligations found elsewhere.

23. Subpart 2 prohibits discrimination against clients on a number of grounds. The Board proposes to modify the rule to expand the prohibition against discrimination to students, supervisees, or social work interns. Certain other types of discrimination, such as sexual orientation and disability, are also prohibited under the proposed rules. No commentators objected to the proposed language. The subpart is needed and reasonable as proposed.

24. Subpart 2a requires that licensees “display or make available” to clients information about each client’s right to obtain licensing information about the social worker and the right to complain to the Board (including the Board’s address and telephone number). SSWLHC objected to the burden of providing this information in hospital settings where patients were already informed of grievance procedures.<sup>33</sup> SSWLHC suggested modifying the language to specify that the requirement to provide the listed information only applied “where patient’s rights are not specified in rule or regulation . . . .”<sup>34</sup> The Board pointed out that many clients are unaware that the Board exists and clients have a need to be informed as to their rights. There has been no showing made that providing the listed information will constitute a hardship to any licensee. The language of the limitation suggested by the commentator would introduce a significant degree of vagueness into the rule language. The rule is needed and reasonable as proposed.

### **8470.0320 – Practice Requirements**

25. The fundamental requirements of providing particular services to clients are set out in proposed rule 8470.0320. Subpart 4 requires that clients provide informed consent before the social worker provides services. Anita Raymond, a licensed graduate social worker, related her experiences in obtaining informed consent and her perception that legal representatives do not always act in the best interest of the client. The Board had, by the time of the hearing, proposed language to address the difficulties in obtaining informed consent.<sup>35</sup> The Board considered additional comments and finally proposed language that would allow a licensee to provide services necessary to protect a client’s safety, property, or financial resources without informed consent.<sup>36</sup> The proposed language contains a number of limiting conditions to ensure that the client’s interest in self-determination and the authority of a duly-appointed legal representative are not disregarded. The Board reiterated that the actions of a client’s legal representative may not appear to be in the client’s best interest, but a social worker cannot act in opposition to those actions, save to initiate legal review.<sup>37</sup> The subpart as modified is needed and reasonable. The new language addresses a

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<sup>33</sup> Public Exhibit 6.

<sup>34</sup> Public Exhibit 6.

<sup>35</sup> Exhibit N, at 1.

<sup>36</sup> Board Reply, at 1-2.

<sup>37</sup> Board Reply, at 2.

situation described at the hearing and does not constitute substantially different language from the rule as published in the *State Register*.

26. In a prehearing comment, Cynthia Dubansky, MSW, LICSW, suggested that the termination of services standard set out in subpart seven was unclear. The commentator suggested indicating that the social worker should make the determination.<sup>38</sup> The Board responded that, while the rule was not unclear, the addition of language expressly requiring the social worker to reasonably determine that the client no longer needs services would address the concern.<sup>39</sup> The rule as modified is needed and reasonable to clearly state who must determine that services are no longer needed and what standard is to be applied. The new language is not substantially different from that published in the *State Register*.

### **8470.0325 – Relationships with Clients; Former Clients; Students; Social Work Interns; and Supervisees**

27. The requirements for proper boundaries between social workers and clients are set out in proposed rule 8470.0325. The only boundary that generated significant comment was the standard proposed for when sexual conduct with a former client was permissible. As originally proposed, subpart 4 prohibited such conduct or even suggesting such conduct for two years after the termination of the professional relationship. The two-year period is extended for so long as a reasonable social worker would conclude that the former client retains an emotional dependence upon or client-type relationship with the social worker.

28. Carol Schreier, President of the Minnesota Society of Clinical Social Work (MSCSW), objected to the proposed rule as insufficient to protect clients.<sup>40</sup> MSCSW supported a complete prohibition against such conduct.<sup>41</sup> Ellen T. Luepker, MSW, LP, related her experiences in providing services to clients who had been invited to enter sexual relationships with social workers "when the two year time limit is over . . . ."<sup>42</sup> Ms. Luepker conducted a survey of her clients to determine the effects of such relationships and found that her clients reported increased suicide risk, substance abuse, and life disruption.<sup>43</sup> Ms. Luepker suggested a total prohibition against sexual conduct between social workers and clients was the only means by which such harm can be eliminated.

29. Ida Sweur of Walk-In Counseling, objected to the application of the prohibition to all social workers, since some social workers are not in clinical settings leading to significant dependency by clients. Also, Ms. Sweur indicated that some social workers serve small diverse groups and could be in the position of not being able to socialize with groups they themselves are part of. To address concerns arising from clinical social work, Ms. Sweur suggested that categories be established and the less involved social workers be subject to a less stringent standard.

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<sup>38</sup> Exhibit K, at 21.

<sup>39</sup> Exhibit M, at 9.

<sup>40</sup> Public Exhibit 5.

<sup>41</sup> Public Exhibit 5, at 2.

<sup>42</sup> Public Exhibit 2, at 3.

<sup>43</sup> Public Exhibit 4, at 15.

30. The Board considered the comments made by the witnesses and concluded that "it is better to establish an across-the-board prohibition to protect against the possibility of a social worker exploiting former client, while also prohibiting sexual conduct that might not be harmful, then [sic] it would be to leave the door open to exploitation after the two-year waiting period that may in fact be very difficult to prove."<sup>44</sup> To accomplish this end, the Board proposed a modification to the rule, that prohibits sexual conduct between social workers and clients for whom "direct services" have been provided.<sup>45</sup> For social workers providing indirect services, the Board proposed that the social worker determine that no "unacceptable risk of harm" to the client would be created by such a relationship. The Board's proposed language meets the concerns of the commentators. Clients are protected where dependency is likely to arise, without the problems inherent in administering a time limit. Social workers whose practices are not likely to create such dependencies are not absolutely prohibited from socializing. Even with indirect services, client interests are protected by application of a reasonable social worker standard. The language proposed by the Board is needed and reasonable.

31. The Board considered the standards adopted by other states in originally proposing the two years, with extension proposal. Twelve states have time periods, ranging from six months to three years.<sup>46</sup> Five states (including Minnesota) have some form of indefinite period controlled by the dependency of the former client.<sup>47</sup> Three states have a prohibition, with an exception where the licensee can prove the former client is not dependent or manipulated.<sup>48</sup> Three states have a permanent prohibition, without exception.<sup>49</sup> Information about the options chosen by other states was made available to interested persons at the hearing.<sup>50</sup> Those persons and groups affected by these rules have had adequate notice that the standard could be changed as part of this proceeding. Total prohibition was one of several choices available to the Board and suggested by a prehearing commentator.<sup>51</sup> Another commentator suggested prohibition with an exception where the licensee can prove no dependency or manipulation.<sup>52</sup> The new language proposed by the Board is a logical outgrowth of the hearing process and the testimony received by the Board. Persons likely to be interested in the proposed rule have had fair warning in the Notice of Intent to Adopt the Rule of the potential for changes in the rule language. The Board's modification is supported by this record and does not constitute substantially different language from that published in the *State Register*.<sup>53</sup>

### **8740.0330 – Client Confidentiality**

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<sup>44</sup> Board Comment, at 4.

<sup>45</sup> Board Comment, at 4.

<sup>46</sup> Exhibit M, at 10.

<sup>47</sup> Exhibit M, at 10-11.

<sup>48</sup> Exhibit M, at 11.

<sup>49</sup> Exhibit M, at 11.

<sup>50</sup> Exhibit M.

<sup>51</sup> Exhibit K, at 13.

<sup>52</sup> Exhibit K, at 9.

<sup>53</sup> Minn. Stat. § 14.05, subd. 2.

32. Proposed rule 8470.0330 requires licensees to keep confidential information concerning or received from a client. Subpart 1 allows release of client information only with written informed consent, subject to specific exceptions. Subpart 2 sets out as exceptions: 1) mandatory reporting of abuse or maltreatment; 2) specific, serious threats of physical violence; and 3) under Board subpoena. Subpart 3 indicates that release is discretionary with the licensee when a court orders release of client information or records. A variety of comments were received suggesting the limitations on the release of information will interfere with a client obtaining services and suggesting changes.<sup>54</sup>

33. In response to the suggestions made, the Board modified the rule language in subpart 1 to break out the rule into items.<sup>55</sup> Item A clarifies that legal representatives can provide consent and that consent will only be sought when necessary to provide services. Item B clarifies that client record release requires consent, subject to exceptions. The new language also clarifies that the expiration date for disclosure applies to the act of releasing records, not the information contained therein. Item C allows verbal consent to take the place of written consent, where obtaining written consent is not practical. Item D allows a social worker to release client information without informed consent for the purpose of providing necessary services.

34. After the hearing, the Board further altered the language in item D to address the concerns of a commentator providing services required by law to clients unable to provide consent.<sup>56</sup> The new language would treat services authorized by law as a category for which informed consent for release of information is not required. The suggested changes to subpart 1 meet the concerns identified by commentators regarding the confidentiality requirements. The new language is needed, reasonable, and not substantially different from the rules as published in the *State Register*.

### **8740.0345 – Fees and Billing Practices**

35. The standards for informing clients of fees, billing clients only for services provided, prohibiting barter for services, and prohibiting payments for referrals are set out in proposed rule 8740.0345. Ms. Dubansky questioned whether the rule on informing clients was intended to "break out the social work component" when a unit fee for a variety of services is charged.<sup>57</sup> The Board proposed new language at the hearing, and then further modified the language after the hearing.<sup>58</sup> The rule as finally proposed clarifies that the social worker's obligation is to ensure that clients are informed of all fees at the first meeting with clients. The Board added language for clients who cannot provide informed consent and lack a legal representative. The modified language proposed by the Board is needed and reasonable to clarify the social worker's responsibilities regarding fees and billing practices. The new language is not substantially different from the rule as published in the *State Register*.

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<sup>54</sup> Exhibit K, at 18, 21-22.

<sup>55</sup> Exhibit N, at

<sup>56</sup> Exhibit K, at 11.

<sup>57</sup> Exhibit K, at 23.

<sup>58</sup> Board Reply, at 3.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Board of Social Work ("Board") gave proper notice in this matter.
2. The Board has fulfilled the procedural requirements of Minn. Stat. § 14.14, and all other procedural requirements of law or rule.
3. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii).
4. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4 and 14.50 (iii).
5. The additions and amendments to the proposed rules suggested by the Board after publication of the proposed rules in the State Register do not constitute substantially different language within the meaning of Minnesota Stat. §§ 14.05, subd. 2 and 14.15, subd. 3.
6. Any Findings which properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.
7. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public comments, provided that the rule finally adopted is based upon facts as appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the proposed rules be adopted.

Dated this     day of October, 1998.

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GEORGE A. BECK  
Administrative Law Judge

Reported: Taped, No Transcript Prepared