

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY
REHABILITATION REVIEW PANEL

In the Matter of the QRC Intern Registration Renewal Denial for Lynette Trunnell, QRCI-#772	ORDER ON CROSS MOTIONS FOR SUMMARY DISPOSITION AND RECOMMENDATION
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This matter was presented to the Administrative Law Judge on stipulated facts, supplemented by affidavits filed on March 24, 2006. No evidentiary hearing was held.¹

Rory H. Foley, Assistant Attorney General, Suite 900 445 Minnesota Street, St. Paul, MN 55101-2127, appeared on behalf of the Rehabilitation and Medical Affairs Unit of the Department of Labor and Industry (the Department).

Barbara R. Kueppers, Attorney at Law, 1455 W. Lake Street, Suite 308, Minneapolis, MN 55408, appeared on behalf of Lynette Trunnell.

The record closed on May 8, 2006.

STATEMENT OF THE ISSUES

Did the Department properly deny Ms. Trunnell's application for QRC-intern registration renewal when she failed to obtain the required national certification within three years of her initial registration?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Petitioner in this matter is the Rehabilitation Review Panel of the Department of Labor and Industry.
2. Respondent/Registrant in this matter is Lynette Trunnell, whose home address is 8450 Jody Court S., Cottage Grove, MN 55016.
3. Ms. Trunnell's employer is Concentra Integrated Services, whose address is 435 Ford Road, Suite 365, St. Louis Park, MN 55426.

¹ Findings 1 – 44 are the stipulated facts.

4. Ms. Trunnell is 55 years of age with a birth date of October 23, 1950. Ms. Trunnell has been married 28 years and has two adopted children, a son in the 10th grade and a 22-year-old disabled daughter, who is confined to a wheelchair but who is gainfully employed. Her daughter's next goal is to live independently.

5. Ms. Trunnell received her LPN (licensed practical nursing) degree in June 1972 from the Minneapolis Vocational School of Practical Nursing, Minneapolis, MN and her RN (registered nursing) degree in 1976 from Normandale Community College, Bloomington, MN. In 1998, she earned a Bachelor of Science in Nursing at Metropolitan State University, St. Paul, MN.

6. Ms. Trunnell started her career in 1972 as a staff nurse on a medical/surgical floor at Divine Redeemer Hospital in South St. Paul, MN. Her responsibilities included daily care of patients' needs such as bathing, treatments and medications. In 1979, Ms. Trunnell became employed at Mounds Park Hospital, St. Paul, MN as an RN staff nurse and part-time charge nurse, again on the medical/surgical floor, where her duties included daily care of patients' needs.

7. In 1985, Ms. Trunnell moved to Equifax in St. Louis Park, MN where she was a medical auditor, auditing hospital bills for insurance companies. In 1987, she moved to Intracorp in Eden Prairie, MN where, as a medical auditor, she audited hospital and chiropractic bills for numerous insurance companies.

8. During this period, Ms. Trunnell had been taking her daughter to Shriner's Hospital for Children and started doing volunteer work there. In 1988, Shriner's offered her part-time employment as an RN Staff Nurse, which she accepted. She worked for Shriner's for two years and then went back to volunteer work there.

9. In November 1993, Ms. Trunnell joined Regina Medical Center in Hastings, MN as a Utilization Manager, where her responsibilities included working with insurance carriers to certify patients' hospital stays and their receipt of appropriate care in the appropriate timeframes.

10. Ms. Trunnell's supervisors at Regina Medical Center encouraged her to return to college to receive her baccalaureate degree so that more opportunities would be available to her. Ms. Trunnell did return to college and received her Bachelor of Science in Nursing in December 1998. In 2000, Ms. Trunnell was promoted to Performance Improvement Manager at Regina where she was responsible for Risk Management and investigation of complaints, while still performing responsibilities as Utilization Review Manager.

11. On July 15, 2002, Ms. Trunnell joined Concentra as a full-time, salaried employee with the objective of becoming a Qualified Rehabilitation Consultant ("QRC"). Amiette Byrne agreed to be Ms. Trunnell's QRC supervisor during Ms. Trunnell's QRC internship.²

² Aff. of Annette Byrne.

12. Minn. R. 5220.1500, subpart 1 (2002) required individuals desiring to be approved as QRC Interns to complete an application consisting of the following:

- A. completed, signed, and notarized application form;
- B. copy of any pertinent license or certification;
- C. documentation supporting any applicable experience requirements;
- D. official transcripts of all pertinent postsecondary education;
- E. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees;
- F. the annual registration application fee of \$100; and
- G. a plan of supervision as required by part 5220.1400, subpart 3a.

13. On July 12, 2002, Ms. Trunnell and Ms. Byrne submitted an Application for Approval and Registration for Rehabilitation Consultant Intern (R-20). The acknowledgment form submitted with the Application indicated that Ms. Trunnell would obtain a Certified Disability Management Specialist (“CDMS”) certification, formerly known as the Board of Rehabilitation Certification, within 3 years of her QRC-Intern registration. She indicated that she would take the April 2005 exam as a Category 2 applicant. The CDMS certification, formerly known as the Board of Rehabilitation Certification, is one of the three national certifications recognized by the Department of Labor and Industry (“DOLI”) for registration as a QRC upon completion of an internship.

14. By letter dated July 17, 2002, Jeanne Gehrman, a Rehabilitation Provider Registration Specialist with DOLI, provisionally approved Ms. Trunnell’s application for QRC Intern registration. Ms. Gehrman notified Trunnell that she had been assigned QRC Intern registration number 772. Concentra Integrated Services, QRC Firm number 5079, was registered as Ms. Trunnell’s employer.

15. The July 17, 2002 approval letter stated, “Your internship will be completed on June 30, 2005, if you obtain the certification required by Minn. Rules Pt. 5220.1400. If you obtain certification within a one-year period, your internship may be completed on June 30, 2003.” The letter further stated, “Your registration will expire June 30, 2003. Registration is an annual requirement. To renew your registration, you will be required to submit documentation of 20 contact hours of continuing education, the \$100.00 annual registration fee and a registration renewal request 60 days prior to that date. There are no continuing education requirements if the QRC or QRC/Intern has the certification required by Minn. Rules Pt. 5220.1400. Late fees will be assessed if completed application forms are not received in our office 60 days prior to your expiration date.”³

16. Ms. Trunnell renewed her QRC-Intern registration annually by completing the appropriate DOLI forms (R-25), by completing her required 20 continuing education hours, and by paying the appropriate fees.

17. Prior to DOLI rules’ amendments, effective on or about June 7, 2005, the qualifying criteria to become a QRC were as follows:

³ Minn. R. 5220.1500.

Subpart 1. Requirement. To become registered as a qualified rehabilitation consultant, the certification, education, and internship requirements of subparts 2 to 5 must be met.

Subpart 2. Certification and education. A qualified rehabilitation consultant shall possess at least one of the following credentials:

- A. a baccalaureate degree, together with certification by the Board of Rehabilitation Certification as a certified rehabilitation counselor or a certified insurance rehabilitation specialist;
- B. a baccalaureate degree together with certification by the Association of Rehabilitation Nurses as a certified rehabilitation registered nurse; or
- C. a baccalaureate degree together with certification by the American Occupational Therapy Certification Board as a registered occupational therapist. Certification by the American Occupational Therapy Certification Board shall have been held for five years prior to application.⁴

18. DOLI rules also required that a QRC intern work at least one year full-time as an intern in the rehabilitation of injured workers under Minn. Stat. § 176.102.

19. The CDMS exam is given twice annually, in late April and late October. In order to sit for the April exam, an applicant's application had to be postmarked by the previous November 15. In order to sit for the October exam, an applicant's application had to be postmarked by the previous May 15.⁵ According to the CDMS Certification Guide, Section 3: Criteria for Eligibility, all education and employment experience requirements had to be fully satisfied by November 15 for the spring cycle (April exam) or by May 15 for the fall cycle (October exam).

20. The CDMS examination "is based on a body of knowledge which encompasses laws, public regulations, and the delivery of disability management services as practiced within the United States."⁶

21. Ms. Trunnell felt that her education and experience best fit CDMS Category 2, which required a current license as a Registered Nurse. The required employment experience to sit for the exam consisted of 24 months of acceptable full-time employment (or its equivalent) providing direct disability management services to individuals with disabilities receiving benefits from a disability compensation system, with 12 of the 24 months spent under the supervision of a CDMS or a CRC (Certified Rehabilitation Counselor).

⁴ Minn. R. 5220.1400, subp. 2 (2002).

⁵ See 2002 CDMS Certification Guide.

⁶ 2002 CDMS Certification Guide, § 1: The Certification Program.

22. Because Ms. Trunnell did not receive her QRC intern status until July 17, 2002, she could not complete her 24 months of required full-time employment experience until July 17, 2004. Because she missed the May 15, 2004 cut-off date for the October 2004 exam, the earliest CDMS exam Ms. Trunnell could take was April 2005. The April 2005 exam required completion of all education and employment experience by November 15, 2004.

23. Ms. Trunnell took the April 2005 exam. In late June 2005, she received her results. She did not pass. Ms. Trunnell immediately applied to retake the exam in October 2005.⁷

24. In a June 27, 2005 (mistakenly dated July 27) letter to Ms. Gehrman, Ms. Byrne wrote, "Unfortunately [Lynette Trunnell] did not pass her CDMS examination which was taken in spring 2005. Kindly, I am asking for an extension of her internship. She is scheduled to retake the examination in October 2005. She has demonstrated competency with working workers' compensation files. She has not had any complaints. She has met all the other eligibility requirements." Ms. Byrne attached Ms. Trunnell's CDMS examination results.

25. On June 29, 2005, DOLI served and filed an Order denying renewal of Ms. Trunnell's QRC internship. The Order stated Minn. Rules Pt. 5220.1400, subp. 4 states "Failure to obtain certification within three years will result in a decision and order denying registration renewal."

26. Concentra and Ms. Trunnell timely filed a notice of appeal.

27. During pendency of the appeal, Ms. Trunnell is permitted to continue her work as a QRC intern.

28. Ms. Trunnell retook the CDMS examination in October 2005. She did not pass but, with the support of her husband, two children and Concentra, she applied to take the April 2006 exam.⁸

29. RNs who are attracted to QRC positions tend to be mid-career and have families. They desire a change from the hospital, acuity level setting and prefer more flexible scheduling. Many prefer developing longer-term working relationships with their patients/clients than they can obtain in a hospital setting.⁹

30. Ms. Trunnell believes that it would impose a hardship on all parties, including injured employees, co-workers and Concentra if she ceased working as a QRC intern before she receives her test results in late June 2006 from the April 2006 exam.

⁷ Affidavit of A. Byrne.

⁸ Affidavit of Lynette Trunnell.

⁹ Affidavit of A. Byrne.

31. The QRC is a neutral, objective party and has knowledge of medical factors, community resources, local labor markets and Minnesota statutes and rules.

32. In Minnesota, a QRC is a person who is professionally trained and experienced and who is registered by the commissioner to provide a rehabilitation consultation and to develop and implement an appropriate plan of rehabilitation services for an employee entitled to rehabilitation benefits under Minn. Stat. § 176.102. and Minn. R. 5220.0100, subp. 23 (2005). A rehabilitation plan is a written document completed by the assigned qualified rehabilitation consultant on a form prescribed by the commissioner describing a vocational goal and the specific services by which the qualified employee will be returned to suitable gainful employment.¹⁰

33. QRCs work with catastrophic injuries, including head injuries, burns, amputation and crush injuries, as well as neurological injuries, back and neck injuries and orthopedic disorders.

34. Ms. Trunnell receives great satisfaction from her QRC work. According to Ms. Trunnell, she wants to be a QRC precisely because the work brings together her employment experience, education, volunteer work and family life in a way that is challenging and rewarding.¹¹

35. Upon becoming a QRC Intern, Ms. Trunnell became familiar with the rules and had a goal of attaining certification with the Spring 2005 exam, receiving results before July 1, 2005.

36. Ms. Trunnell never understood that, if she failed the CDMS examination or otherwise failed to obtain certification before July 1, 2005, she could no longer be a QRC Intern. Her understanding was that registration “might not” be renewed. She never knew that registration renewal was automatically denied if not obtained within three years. Nothing she read in the rules said she “must” obtain her registration in three years or registration would not be renewed.

37. On May 17, 2005, Ms. Gehrman sent Ms. Trunnell a notice which contained the following:

ALSO, OUR LETTER APPROVING RENEWAL OF REGISTRATION LAST YEAR STATED “YOU MUST OBTAIN CERTIFICATION BY YOUR NEXT EXPIRATION DATE OR REGISTRATION MAY NOT BE RENEWED. CALL IF YOU HAVE ANY QUESTIONS.” PLEASE SEND DOCUMENTATION THAT YOU HAVE OBTAINED CERTIFICATION PRIOR TO YOUR EXPIRATION DATE OR OUR OFFICE MAY NOT APPROVE RENEWAL OF REGISTRATION ON JULY 1, 2005.¹² According to Ms.

¹⁰ Minn. R. 5220.0100, subp. 27.

¹¹ Affidavit of L. Trunnell.

¹² Uppercase in original.

Byrne, Ms. Trunnell works in field case management where non-QRC/administrative positions are few and do not pay at the same rate as Ms. Trunnell is currently earning.¹³

38. CDMS dramatically revised its education and employment requirements to sit for the April 2006 exam and revised the exam as well. Employment experience in all categories was reduced to 18 months, with all employment experience satisfied by January 1 for the April exam or by July 1 for the October exam. The CDMS Certification Guide was revised as of June 2005 and then was further revised in October 2005, with revisions to take effect with the April 2006 exam.¹⁴

39. The number of persons sitting for the CDMS nationally is quite small. According to CDMS:

New applications processed:	October 2004	71
	April 2005	52
Percentage of new applications found ineligible for certification:	October 2004	34
	April 2005	27
Percentage of candidates who passed the exam in each cycle:	October 2004	74.0
	April 2005	74.5

40. Prior to June 7, 2005, Minn. R. 5220.1400, subp. 3 stated:

If an individual meets the requirements of subpart 2, item A or B, except for obtaining certification, that individual may be registered as a qualified rehabilitation intern by documenting how the certification will be obtained within three years from the date of registration.

41. Subsequent to amendment of the rules on or about June 7, 2005, the rules now provide:

A qualified rehabilitation consultant intern must obtain certification by one of the entities specified in subpart 2 within three years of approval of registration as an intern by the commissioner. Failure to obtain certification within three years will result in a decision and order denying registration renewal.¹⁵

42. DOLI denied QRC Intern renewal registration to other QRC Interns who had not obtained the certification required by Minn. R. 5220.1400, subp. 4.

¹³ Affidavit of A. Byrne.

¹⁴ See *CDMS Guides*.

¹⁵ Minn. R. 5220.1400, subp. 4 (2005).

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Rehabilitation Review Panel have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 176.102, subd. 3 (1992). The panel has complied with all substantive and procedural requirements.

2. The statutes and rules governing QRC interns require that interns become certified Qualified Rehabilitation Consultants within three years of application.¹⁶

3. The Petitioner has not demonstrated that the Department retroactively and unconstitutionally applied a new rule to Petitioner.

4. The Petitioner has not demonstrated that the savings clause of Minn. R. 5220.1400, subp. 2 (effective June 7, 2005) is applicable. Petitioner does not meet the requirements of the rule.

5. The Petitioner has not demonstrated that promissory estoppel should be applied against the Department.

Based upon the foregoing Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Rehabilitation Review Panel affirm the denial of Lynette Trunnell's Qualified Rehabilitation Consultant intern registration renewal.

Dated this 9th day of May 2006.

/s/

RICHARD C. LUIS
Administrative Law Judge

Submitted on Stipulated Facts

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Rehabilitation Review Panel shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument

¹⁶ *Id.*

to the Panel. Exceptions to this Report, if any, shall be filed with Joseph Sweere, Chair, Rehabilitation Review Panel, 443 Lafayette Road, St. Paul, Minnesota 55155.

MEMORANDUM

Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.¹⁷ The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.¹⁸ A genuine issue is one that is not sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.¹⁹

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist a motion for summary judgment, the nonmoving party must show that there are facts in dispute that have a bearing on the outcome of the case.²⁰ When considering a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party.²¹ All doubts and factual inferences must be resolved against the moving party.²² If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.²³ Summary judgment should only be granted in those instances where there is no dispute of fact and where there exists only one conclusion.²⁴ In this matter, there are no disputed facts at issue. The parties have entered into a joint Stipulation of Facts and both have moved for summary disposition.

1. QRC Rules Did Not Create a Contract Between the State and Ms. Trunnell.

Ms. Trunnell contends that the QRC rules in existence when she became a qualified rehabilitation consultant intern created a contract between her and the State. The United States and Minnesota Constitutions prohibit the passage of any law impairing the obligation of contracts.²⁵ To prove the unconstitutional impairment of a contract, Ms. Trunnell must prove the existence of a contract, and an unconstitutional

¹⁷ *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwegie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R.1400.5500K; Minn. R. Civ. P. 56.03.

¹⁸ See, Minn. R.1400.6600.

¹⁹ *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984).

²⁰ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

²¹ *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

²² See, e.g., *Thompson v. Campbell*, 845 F.Supp. 665, 672 (D.Minn. 1994); *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971).

²³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-251 (1986).

²⁴ *Id.*

²⁵ The United States Constitution provides: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10. Similarly, the Minnesota Constitution states: "No . . . law impairing the obligation of contracts shall be passed..." MINN. CONST., art. I, § 11 (2005).

impairment of that contract. Her argument falls short on both counts. In general, statutes and rules *do not* create contract rights.²⁶ As the Minnesota Court of Appeals has explained:

(N)o statute can be reasonably interpreted as an explicit or implicit legislative promise... Absent such a promise, appellants' claim that (a statutory amendment) unconstitutionally impaired a contract ...must fail. Absent some clear indication that the legislature intends to bind itself contractually, the presumption is that a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.²⁷

As the United States Supreme Court has stated, the "principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state."²⁸ "Policies," the Court stated, "unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body."²⁹

The QRC rules do not create a property interest for interns. "[T]o have a property interest in something, an individual must not have simply a unilateral expectation or an abstract need or desire for it; rather, the individual must have a legitimate claim of entitlement to it."³⁰ A person who is licensed to engage in a business, trade or occupation subject to legislative control and regulation does not acquire a vested right to continue; all of a citizen's rights and liberties are held in subordination to the legislature's reasonable regulations and restrictions.³¹ Ms. Trunnell undoubtedly had a unilateral expectation that she would become a qualified rehabilitation consultant. This does not, however, create a property interest. Ms. Trunnell had no legitimate expectation that the Department rules would continue without change after 2002. For these reasons, Ms. Trunnell's argument that the 2005 rules change unconstitutionally impaired a contractual interest must be rejected.

2. The Savings Clause in the Rules is inapplicable because Ms. Trunnell is not eligible.

Next, Ms. Trunnell argues that the "savings clause" in the rule entitles her to QRC-Intern registration. The rule provides in part:

²⁶ *Minneapolis Teachers Retirement Fund Ass'n v. State*, 490 N.W.2d 124, 130 (Minn. App. 1992). See also *Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry.*, 470 U.S. 451, 465-66 (1985).

²⁷ *Id.* Internal quotations omitted

²⁸ *Id.* at 466.

²⁹ *Id.*

³⁰ *Bird v. State, Dep't of Pub. Safety*, 375 N.W.2d 36, 42 (Minn. App. 1985), quoting *Board of Regents v. Roth*, 408 U.S. 564, 578 (1972).

³¹ *Paron v. City of Shakopee*, 226 Minn. 222, 229, 32 N.W.2d 603, 608 (1948).

A qualified rehabilitation consultant or qualified rehabilitation consultant intern registered with the department before July 1, 2005, may either continue to meet the certification requirements in effect at the time of initial registration or meet the certification requirements in items A and B.³²

The certification requirements for qualified rehabilitation consultant interns in effect at the time of Ms. Trunnell's initial registration in 2002 read in part as follows:

Subp. 3 Qualified rehabilitation consultant intern.

An individual who meets the requirements of subpart 2, item A, B, or C, may be registered as a qualified rehabilitation consultant intern. *If an individual meets the requirements of subpart 2, item A or B, except for obtaining certification, that individual may be registered as a qualified rehabilitation consultant intern by documenting how the certification will be obtained within three years from the date of registration.* A qualified rehabilitation consultant intern must complete an introductory training session sponsored by the department within six months of approval of registration. A qualified rehabilitation consultant intern shall not be a solo practitioner.³³

Items A and B formerly read as follows:

Subp. 2. Certification and education. A qualified rehabilitation consultant shall possess at least one of the following credentials:

- A. a baccalaureate degree, together with certification by the Board of Rehabilitation Certification as a certified rehabilitation counselor or a certified insurance rehabilitation specialist; or
- B. a baccalaureate degree together with certification by the Association of Rehabilitation Nurses as a certified rehabilitation registered nurse.³⁴

The version of the "savings clause" in effect when Ms. Trunnell registered required either: (1) a baccalaureate degree and certification as a rehabilitation counselor or certification as an insurance rehabilitation specialist, or (2) a baccalaureate

³² Minn. R. 5220.1400, subp. 2. (as amended May 31, 2005).

³³ Minn. R. 5220.1400, subp. 2. (2001). *Emphasis added.*

³⁴ *Id.*

degree and certification as a registered rehabilitation nurse. While the stipulated facts indicate that Ms. Trunnell has a baccalaureate degree, there is no indication that she is certified as a rehabilitation counselor, insurance rehabilitation specialist, or registered rehabilitation nurse.³⁵ For these reasons, Ms. Trunnell is not eligible for the savings clause.

3. The Department is not barred by Promissory Estoppel

Finally, Ms. Trunnell argues that the Department is estopped from denying her QRC-Intern registration renewal because the rule in effect when she became a registered intern did not require certification within three years after she first registered.

The elements of a promissory estoppel claim are: (1) a promise has been made; (2) the promisor should have reasonably expected the promise to induce action by the promisee; (3) the promisee does in fact act; and (4) justice requires enforcement of the promise.³⁶

The Minnesota Supreme Court has cited the restatement of contracts in defining the doctrine:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.³⁷

The *Christensen* court observed that the promissory estoppel, like equitable estoppel, might be applied against the state to the extent that justice requires. In examining Christensen's right to a pension benefit, the court observed that:

In applying promissory estoppel, two factors must be kept in mind: (1) What had been promised by the state? and (2) To what degree and what aspects of the promise has there been reasonable reliance on the part of the employee? Not every promise and all its implications is necessarily

³⁵ Stipulated Finding No. 5. Ms. Trunnell argues that because the saving clause applies to interns who by definition are not certified, the reference to certification should be read to mean current interns in the process of obtaining certification. This is an incorrect reading of the former rule. The former rule recognized the distinction between qualified rehabilitation consultants and three other independently certified or registered professions; certified rehabilitation counselors, certified insurance rehabilitation specialist and rehabilitation registered nurse. The phrase "except for obtaining certification" refers to certification as a qualified rehabilitation consultant and not to certification as a rehabilitation counselor, insurance rehabilitation specialist or rehabilitation registered nurse.

³⁶ *Cohen v. Cowles Media Co.*, 479 N.W.2d 387, 391 (Minn. 1992).

³⁷ *Christensen v. Minneapolis Municipal Employees Retirement Board*, 331 N.W.2d 740, 749 (Minn. 1983).

enforceable under promissory estoppel. Estoppel applies only to avoid injustice.³⁸

In the case of *Brown vs. Minnesota Department of Public Welfare*, the Supreme Court set out the requirements for equitable estoppel of government outside of the pension benefit area. The requirements are more detailed than those stated in *Christensen*. The Court held that the party asserting estoppel must show fault or wrongful conduct on the part of the agency, reasonable reliance on the representations made, harm to the party if estoppel is not allowed, and that the equities of the case outweigh the public interest.³⁹

Ms. Trunnell does not identify any faulty or wrongful statement by the Department. The record does not contain any evidence of affirmative misconduct by the Department. Instead, Ms. Trunnell argues the doctrine of equitable estoppel should be applied because the Department breached a duty to disclose information about the changing 3-year limitation. Any claim of equitable estoppel against the government must include proof that the government committed affirmative misconduct.⁴⁰ Ms. Trunnell cites no authority supporting the proposition that a breach of a duty to disclose is tantamount to affirmative misconduct.

Furthermore, even if the law permitted equitable estoppel based on a failure to disclose, this record does not support a claim that the Department breached a duty to disclose. The Department told Ms. Trunnell that her internship “will be completed on June 30, 2005 if you obtain the certification required by Minn. Rules pt. 5220.1400.”⁴¹ On June 3, 2004, the Department informed Ms. Trunnell that “you must obtain certification by your next expiration date (June 30, 2005) or registration may not be renewed. Call if you have questions.” There is no evidence that Ms. Trunnell called the Department in response to the June 3, 2004 letter.

Finally, Ms. Trunnell had constructive notice that the Department proposed to amend Minn. R. 5220.1400, subpart 4 when the Department published its proposed rule amendments on December 20, 2004. The Department then published notice of its final adoption of the amended rule in the *State Register* on May 31, 2005.⁴² The amended rule stated in part:

A qualified rehabilitation consultant intern must obtain certification by one of the entities specified in subpart 2 within three years of approval of registration as an intern by the commissioner. Failure to obtain certification within three

³⁸ *Christensen*, 331 N.W.2d at 749.

³⁹ *Brown v. Minnesota Department of Public Welfare*, 368 N.W.2d 906, 910 (Minn. 1985).

⁴⁰ *Id.* See *Beaty v. Minnesota Board of Teaching*, 354 N.W. 2d 466 (Minn. 1984) (Statement by licensing official that university courses would be approved for state requirements).

⁴¹ Stipulated Finding No. 15.

⁴² 29 SR 1480 (May 31, 2005).

years will result in a decision and order denying registration renewal.⁴³

Governmental agencies frequently adopt rules that significantly affect citizens of the state. The legislature has adopted extensive procedures to ensure that citizens have an opportunity to become informed about and comment on any proposed rule. The Department followed the prescribed process. This provided Ms. Trunnell with constructive notice of the rule change.⁴⁴ For this reason, Ms. Trunnell cannot reasonably rely upon the prior text of duly amended rule.

The record demonstrates that the Department repeatedly notified Ms. Trunnell that she needed to obtain certification within a 3-year period. The Department appropriately published its proposed change in the QRC rules in December 2004. Promissory estoppel, at a minimum, requires some evidence of the transmission of inaccurate information.⁴⁵ There is no evidence of specific misrepresentation by the Department. Accordingly, there is no basis for promissory estoppel.

R.C.L.

⁴³ Proposed rule 29 SR 685, 692 (December 20, 2004); Minn. R. 5220.1400, subp. 4 (effective June 7, 2005).

⁴⁴ Ms. Trunnell cites an unpublished Court of Appeals opinion, *Schultz v. Minnesota Board of Psychology*, 1999 WL 1101219, 1999 Minn. App. LEXIS 1276 (November 30, 1999) in support of her estoppel arguments. In that case, the Board knew the rules were ambiguous and failed to rectify them. There is no evidence that the Department knew its QRC rules were ambiguous.

⁴⁵ *Brown, supra* at 911 – 912.