

**5300.0340 VARIANCE.**

Subpart 1. **Variance; when allowed.** A licensee or applicant may petition the board in writing for a variance from rules in parts 5300.0100 to 5300.0360, except for a rule which incorporates a statutory requirement. A variance shall be granted if the board determines that the licensee or applicant has specified alternative practices or measures equivalent to or superior to the rule in question and if the licensee or applicant provides evidence that:

- A. the rationale for the rule in question can be met or exceeded by the specified alternative practices or measures;
- B. adherence to the rule would impose an undue burden on the licensee or applicant; and
- C. the granting of the variance will not adversely affect the public welfare.

Subp. 2. **Petition; requirements.** A petition for a variance must contain the following information:

- A. the specific rule for which the variance is requested;
  - B. the reason for the request;
  - C. the alternative practices or measures that will be taken if a variance is granted;
- and
- D. the length of time for which a variance is requested.

Subp. 3. **Alternatives must be followed.** Any licensee or applicant who is granted a variance must comply with the alternative practices or measures specified in the petition for the variance.

Subp. 4. **Renewal; notice of change; revocation.** If required by the board, a variance shall be renewed upon petition for a renewal of the variance at the time specified by the board when granting the variance if the circumstances justifying the variance continue to exist, their existence is not due to failure to comply with the correction of these conditions, and if all of the requirements of subparts 1, 2, and 3 are met. A licensee or applicant who has been granted a variance must immediately notify the board of any material change in the circumstances that justified the variance. A variance shall be revoked if there is a material change in the circumstances which justified the granting of the variance.

Subp. 5. **Burden of proof.** The burden of proof is upon the licensee or applicant to demonstrate to the board, by a preponderance of the evidence, that the requirements in subparts 1 and 2 have been met.

Subp. 6. **Notice of variance; denial; revocation.** The board shall notify the licensee or applicant in writing when the board grants, denies, renews, or revokes a variance. The notice must specify the reasons for the action. If a variance is granted, the notification

must state the period of time for which the variance is effective, if required, and must state alternative practices or measures the licensee or applicant must meet.

**Statutory Authority:** *MS s 148B.31; 148B.37; 214.06*

**History:** *15 SR 1782*

**Published Electronically:** *June 11, 2008*