

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF CHIROPRACTIC EXAMINERS**

**In the Matter of the Adoption of
Amendments to the Board of
Chiropractic Examiners
Minnesota Rules, Parts
2500.0200 to 2500.5000.**

**ORDER ON REVIEW OF
RULES UNDER MINN.
STAT. § 14.26**

The Board of Chiropractic Examiners (board) is seeking review and approval of rule amendments adopted on April 11, 1996, pursuant to Minn. Stat. § 14.26. On May 7, 1996, the Office of Administrative Hearings received all of the documents from the Agency required to be filed under Minn. Stat. § 14.26 and Minn. R. 1400.2310.

Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, 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 rule.
2. The rule was adopted in compliance with the procedural requirements of chapter 14 and Minn. R., chapter 1400, except for omissions of specific statements in the Notice of Intent to Adopt Rules. The following statements were not included in the Notice of Intent to Adopt Rules:

Pursuant to Minn. R. 1400.2080(2)(E) a statement that the SNR includes information on who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule, and how to obtain a copy from the agency.

Pursuant to Minn. R. 1400.2080(2)(G) a statement that persons may request to be placed on the agency's mailing list to receive notice of future rule proceedings.

Pursuant to 1400.2080(3)(E) a statement that if a request for a hearing does not provide the information under item E, that the request is invalid and will not count when determining whether a public hearing must be held.

Pursuant to 1400.2080(3)(J) a statement that persons who wish to comment on the legality of the rule must do so during the 30-day comment period.

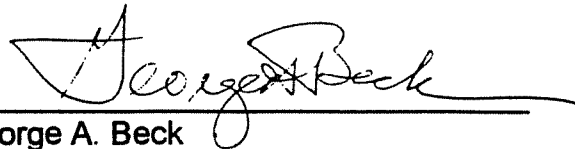
The Administrative Law Judge finds that the failure to include the above statements did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process and therefore constitutes harmless error under Minn. Stat. §14.26(3)(d)(1).

3. The record demonstrates a rational basis for the need for and reasonableness of the adopted rule.

4. The adopted rule is not substantially different from the rule as originally proposed.

5. The adopted rule amendments are approved as to its legality with the exception of Minn. R. part 2500.5000 which is disapproved as to its legality under Minn. R. 1400.2100, item E.

Dated this 21st day of May, 1996.



George A. Beck
Administrative Law Judge

MEMORANDUM

Under Minn. Stat. § 14.26, the Administrative Law Judge is authorized to review adopted rules submitted by agencies as to the rules legality. As stated in the above order, the rules meet the statutory authority, procedural, substantial difference, and rational basis requirements of Minn. Stat. § 14.26 and Minn. R. 1400.2100. However, the rule is being disapproved as to the agency's amendment made to Minn. R. 2500.5000 as not meeting the constitutional standard under Minn. R. 1400.2100, item E.

The amendment to Minn. R. 2500.5000, Recordkeeping, provides as follows:

~~In order to justify the need for chiropractic care, a chiropractor must obtain information necessary to generate and maintain documents that indicate the information in items A to H.~~ A record containing a preponderance of the information in items A to G, as determined by the board, shall constitute a complete patient record.

In justifying the rule amendment, the board explained that while the current rule was intended to establish a foundation and premise for standards by which good quality records could be measured, the board was unprepared for the literal translation of the rule by third party payors, and how this interpretation would adversely impact

licensees reimbursements. The board explained that it was not uncommon for a third party payor to refuse to reimburse a licensee for services, for what they (the third party) considered to be an infraction of the record keeping rule. Such interpretations, the board argues, would leave the patient unprotected and liable for the bill.

Additionally, the board explained that the quantity of complaints for seemingly minimal infraction of this rule have become nearly overwhelming, as the third party payors find simple recourse to refuse payment. The board is more concerned that the licensee is in substantial compliance with the rule. The board also wants more latitude to be able to make a decision as to whether the licensee is in violation of the intent of the rule, which is to produce records sufficient to justify care.

The Administrative Law Judge agrees with the board that there is a need to clarify this rule provision. However, the amended rule is vague in that it does not provide a definition as to what is meant by "preponderance of the information" that a chiropractor would need to maintain for a complete patient record. In addition, the amended rule grants excessive discretion to the board, without adequate criteria or guidelines, for determining what constitutes a complete patient record.

A rule that grants discretionary authority to the agency must include a reasonably clear policy or standard of action. A rule needs to have specific criteria to avoid excessive agency discretion. Adequate guidelines are needed to ensure that the rule will be applied in a consistent manner. Blocher Outdoor Advertising Co. v. Minnesota Dep't of Transp., 347 N.W.2d 88, 91 (Minn. Ct. App. 1984). Therefore, in order for the rule amendments to be approved, adequate guidelines or criteria must be set forth as to what constitutes "substantial compliance," for a complete patient record sufficient to justify care.

Under Minn. R. 1400.2300, subpart 7, the reasons for disapproval of the rule amendment will be submitted to the chief administrative law judge for review. Under 1400.2300, subpart 8, the agency may resubmit the rule to the chief judge for review after changing it and may request that the chief judge reconsider the disapproval.

G.A.B.