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How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
• Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
• Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
• Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
• Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
• Notice of adoption of temporary rules.
• Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The State Register publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue/Range and Issue Number. Includes rows for Issues 1-13, 14-25, 26, 27-38, 39, 40-51, and 52.

The listings are arranged in the same order as the table of contents of the MCAR.

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**PROPOSED RULES**

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
  2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
  3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

**Board of Nursing**

**Proposed Repeal of Current Rules (7 MCAR §§ 5.1050-5.1101 and 5.2040-5.2091) and Adoption of New Rules (7 MCAR §§ 5.3000-5.3021) Regarding Practical and Professional Nursing Program Approval**

**Notice of Hearing**

A public hearing concerning the proposed new rules and amendments to the rules captioned above will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, on December 16,

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

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1982, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7645, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411 to 15.0417, 15.052 (1980 and Supp. 1981) and by 9 MCAR §§ 2.101 to 2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five (25) days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the statement of need and reasonableness before the hearing and to attend the hearing. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

A copy of the proposed rules is attached hereto and made a part hereof. Questions concerning the rules may be addressed to Margaret Baach, Assistant Director of the Board of Nursing, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, telephone (612) 623-5186. The proposed rules address the processes of and establish the standards for obtaining and retaining board approval of programs preparing students for licensure. Current rules to be repealed deal with broad curricula topics, specify criteria for board approval of clinical facilities used for student learning and require faculties to list graduate competencies. The proposed rules require faculties to evaluate students for possession of board-specified nursing abilities. Also, the proposed rules require that controlling bodies applying for approval submit additional information to the board. The statutory authority of the Minnesota Board of Nursing to adopt these rules is contained in Minn. Stat. §§ 148.191, subd. 2, 148.251, 148.292, 148.296 (1980 and Supp. 1981). Please note that these proposed rules repeal current 7 MCAR §§ 5.1050-1101, 5.2040-5.2091, and proposed 7 MCAR § 5.3002, subparts C. and D. effective July 1, 1985.

It is anticipated that the total cost to public bodies in this state of implementing these rules will not exceed \$100,000 in either of the two years following their adoption.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the agency, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A.03, subd. 1 (1980) requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

- a. Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
- b. Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

October 25, 1982

Joyce M. Schowalter, Executive Secretary  
Board of Nursing

**Rules as Proposed (all new material)****7 MCAR § 5.300 Definitions.**

A. Scope. For the purpose of 7 MCAR §§ 5.3000-5.3021 the following terms have the meanings given them.

B. Advanced standing. "Advanced standing" means academic credit granted a licensed practical nurse in recognition of prior nursing education and nursing experience.

C. Affiliation. "Affiliation" means an arrangement between representatives of a controlling body and of a clinical setting in which representatives of the clinical setting who are not faculty members determine and guide students in the implementation of clinical learning activities, and evaluate nursing abilities of students assigned to the clinical setting in accordance with 7 MCAR §§ 5.3014-5.3021.

D. Approval. "Approval" means authority granted by the board for a controlling body to offer a program designed to prepare students to meet the nursing education requirements for licensure as practical or professional nurses in Minnesota.

E. Board. "Board" means the Board of Nursing.

F. Board review panel. "Board review panel" means the group convened under Minnesota Statutes, section 214.10 to review investigations of alleged noncompliance with rules.

G. Controlling body. "Controlling body" means a school or organization falling within the provisions of Minnesota Statutes, section 148.171 to 148.299 and meeting the requirements of 7 MCAR § 5.3004 B.

H. Counseling. "Counseling" means using mutual deliberation to assist the patient or family in decision making.

I. Director. "Director" means the registered professional nurse responsible for developing a proposed program or for implementing a program. This title is used regardless of the official title given to the person by controlling body.

J. Faculty. "Faculty" means the director and other individuals designated by the controlling body as having ongoing responsibility for teaching or evaluating student learning in the program.

K. Family. "Family" means two or more people related through blood or marriage or living in the same household.

L. Nursing ability. "Nursing ability" means the mental and physical capacity and skill necessary to perform nursing actions.

M. Nursing care. "Nursing care" means responding to the needs of patients and performing personal services for and with patients.

N. Nursing care plan. "Nursing care plan" means a pattern of specified patient goals, desired patient outcomes, and nursing actions designed to achieve the outcomes and goals.

O. Nursing personnel. "Nursing personnel" means those nurses and nursing assistants, exclusive of nursing students, who provide care to patients.

P. Observation. "Observation" means the act of using the senses to perceive information.

Q. Patient. "Patient" means a person of any age, including a pregnant person and a fetus, who is receiving or needs to receive care from a nurse. An exception to this definition is permitted in 7 MCAR §§ 5.3017 and 5.3018 when complying with 7 MCAR §§ 5.3019 and 5.3020.

R. Practical program. "Practical program" means a program designed to prepare students for licensure as practical nurses.

S. Professional program. "Professional program" means a program designed to prepare students for licensure as registered nurses.

T. Program. "Program" means a course of study offered by a controlling body that prepares students to practice practical nursing or professional nursing.

U. Safety. "Safety" means protection against physical or psychosocial hurt, injury, loss, danger, or risk of harm.

V. Survey. "Survey" means collecting and analyzing information to assess compliance with rules. Information may be collected by several methods, including review of written reports and materials, on-site observation and review of materials, or in-person or telephone interviews and conferences.

W. Treatment. "Treatment" means a therapy prescribed by a licensed health professional or a legally prescribed medication.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## **PROPOSED RULES**

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7 MCAR § 5.3001 Purpose. Rules 7 MCAR §§ 5.3000-5.3021 are promulgated to establish requirements for practical and professional nursing programs conducted under Minnesota Statutes, sections 148.171 to 148.292.

7 MCAR § 5.3002 Scope of rules and temporary exemptions.

A. Scope. Rules 7 MCAR §§ 5.3000-5.3021 apply to new applications for program approval and to currently approved practical and professional programs, except those programs temporarily exempted under C. Nothing in 7 MCAR §§ 5.3000-5.3021 restricts faculty from designing or implementing curricula, establishing evaluative criteria, or evaluating student abilities more comprehensively than required under 7 MCAR §§ 5.3000-5.3021.

B. Continuing approval. Programs approved under 7 MCAR §§ 5.1050-5.1101 or 7 MCAR §§ 5.2040-5.2091 are not required to obtain additional program approval under 7 MCAR §§ 5.3001-5.3021, unless existing approval is terminated by the board. Approval continues in effect as long as a program demonstrates compliance with all applicable rules.

C. Temporary exemption. Before July 1, 1983, either representatives of a controlling body that already operates an approved professional or practical program or the director of the program may notify the board, in writing, of intent to operate the program under existing rules 7 MCAR §§ 5.1050-5.1101 or 7 MCAR §§ 5.2040-5.2091, rather than under 7 MCAR §§ 5.3000-5.3021. This temporary exemption may be used until June 30, 1985, at which time all approved nursing programs must comply with these rules.

D. Limited temporary exemption. Currently approved professional programs leading to associate degrees (addressed in Minnesota Statutes, section 148.251, subdivision 4) may use the exemption in C. for all of the rules except 7 MCAR § 5.3011.

7 MCAR § 5.3003 Restrictions before approval. Until a controlling body has received approval to conduct a program, representatives of the body shall use the term "proposed" in all printed references to the nursing program. Also, the controlling body may not conduct nursing courses designed to assist students in the achievement of nursing abilities specified in 7 MCAR §§ 5.3017 and 5.3018. This restriction does not prevent the controlling body from conducting nonnursing courses or from providing continuing education to nursing personnel.

7 MCAR § 5.3004 Conditions for program approval.

A. Minimum conditions. The board shall consider for approval only proposed programs that meet the conditions of B. and C.

B. Controlling body. The controlling body proposing a program must be a Minnesota public or private postsecondary educational institution, or a general hospital that had an existing program as of July 1, 1976.

C. Director. The controlling body shall name a director to develop the proposed program and to implement the approved program.

7 MCAR § 5.3005 Application for program approval.

A. Content. An application for approval of either a practical or professional program must meet each of the following requirements:

1. The application must be on a board-supplied form and must contain current and accurate information.
2. The information in the application must be confirmable by survey.
3. The application must be signed by the director and by another official representative of the controlling body.
4. Before the board acts upon the application, the application must include evidence that the proposal to establish the program has been favorably reviewed by the Minnesota Higher Education Coordinating Board, and, in the case of public postsecondary educational institutions, that authorization has been received to conduct the program from a state agency such as the Department of Education for Area Vocational Technical Institutes, State Board for Community Colleges, State University Board, or the University of Minnesota Board of Regents.
5. The application must include evidence of readiness to comply with each of the following rules: 7 MCAR § 5.3009; 7 MCAR § 5.3012, for the first year faculty only; 7 MCAR § 5.3013, for first year nursing courses and student evaluations only; 7 MCAR § 5.3014 and 7 MCAR § 5.3015, for first quarter, first semester, or first term only; 7 MCAR § 5.3016; and 7 MCAR §§ 5.3017-3021, for first quarter, first semester, or first term for which evaluations of students' nursing abilities are planned.
6. The application must include a detailed written description of how the program will comply with each of the following rules: 7 MCAR § 5.3010; 7 MCAR § 5.3011, if applicable; 7 MCAR §§ 5.3013-5.3015, during all nursing courses; and 7 MCAR §§ 5.3017-5.3021, before the first student completes the program.
7. The board may waive all or part of the sequence for evidencing compliance specified in 6. and in 7 MCAR § 5.3006 A. if the application satisfactorily meets rules 7 MCAR §§ 5.3009-5.3021.

B. Processing. When the board receives a satisfactory application and grants approval, the board shall notify representatives



of the controlling body in writing of the approval. When nursing courses begin, the director shall notify the board of the beginning date.

If the board receives an incomplete application, or if the application and survey fail to evidence compliance with the rules, the board shall notify representatives of the controlling body in writing of the deficiencies it must remedy. Once all deficiencies are satisfactorily remedied, the board shall grant approval and notify representatives of the controlling body in writing of the approval. If the deficiencies are not corrected, the board shall deny approval according to procedures in 7 MCAR § 5.3007 C.

If 24 months have elapsed since the receipt of an incomplete or otherwise unsatisfactory application, and the representatives of the controlling body have neglected to satisfactorily complete the application, to satisfactorily remove deficiencies, or to withdraw the application, the board shall deny approval and so notify representatives of the controlling body.

C. Reapplication. The board shall not reconsider an application that has been denied, but representatives of a controlling body may file a new application at any time.

#### 7 MCAR § 5.3006 Director's responsibilities.

A. Initial evidence of compliance. Within one year after beginning the first nursing course, and each succeeding year until the first student has completed the program, the director shall submit written evidence of compliance to date with 7 MCAR § 5.3009; 7 MCAR § 5.3010, when applicable; 7 MCAR § 5.3011, if applicable; and 7 MCAR §§ 5.3012-5.3021.

B. Evidence of compliance upon request. Upon request from the board, the director shall furnish evidence of compliance with any rule.

C. Annual evidence of compliance. After the first student has completed the program, the director shall annually submit an affidavit before October 1 that attests to compliance during the immediately preceding period, July 1 through June 30, with the applicable rules, at all locations and extended campuses. The affidavit must be on a board-supplied form.

D. Notice of change. The director shall inform the board within 30 days of a change in the director, the name of the program, the name of the controlling body, the address of the program, the address of the controlling body, or control of the program. Changes in control of the program include sharing control with another body, deleting a body from sharing control, transferring control in whole or part to another body, or merging programs formerly controlled by other bodies.

#### 7 MCAR § 5.3007 Rule compliance survey.

A. Timing. The board shall survey a proposed program for compliance with all applicable rules upon application for approval. The board shall survey an approved program for compliance with all applicable rules at least once every ten years. It shall also survey the program for compliance with one or more applicable rules if:

1. the success rate is 75 percent or less for students and graduates who, during any January 1 through December 31 period, wrote the licensing examination for the first time;
2. requirements for approval are changed or added;
3. the board has cause to suspect a lack of compliance with the rules; or
4. the board has cause to suspect program personnel of submitting false or misleading information or engaging in fraudulent practices to obtain or maintain approval.

B. Survey notice. The board shall notify the director of the time allowed for supplying by mail the information regarding compliance with rules, including time allowed for completing board-supplied forms and providing materials and written reports. Prior notice shall be given to the director of all onsite conferences, but not necessarily given for all onsite observations.

C. Board action. The board shall take one of the following actions upon completion of a survey:

1. notify the director in writing that compliance with the rules has been determined; or
2. notify the director in writing of allegations of lack of compliance with one or more rules and that a conference with a board review panel will be held, or that a contested case hearing will be held in accordance with the Minnesota Administrative Procedure Act, Minnesota Statutes, sections 15.041-15.052, and contested case rules of the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.222.

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If a board review panel finds that the allegations are untrue, the board shall dismiss the matter. If the panel finds that the allegations are true, and representatives of the program consent, the panel shall submit a report to the board.

The board shall take one of the following actions upon receipt of the report of the review panel or hearing officer: the board shall notify the director in writing that compliance with all rules has been determined; or issue a reprimand without changing the approval status if the program is in compliance either at the time of convening the review panel or hearing or by the time the board reviews the report of the panel or hearing; or issue a correction order specifying the date upon which the order will expire. Subsequently, if a deficiency is corrected before expiration of the correction order, the director will be notified in writing that the applicable rule has been determined to be in compliance. If a deficiency is not corrected before expiration of the correction order, the director will be notified that a conference with a board review panel may be held, or that a contested case hearing may be held in accordance with Minnesota Administrative Procedure Act, Minnesota Statutes, sections 15.041-15.052, and with contested case rules of the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.222. The purpose of the review panel or hearing is to determine if the deficiency was corrected prior to expiration of the correction order. If the deficiency was not corrected prior to expiration of the correction order, the board shall either remove the program from the list of approved programs or deny approval to an applicant.

### 7 MCAR § 5.3008 Program closure.

A. Notice. If a program is voluntarily closing, the director shall give notice to the board of the planned closing date within 30 days of making the decision public, and shall notify the board of closure within 30 days after actual date of closure.

B. Ending approval. The board will act to end approval after receipt of notice of voluntary closure. The board shall end approval as of the actual date of voluntary closure.

7 MCAR § 5.3009 Academic records. The director must have identified arrangements for secure storage of students' academic records or transcripts for the next 50 years in the event the program closes or the approval of the program is revoked. The director must inform the board of the name of the educational institution, hospital, or other organization that will be responsible for furnishing copies of students' academic records to graduates for that period of time.

7 MCAR § 5.3010 Verification of completion. Either the director or representatives of the controlling body shall supply a document, such as a transcript, that verifies program completion to each student who satisfactorily completes the course of study. The document must attest to the student's fulfillment of all requirements of the program and to the student's eligibility for a degree, diploma, or certificate. This document must include the name of the student, and either the date the student met all program requirements or the date of conferral of the degree, diploma, or certificate.

### 7 MCAR § 5.3011 Advanced standing.

A. Advanced standing. The faculty of a professional program leading to an associate degree (addressed in Minnesota Statutes, section 148.251, subdivision 4) shall allow a qualified licensed practical nurse to gain advanced standing for at least one-third of the nursing credits required for graduation. A qualified licensed practical nurse is one who has met the admission requirements of the program and whose nursing education and experience have been reviewed under B. The faculty shall grant advanced standing to the qualified licensed practical nurse before he or she begins the first nursing course in the program.

B. Determining advanced standing. The faculty shall use one or more of the following methods to determine the number of academic credits, if any, to be granted:

1. review of a licensed practical nurse's previous education as reported on a transcript or similar document;
2. granting a previously determined number of credits for graduation from any approved practical nursing program; or
3. testing of a licensed practical nurse's knowledge and skill. Passing the tests does not require the specialized knowledge and skill that constitute "the practice of professional nursing," as defined in Minnesota Statutes, section 148.171, clause (3), and in rule 7 MCAR § 5.3018.

C. Transition. The program must establish and implement learning activities designed to assist a licensed practical nurse who has been granted advanced standing in the transition from practical to professional nursing. The transitional learning activities may be provided in various ways, such as through nursing courses, tutoring, autotutorial lessons, or auditing of classes.

D. Completion. The program must make it possible for a licensed practical nurse who is a full-time student, and who has been granted advanced standing equivalent to at least one-third of the nursing credits required for graduation, to acquire all of the remaining nursing credits within the same length of time it would take the majority of full-time classmates who have not been granted any advanced standing. However, if all students enrolled have been granted advanced standing, they must be able to complete the remaining nursing credits in no more than 15 months.

E. Reporting. By October 1 of each year the director shall submit, on a board-supplied form, the following information for the immediately preceding period, July 1 through June 30: the number of licensed practical nurses who applied for advanced

standing; the number of licensed practical nurses admitted to the program; the number of licensed practical nurses admitted to the program with advanced standing; and the number of nursing credits granted to each. If no licensed practical nurse was admitted with advanced standing, the director shall provide an explanation.

F. Compliance deadline. To maintain approval, professional programs leading to associate degrees (addressed in Minnesota Statutes, section 148.251, subdivision 4) must be in compliance with this rule by September 1, 1983 and thereafter.

**7 MCAR § 5.3012 Faculty.**

A. Responsibility. Only the director and faculty members who are registered professional nurses may teach and evaluate student understanding of nursing theory and practice. Individuals who assist registered nurse faculty members or teach related subjects need not meet the qualifications outlined in B. and C.

B. Qualifications. The director must be prepared to supply documents showing that each registered nurse faculty member meets each of the following qualifications.

1. Each registered nurse faculty member must hold a professional nursing license and Minnesota current registration renewal certificate or, if licensed in another state, a permit to practice professional nursing in Minnesota.

2. Each registered nurse faculty member must successfully complete at least ten hours of educational preparation in principles and methods of evaluation. The preparation must be designed to develop skill in evaluating, such as describing basic principles of judging value or quality, describing characteristics of effective measuring procedures, defining a problem for evaluation, designing an evaluation plan, collecting information, and using evaluation results.

The preparation must be acquired through planned faculty in-service learning activities, continuing education offerings, or college courses.

The preparation must be obtained at least once in a faculty member's career, either by July 1, 1985, or within two years of initial faculty appointment to an approved program, or prior to the time the board acts on the application for approval of a program.

C. Basic education. Representatives of a controlling body applying for approval of a program or the director of a program that has not yet had a student complete the program must be able to supply documents showing that each of the registered nurse faculty members meets the additional educational qualifications specified as follows:

1. For practical nursing programs, the director must have at least a bachelor's degree of science or arts from a regionally accredited college or university.

2. For professional nursing programs, the director must have at least a master's degree from a regionally accredited college or university. All other faculty members must have at least a bachelor's degree of science or arts from a regionally accredited college or university.

**7 MCAR § 5.3013 Learning materials.** If a program has not yet had a student complete the program, the director shall ensure the availability of current instructional and evaluative materials necessary to enable students to acquire and demonstrate nursing abilities specified in 7 MCAR § 5.3017 and, for professional programs only, 7 MCAR § 5.3018. These may include library resources, autotutorial materials, audiovisuals, and classroom laboratory equipment and supplies.

**7 MCAR § 5.3014 Student clinical activities.**

A. Notice of option choice. By October 1 of each year, the director shall notify the board in writing, on the form submitted under 7 MCAR § 5.3006 C., of intent to conduct clinical teaching or evaluative activities in accordance with either B. or C.

B. First program option. The program must have evidence showing that each student is provided with learning activities in clinical settings that involve the application of nursing abilities, or is evaluated for possession of nursing abilities in clinical settings, with patients in each of the following categories:

1. newborn through 11 months;
2. one year through 12 years;
3. eighteen years through 64 years;
4. sixty-five years and older;

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5. healthy patients, such as patients in an uncomplicated maternity cycle or, for professional programs only, patients in need of health teaching;

6. acutely ill patients, suffering illness with a short and relatively severe course; and

7. chronically ill patients, suffering from an illness that persists over a long period of time.

C. Second program option. The program must have evidence showing that each student is provided with learning activities in clinical settings that involve the application of nursing abilities, or is evaluated for possession of nursing abilities in clinical settings, with patients in each of the following categories:

1. for the practical program: children; mothers of newborn infants; newborn infants; adults with common illnesses; geriatric patients; and patients with mental and emotional problems;

2. for the professional program: patients having nursing care needs in all stages of illness; adults, including those over 65 years of age, and children receiving medical and surgical therapy; patients having mental illness; and mothers and newborn infants in the maternity cycle.

**7 MCAR § 5.3015 Evidence of student clinical activities.** Compliance with 7 MCAR § 5.3014 B. or C. must be demonstrated, either through written evidence that the clinical learning activities or evaluations are required in nursing courses which all students must satisfactorily complete or through individual student records of clinical activities or evaluations. To demonstrate compliance, the director must be prepared to supply, for students progressing through the program and for the immediately preceding graduating class, one of the following: nursing course outlines or individual student records of clinical activities or of evaluation.

**7 MCAR § 5.3016 Clinical settings.**

A. Use of clinical settings absent affiliation. If a program uses a clinical setting to meet the requirements of 7 MCAR §§ 5.3014-5.3021 and has no affiliation with that clinical setting, then registered professional nurse faculty members must be responsible for determining clinical learning activities and for guiding and evaluating students in that setting.

B. Clinical use authorizations. A controlling body applying for program approval must have a written authorization from a representative of each clinical setting needed to meet the requirements of 7 MCAR §§ 5.3014-5.3021. There must be an authorization from each clinical setting needed to accommodate all of the students who will be enrolled at any one time prior to the first student's completion of the program.

C. Beginning affiliation. An affiliation established for the purpose of complying with 7 MCAR §§ 5.3014-5.3021 must be approved by the board before being implemented. The board shall base approval of the affiliation upon a written description of how the arrangement will provide for compliance with each of the following requirements:

1. There must be clear identification of the purpose of the proposed affiliation, identification of its relationship to all nursing courses, and evidence of how one or more of the requirements in 7 MCAR §§ 5.3014-5.3021 would be met.

2. A faculty member shall observe student performance in the clinical setting at least once a week.

3. Students shall not participate in an affiliated clinical setting for more than half of any one term, quarter, or semester.

4. Students shall not participate in more than two affiliated clinical settings while completing the program.

D. Continuing affiliation. Continued board approval of an affiliation shall be based upon evidence of actual compliance with each of the requirements in C. throughout the duration of the affiliation.

**7 MCAR § 5.3017 Nursing abilities to be evaluated.**

A. Listing for evaluation. Students must be evaluated for each of the nursing abilities in B.-H., grouped under categories of nursing practice.

B. Interaction with patients. Students must be evaluated for the ability to:

1. use verbal and nonverbal communication skills; and

2. establish a relationship based on the patient's situation.

C. Nursing observation and assessment of patients. Students must be evaluated for the ability to:

1. collect data pertaining to a patient's physical and physiological structure and function;

2. collect data pertaining to a patient's intellectual, emotional, and social function;

3. interpret collected data to identify a patient's health needs;

4. given a nursing care plan, establish a sequence of their own nursing actions; and

5. given nursing care plans for at least three patients, set nursing care priorities for that group.

- D. Physical nursing care. Students must be evaluated for the ability to:
1. provide for physical safety;
  2. prevent spread of pathogens;
  3. determine when necessary to use sterile technic;
  4. maintain sterility of equipment and supplies;
  5. maintain integrity of skin and mucous membranes;
  6. promote respiratory function;
  7. promote circulatory function;
  8. promote nutrition and fluid balance;
  9. promote elimination;
  10. promote physical activity;
  11. promote restoration or maintenance of physical independence;
  12. provide for physical comfort;
  13. promote rest and sleep; and
  14. provide for personal hygiene.
- E. Psychosocial nursing care. Students must be evaluated for the ability to:
1. promote development or maintenance of intellectual function;
  2. promote emotional development;
  3. promote social development;
  4. promote self esteem;
  5. promote a feeling of psychological safety and comfort;
  6. promote adaptation to change or loss, including loss of independence or death; and
  7. provide for a patient's need to know by giving, translating, or transmitting information.
- F. Delegated medical treatment. Students must be evaluated for the ability to:
1. administer oxygen;
  2. maintain patency of airway;
  3. assist in the administration of sterile fluid through an established intravenous route;
  4. implement treatment related to gastrointestinal function;
  5. implement treatment related to genitourinary function;
  6. implement treatment related to function of the integument;
  7. implement treatment related to musculoskeletal function;
  8. locate information necessary to administer prescribed medication;
  9. calculate dosage necessary to administer prescribed medication;
  10. prepare prescribed medication for administration;
  11. administer prescribed medication by mouth;
  12. administer prescribed medication by intramuscular injection;
  13. observe effects of the administration of a prescribed medication; and
  14. follow procedure for working with controlled substances in the administration of prescribed medication.

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G. Reporting and recording. Students must be evaluated for the ability to:

1. report orally the information necessary to facilitate the continued nursing care of a patient by any others involved; and
2. record in writing the information necessary to maintain a record of nursing actions, patient's reactions to the care, and resulting patient outcomes.

H. Evaluation of nursing actions. Students must be evaluated for the ability to evaluate effects of their own nursing actions.

### 7 MCAR § 5.3018 Additional professional nursing abilities to be evaluated.

A. Listing for evaluation. In addition to abilities specified in 7 MCAR § 5.3017, students in professional programs shall be evaluated for each of the nursing abilities in B.-L., grouped under categories of nursing practice.

B. Nursing care planning. Students must be evaluated for the ability to make a nursing care plan for a patient.

C. Case finding. Students must be evaluated for the ability to identify an individual who is not currently receiving nursing care, but who could benefit from care.

D. Health teaching and counseling. Students must be evaluated for the ability to:

1. promote a patient's understanding of a health practice or of needed care through teaching; and
2. promote a patient's independent functioning through counseling.

E. Referral to other health resources. Students must be evaluated for the ability to:

1. identify available health resources which match a patient's needs and desires; and
2. provide necessary information to patient and health resource.

F. Delegation to nursing personnel. Students must be evaluated for the ability to:

1. determine which nursing actions are to be delegated and the level of nursing personnel to whom they should be delegated; and
2. specify to nursing personnel the responsibilities for delegated actions.

G. Supervision of nursing personnel. Students must be evaluated for the ability to:

1. determine the need of nursing personnel for supervision;
2. direct or assist nursing personnel; and
3. evaluate care given by nursing personnel.

H. Teaching nursing personnel. Students must be evaluated for the ability to:

1. assess nursing personnel for a learning need;
2. make a teaching plan for meeting a learning need of nursing personnel;
3. implement a teaching plan for nursing personnel; and
4. determine if a learning need of nursing personnel has been met.

I. Delegated medical treatment. Students must be evaluated for the ability to administer prescribed medication through an already established intravenous route.

J. Evaluation of nursing care plans. Students must be evaluated for the ability to:

1. evaluate effectiveness of the nursing care plan for a patient; and
2. modify, if necessary, the nursing care plan for a patient.

K. Nursing assessment of actual or potential physiological or psychological health needs of families. Students must be evaluated for the ability to:

1. collect and interpret data pertaining to a family's structure and function in relation to health needs; and
2. make a plan to assist a family to achieve a health goal.

L. Nursing assessment of actual or potential physiological or psychological health needs of communities. Students must be evaluated for the ability to:

1. collect and interpret data pertaining to a community's population and environment in terms of the community's effects on an individual's health; and
2. make a plan for modifying conditions within the community which affect the health of an individual.

**7 MCAR § 5.3019 Preparation for evaluation.**

A. Predeterminations. There must be written evidence that, before students were evaluated, the faculty had determined the evaluation components as follows for each nursing ability specified in 7 MCAR § 5.3017 and, for professional programs only, 7 MCAR § 5.3018:

1. the nursing actions a student may perform to demonstrate each nursing ability;
2. the evaluation situation or stimulus to be presented to students (the situation or stimulus must elicit or at least permit a demonstration of each identified nursing ability that can be observed or otherwise measured for quality);
3. the criteria for judging a student's performance of each nursing ability (these criteria must be measurable, be appropriate to the nursing ability, address the safety of the patient, and ascertain the accuracy of student performance); and
4. the basis for deciding whether the student possesses each nursing ability.

B. Evidence of preparation. The director of a program which has had a student complete the program must demonstrate compliance with A., by supplying the written and dated evidence required in A. for a sample of the nursing abilities outlined in 7 MCAR § 5.3017 and, for professional programs only, 7 MCAR § 5.3018. This sample shall be selected by the board or its representative.

C. New program compliance. Representatives of a controlling body applying for approval of a program, or the director of a program that has not yet had a student complete the program, must demonstrate compliance with all aspects of A. for all of the nursing abilities outlined in 7 MCAR § 5.3017 and, for professional programs only, 7 MCAR § 5.3018, in accordance with 7 MCAR § 5.3005 A.5. and 6. and 7 MCAR § 5.3006 A.

**7 MCAR § 5.3020 Evaluation of nursing abilities.**

A. Practical program evaluation requirement. Directors of practical programs shall be prepared to give evidence that each student has been evaluated at least once for each of the nursing abilities specified in 7 MCAR § 5.3017.

B. Professional program evaluation requirement. Directors of professional programs shall be prepared to give evidence that each student has been evaluated at least once for each of the nursing abilities specified in 7 MCAR § 5.3017 and 7 MCAR § 5.3018.

C. Evidence of evaluation of nursing abilities. For the sample of nursing abilities chosen by the board or its representative, compliance with A. and B. must be demonstrated through at least one of the following methods:

1. evidence that the evaluations are required in nursing courses that students must satisfactorily complete;
2. evidence that satisfactory completion of the evaluations are required of all students in order to progress through the program, even though the evaluations are not course related; or
3. a sample of student evaluation records, chosen by the board or its representative.

D. New program compliance. Representatives of a controlling body applying for approval of a program, or the director of a program that has not yet had a student complete the program, must demonstrate compliance for all of the nursing abilities through one of the methods outlined in C. in accordance with 7 MCAR § 5.3005 A.5. and A.6. and 7 MCAR § 5.3006 A.

**7 MCAR § 5.3021 Evaluation of combining nursing categories.**

A. Evaluation requirement. The director must be prepared to give evidence that each student's ability to combine at least three of the categories of nursing practice listed in 7 MCAR § 5.3017 and, for professional programs only, 7 MCAR § 5.3018 has been evaluated at least once. The ability to be demonstrated in this evaluation is that of bringing together nursing abilities from several categories of nursing practice to provide a coordinated, interrelated performance of nursing actions.

This evaluation must occur in a clinical setting. The combined categories of nursing practice must include at least one nursing ability from each of three or more categories of nursing practice.

For practical programs, this evaluation must involve multiple patients.

For professional programs, this evaluation must involve at least one of the following: multiple patients or multiple nursing personnel, a severe or urgent patient condition, or an unpredictable patient or nursing personnel situation.

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B. Preparation for evaluation. For the evaluation specified in A. there must be written evidence that, before students were evaluated, each of the following determinations were made:

1. The faculty identified the categories of nursing practice to be combined. This does not mean that nursing abilities evaluated within the categories must be determined before evaluation. The predeterminations required in 7 MCAR § 5.3019 A. may be used to evaluate these specific nursing abilities.

2. The faculty specified the clinical situation to be presented to students. This clinical situation must elicit or at least permit a demonstration of the ability to combine identified categories of nursing practice with actual patients or, for professional programs only, nursing personnel. Also, the situation must permit a demonstration which can be observed or otherwise measured for quality.

3. The faculty specified all criteria for judging a student's ability to combine categories of nursing practice. These criteria must be measurable, be appropriate to the combination of the categories of nursing practice in the situation, address the safety of the patient, and ascertain the accuracy of the student's performance.

4. The faculty specified the basis for deciding whether the student has the ability to combine categories of nursing practice in the situation.

C. Evidence of preparation. A program which has had a student complete the program must demonstrate compliance with B. by supplying written and dated evidence required in B. for the clinical performance evaluation outlined in A.

Representatives of a controlling body applying for approval, or the director of a program that has not yet had a student complete the program, must demonstrate compliance with B. in accordance with 7 MCAR § 5.3005 A.5. and A.6. and 7 MCAR § 5.3006 A.

D. Evidence of evaluation of combining nursing categories. Compliance with A. must be demonstrated for the evaluation of combining nursing categories, through one of the following methods:

1. evidence that the evaluation is required in a nursing course that all students must satisfactorily complete;
2. evidence that satisfactory completion of the evaluation is required of all students in order to progress through the program, even though the evaluation is not course related; or
3. a sample, chosen by the board or its representative, of student evaluation records.

E. New program compliance. Representatives of a controlling body applying for approval of a program, or the director of a program that has not yet had a student complete the program, must demonstrate compliance with evaluation of combining nursing categories through one of the methods outlined in D., in accordance with 7 MCAR § 5.3005 A.5. and A.6. and 7 MCAR § 5.3006 A.

Repealer. Rules 7 MCAR §§ 5.1050-5.1101, 5.2040-5.2091, and subparts C. and D. of 5.3002 are repealed effective June 30, 1985.

## ADOPTED RULES

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

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### Pollution Control Agency

#### Adopted Amendments to 6 MCAR § 4.0001 Reducing Ambient Air Quality Standards

The rule proposed and published at *State Register*, Volume 5, Number 49, pages 1943-1947, June 8, 1981 (5 S.R. 1943) is adopted with the following modifications:



**Rules as Adopted**

6 MCAR § 4.0001 Ambient air quality standards.

A. ~~The "primary" ambient air quality standards are levels of air pollutants above which, on the basis of present knowledge, public health hazards or impairment may be produced. The "secondary" ambient air quality standards are levels established to protect the public welfare from any known or anticipated adverse effects, such as injury to agricultural crops and livestock, damage to or deterioration of property, annoyance and nuisance of persons, or hazards to air and ground transportation.~~ Definitions. For the purpose of this rule, the following terms have the meanings given them.

1. "Primary ambient air quality standards" or "primary standards" mean levels established to protect the public health from adverse effects. The adverse effects that the standards should protect against include acute or chronic subjective symptoms and physiological changes that are likely to interfere with normal activity in healthy or sensitive individuals or to interfere unreasonably with the enjoyment of life or property.

2. "Secondary ambient air quality standards" or "secondary standards" mean levels established to protect the public welfare from any known or anticipated adverse effects, such as injury to agricultural crops and livestock, damage to or deterioration of property, annoyance and nuisance of persons, or hazards to air and ground transportation.

B. ~~+~~ No person shall emit any pollutant in such an amount or in such a manner as to cause or contribute to a violation of any ambient air quality standard, ~~established in Part E of this rule. The ambient air means that portion of the atmosphere, external to buildings, to which the general public has access beyond such person's property line, provided however, that in the event the general public has access to the person's property or portion thereof, the ambient air quality standards shall apply in those locations. The general public shall not include employees, trespassers or other categories of people who have been directly authorized by the property owner to enter or remain on the property for a limited period of time and for a specific purpose.~~

2. C. Enforcement; restrictions. ~~The requirement specified in subparagraph B.1. shall apply~~ applies without respect to whether emission rules stated in other air pollution control rules of the agency are also being violated. However, in enforcing the ambient air quality standards specified in this rule, the agency shall not seek payment of a civil or criminal penalty from a person to or with whom a permit or stipulation agreement has been issued or entered into by the agency if and only if:

a. ~~1.~~ that permit or stipulation agreement establishes emission limitations or standards of performance for the pollutant or precursor thereof for which there is an ambient air quality standard which has been violated; and,

b. ~~2.~~ the person to or with whom the permit or stipulation agreement has been issued or entered into by the agency was in compliance with the corresponding emission limitations and standards of performance at the time of the violation of the ambient air quality standard.

3. D. Notwithstanding B.2. C., any violations of the ambient air quality standards shall constitute grounds for the modification or revocation of a permit, for action by the agency to amend a stipulation agreement, or for other enforcement action by the agency to further require reduction or control of that person's emissions.

~~C.1.~~ E. Measurement methodology, except for hydrogen sulfide. For all ambient air quality standards except hydrogen sulfide, measurements made to determine compliance with the standards shall be performed as set forth in:

a. ~~1.~~ 40 Code of Federal Regulations C.F.R. Part 50; National Primary and Secondary Ambient Air Quality Standards (1981), or,

b. ~~2.~~ 40 Code of Federal Regulations C.F.R. Part 53; Ambient Air Monitoring Reference and Equivalent Methods (1981), and,

e. ~~3.~~ 40 Code of Federal Regulations C.F.R. Part 58; Ambient Air Quality Surveillance (1981).

~~C.2.~~ F. Measurement methodology for hydrogen sulfide. For hydrogen sulfide, measurements made to determine compliance with the standards shall be performed in accordance with any measurement method approved by the director. The director shall approve a measurement method ~~if the director finds:~~

a. ~~that the method demonstrates acceptable~~ where the sensitivity, precision, accuracy, response time and interference levels ~~as related to the standard,~~ of the method are comparable to that of the measurement methods for the other pollutants described in E.; and

**KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.**

# ADOPTED RULES

~~b.~~ that when the person seeking to take the measurement has developed and submitted to the agency an acceptable a quality assurance plan that provides operational procedures for each of the activities described in Code of Federal Regulations 1981, title 40, part 58, appendix A.2.2, Quality Assurance Requirements for State and Local Air Monitoring Stations.

~~D.~~ G. Time of compliance. The state secondary ambient air quality standards for ozone and sulfur dioxide and ozone, that are more restrictive than the state primary ambient air quality standards, shall be attained as expeditiously as practicable but in no case later than December 31, ~~1986~~ 1984.

~~E.~~ H. State ambient air quality standards. Exhibit 6 MCAR § 4.0001 H.-1. contains the state ambient air quality standards.

## Exhibit 6 MCAR § 4.0001 H.-1.

### State Ambient Air Quality Standards

Pollutant/ Air Contaminant	Primary Standard	Secondary Standard	Remarks
1- Hydrogen Sulfide	0.05 ppm by volume (70.0 micrograms per cubic meter) 0.03 ppm by volume (42.0 micrograms per cubic meter)		1/2 hr. average not to be exceeded over 2 times per yr. 1/2 hr. average not to be exceeded over 2 times in any 5 consecutive days
2- Ozone	<del>0-10</del> 0.12 ppm by volume (200 <del>235</del> micrograms per cubic meter)	<del>0-10</del> 0.12 ppm by volume (200 <del>235</del> micrograms per cubic meter)	the standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above the standard is equal to or less than one, as determined by 40 C.F.R. Part 50, Appendix H—Interpretation of the National Ambient Air Quality Standards for Ozone (1981)
3- Carbon Monoxide	9 ppm by volume (10 milligrams per cubic meter) 30 ppm by volume (35 milligrams per cubic meter)	9 ppm by volume (10 milligrams per cubic meter) 30 ppm by volume (35 milligrams per cubic meter)	maximum 8 hr. concentration not to be exceeded more than once per yr. maximum 1 hr. concentration not to be exceeded more than once per yr.
4- Hydrocarbons	0.24 ppm by volume (160 micrograms per cubic meter)	0.24 ppm by volume (160 micrograms per cubic meter)	maximum 3 hr. concentration (6 to 9 a.m.) not to be exceeded more than once per <del>yr.</del> year, corrected for methane
5- Sulfur Dioxides	<del>0.03 ppm by volume</del> (80 micrograms per cubic meter) (0.03 ppm by volume) <del>0.14 ppm by volume</del> (365 micrograms per cubic meter) (0.14 ppm by volume) <del>0.35 ppm by volume</del> (915 micrograms per cubic meter)	<del>0.02 ppm by volume</del> (60 micrograms per cubic meter) (0.02 ppm by volume) <del>0.14 ppm by volume</del> (365 micrograms per cubic meter) (0.14 ppm by volume) <del>0.35 ppm by volume</del> (915 micrograms per cubic meter) (0.35 ppm by volume)	maximum annual arithmetic mean maximum 24 hr. concentration not to be exceeded more than once per yr. maximum 3 hr. concentration to be exceeded more than once per <del>yr.</del> year in Air Quality Control Regions 127, 129, 130, and 132 as set forth in 40 C.F.R. Part 81, Designations of Air Quality Control Regions (1981)

		<u>1300 micrograms per cubic meter (0.5 ppm by volume)</u>	<u>maximum 3 hour concentration not to be exceeded more than once per year in Air Quality Control Regions 128, 131, and 133 as set forth in 40 C.F.R. Part 81, Designation of Air Quality Control Regions (1981)</u>
	<u>1300 micrograms per cubic meter (0.5 ppm by volume)</u>		<u>maximum 3 hour concentration not to be exceeded more than once per year</u>
	<u>1300 micrograms per cubic meter (0.5 ppm by volume)</u>		<u>maximum 1 hour concentration not to be exceeded more than once per year</u>
6- Particulate Matter	75 micrograms per cubic meter	60 micrograms per cubic meter	maximum annual geometric mean
	260 micrograms per cubic meter	150 micrograms per cubic meter	maximum 24 hr. concentration not to be exceeded more than once per <del>yr.</del> year
7- Nitrogen Dioxides	0.05 ppm by volume (100 micrograms per cubic meter)	0.05 ppm by volume (100 micrograms per cubic meter)	maximum annual arithmetic mean

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**TAX COURT**

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

**State of Minnesota  
County of Martin**

**Tax Court  
Regular Division**

Farm Air, Inc.,

Appellant,

v.

Commissioner of Revenue,

Appellee.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER FOR JUDGMENT**

Docket No. 3551

Order dated October 22, 1982.

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on June 10, 1982, at the Courthouse in the City of Fairmont.

Harry Munson, president of Appellant, appeared on behalf of Appellant. Appellant was not represented by counsel.

Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of Appellee.

Briefs were subsequently submitted by both parties.

**Syllabus**

Payment by a corporation of expenses that appear to be for the principal benefit of the officers and principal shareholders and their families and are of no benefit or minor benefit to the corporation are not allowable deductions as corporate expenses. The amounts of such payments are corporate income and should be treated as dividends to the recipient officers.

**Findings of Fact**

1. The taxpayer corporation is engaged in grain farming raising principally corn and soybeans. The sole shareholders are Harry Munson (94%) and his wife, Elizabeth Munson (6%). The corporation has never declared and paid a dividend. The officers are Harry Munson, President; Carl Munson (son), Vice-President; Elizabeth Munson (wife), Secretary-Treasurer; Brian Scott (son-in-law), Director. The principal employees of the corporation are Harry Munson, Elizabeth Munson, Carl Munson and Brian Scott.

2. The corporation owns no land but leases land from the following persons:

Harry Munson	400 acres
Elizabeth Munson	160 acres
Carl Munson	160 acres
Mrs. Brian Scott (daughter)	160 acres
Bonnie Scott	160 acres

The land owned by the children was gratuitously transferred to the children by Harry Munson. Each year the payment due to Harry Munson from the children on the transfer of the land is forgiven.

3. The items in question involving certain costs and expenditures will be considered in the order that they appear in the audit report.

4. The corporation claimed a deduction for depreciation on an indoor swimming pool built on land owned by Harry and Elizabeth Munson and adjacent to their home. The pool is used principally for recreation by the Harry Munson's children, grandchildren and friends. Appellant claimed it was used by employees and others for business purposes. Appellant provided with his brief after the trial a list of persons who presumably had used the pool, but there had been little if any evidence introduced at the trial to indicate how the pool benefited the Appellant corporation. Other claims were made in the brief submitted after trial relative to use in research for heating units and crop development. There was no testimony of this at the trial.

The question of whether or not the purpose of the pool was principally for the benefit of the Munsons, their friends and family or whether it had some benefit for the corporation is a question of fact and this Court finds that the pool had insignificant, if any, benefit to the Appellant corporation. The depreciation deduction should be disallowed.

5. The Appellant corporation adopted a self-insured medical reimbursement plan for officers, their families and dependents but not employees. The plan provided that the corporation would pay up to \$4,000 in any one year to reimburse officers for medical expenditures. In the year ending March 31, 1980, the corporation paid to Harry Munson, President, the sum of \$5,059.04 in medical reimbursement. The commissioner disallowed the deduction over \$4,000. The Appellee's brief indicated that there was some question as to the validity of any deduction since it did not include employees. This issue is not ruled on here as there was no request for denial of the \$4,000 deduction.

Harry Munson testified at the trial that some of the expenses were for a prior year and, therefore, the \$4,000 annual reimbursement had not been exceeded. He offered some bills with his post-trial brief to substantiate this. We note in the statement of Doctor Paul Arnesen attached to Appellant's post-trial brief as Exhibit B that there are charges for submitting statements to Union Casualty Insurance. The minutes of the corporation providing for reimbursements specifically state that any recovery received by the officers from insurance shall be deducted from the total medical costs. There was no indication as to whether or not there had been any reimbursements. There is insufficient evidence to overcome the prima facie finding of the commissioner and the deduction in excess of \$4,000 should be disallowed.

6. Expenses or taxes were deducted relative to a mobile home. There was inadequate evidence to indicate that the mobile home was a necessary business expense and the deduction should be disallowed.

There is some indication that depreciation on the mobile home has also been taken, but since this issue was not raised by the commissioner, we make no findings relative to it.

7. During the period in question, the corporation paid all of the utility expenses including telephone and electricity of the Munson family, including the father's home, the daughter's home and the son's home. The commissioner disallowed 50% of these expenses on the basis that they were personal expenses of the individuals. Appellant's claim and evidence that these were necessary corporate expenses was not sufficient to overcome the presumption that the commissioner's finding was correct.

8. The commissioner disallowed payments for merchandise, much of it purchased from women's apparel shops. Appellant offered no credible evidence to substantiate the allowance of this as a corporate business expense, so the deduction taken by the corporation should be disallowed.

9. Appellant claimed travel expenses in connection with the leasing of the farm properties. The travel was to family members or friends and the evidence did not substantiate a real need for such travel. The deductions claimed should be disallowed.

10. Travel expenses to the Cayman Islands for the purpose of investigating financing was disallowed by the commissioner. The investigation of financing was indicated to have been conducted during a few days of a two-month vacation by Mr. and Mrs. Harry Munson, the sole shareholders. There was insufficient evidence to substantiate the claim of Appellant and the deduction should be disallowed.

11. The commissioner disallowed certain insurance premiums that were taken as deductions. It appeared from the evidence that the disallowance pertained principally to insurance on the farm dwellings which are not owned by the corporation. In fact, the minutes of the corporation specifically indicate that the owners of the land would pay the real estate taxes, fire and wind insurance on the buildings, and the liability insurance of the owners.

The commissioner concedes that insurance payments of \$10.50 for the grain dryer and liability insurance paid to Milbank Mutual Insurance are allowable deductions. The Order of the Commissioner should be amended to properly reflect these deductions.

#### Conclusions of Law

1. The Order of the Commissioner assessing additional income taxes for the years 1978 and 1979 should be amended to reflect the insurance deductions conceded by the Commissioner and when so amended, said Order is confirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF FIFTEEN (15) DAYS IS HEREBY ORDERED.

By the Court  
Carl A. Jensen, Judge  
Minnesota Tax Court

#### Memorandum

The findings herein are principally fact questions. To be deductible, expenditures must be ordinary and necessary expenses of the business. Minn. Stat. § 290.09, subd. 2.

To be ordinary, an expenditure must be customary or usual in the type of business in question and to be necessary, the expenditure must be appropriate and helpful in the trade or business in question. *Welch v. Helvering*, 290 U.S. 111 (1933); *Blackmer v. Commissioner*, 70 F. 2d 255 (2nd Circuit 1934).

Considering the facts of each matter in dispute and the previous interpretations of the statutes and regulations by the Courts, we find as a fact matter that the commissioner properly disallowed the deductions referred to in his Order.

C.A.J.

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**SUPREME COURT**

## Decisions Filed Friday, October 29, 1982

Compiled by John McCarthy, clerk

81-1256 Gerald Whaley, petitioner, v. Anoka-Hennepin Independent School District No. 11, Appellant. Hennepin County.

The decision of appellant school district to terminate respondent as a tenured teacher is supported by substantial evidence in the record considered as a whole.

Reversed. Amdahl, C. J.

82-287, 82-425 Joseph A. Novak, petitioner, Appellant, v. State of Minnesota. Freeborn County and Mower County.

In postconviction proceeding for retroactive application of Sentencing Guidelines, district court, in determining whether petitioner's early release from sentence would not present a danger to the public and would not be incompatible with the welfare of society, is not bound by finding of another district court judge in a different proceeding for resentencing in connection with a different offense.

If district court decides to retroactively apply the Sentencing Guidelines, court must follow Guidelines in determining whether or not a departure would have been appropriate and in determining scope of departure.

Affirmed in Case No. 82-287; affirmed as modified in Case No. 82-425. Amdahl, C. J.

## SUPREME COURT

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**82-89 Stonewall Insurance Company v. Todd Horak, Appellant. Steele County.**

Service of process by certified mail on a Minnesota domiciliary currently residing in West Germany is permitted under Minn. Stat. § 543.19 (1980), and Minn. R. Civ. P. 4.03.

Under the circumstances of this case, service of process by certified mail on a nonresident defendant does not violate due process.

Affirmed. Simonett, J. Took no part, Coyne, J.

**81-1071, 81-1121 Marian Jones, etc., et al., Appellants (81-1071), v. James W. Fleischhacker, Appellant (81-1121), Ronald J. Fleischhacker. Ramsey County.**

A minor who is given initial permission by his parent to drive the parent's vehicle is deemed to be the agent of the parent under Minn. Stat. § 170.54 (1980) notwithstanding that the minor disobeyed the parent's instructions regarding operation of the vehicle.

A party does not have standing at trial to raise issue of alleged ethical misconduct of counsel for opposing party where the complaining party is not the former client of the attorney, the complaining party fails to show prejudice to his own interests, and the former client of the attorney does not himself complain.

Jury's finding regarding plaintiff-passenger's negligence will be upheld on appeal where the trial court properly instructed that passenger has a duty not to ride with an incompetent driver, sufficient evidence was presented for jury to conclude that plaintiff-passenger failed to exercise due care for his own safety, and conduct of counsel amounted to waiver of objection to potentially inadmissible evidence.

Trial court did not abuse its discretion in admitting testimony of expert as to plaintiff's potential for academic and employment success.

Damages awarded by the jury were not inadequate as a matter of law.

Jury's finding of negligent entrustment on the part of vehicle owner was sustained by evidence that negligent operation of the vehicle was reasonably foreseeable.

Affirmed in part, reversed in part and remanded for entry of judgment. Kelley, J.

**82-112 Edward G. Sigler, et al., v. First American National Bank of St. Cloud, Appellant, John Terhaar, Harriet Terhaar. Benton County.**

Genuine issues of material fact exist regarding defenses of estoppel and novation.

Reversed and remanded. Kelley, J. Took no part, Coyne, J.

**82-621 Tor L. Solberg v. FMC Corporation, Northern Ordnance Division, et al., Relators. Workers' Compensation Court of Appeals.**

The provision in Minn. Stat. § 176.102, subd. 11 (1980) governing compensation payable to an employee during retraining applies to all retraining benefits for which an employer's liability has not been established prior to October 1, 1979.

Reversed in part, affirmed in part and remanded. Kelley, J. Dissenting, Scott, J., and Todd, J.

**82-974 State of Minnesota, Appellant, v. David Norton Keith. Scott County.**

Pretrial appeal by state in criminal case from order suppressing evidence is dismissed for failure to timely file brief.

Appeal dismissed. Scott, J.

# STATE CONTRACTS

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Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

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## City of Duluth

### Notice of Availability of Contract for Preliminary Engineering-Traffic Control System

The City of Duluth requires the services of a qualified consultant with recent experience in multiple intersection master controlled signal systems.

Proposed work includes:

- 1) Assist the City in the selection of an appropriate technology replacement for the computerized central controller of the 28 intersection central business district signal system.
- 2) Perform and document traffic studies and related analyses as needed.
- 3) Prepare project memorandum (combined project development report/location design study report).
- 4) Prepare plans, specifications and estimates and other documentations as needed.
- 5) Perform inspection of the installation of the selected system as needed.
- 6) Prepare documentation necessary for FHWA final approval.

Firms desiring consideration shall express their interest and submit their current Federal Forms 254 and 255 by 4:00 p.m., November 15, 1982. Technical proposals will be requested from qualifying firms.

This is not a request for proposal. Send your response to:

Daniel Murphy  
Traffic Engineer  
204 City Hall  
Duluth, MN 55802  
(218) 723-3346

## Department of Health Health Systems Division

### Notice of Request for Proposals for Technical Assistance in Reviewing Rules, Procedures, and Data Collection and Dissemination

The Department of Health is reviewing the rules, procedures, and data collection and dissemination efforts of the Hospital Rate Review System. The primary purpose of this project is the improvement and refinement of the system's ability to monitor, contain, and inform the public on the nature of expenditures for hospital care. The department is soliciting proposals to provide technical assistance in these tasks.

This Request for Proposal does not obligate the state to complete the project, and the state reserves the right to cancel the solicitation if it is considered to be in the State's best interests.

A. Scope of Project:

(Described immediately above)

B. Project Tasks:

The following tasks are expected to be sufficient to fulfill the purpose of this project (responders may propose additional tasks or activities if they will substantially improve the results of the project):

1. Review and analyze existing rules, procedures, and data collection and dissemination efforts:

## STATE CONTRACTS

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2. Identify techniques of improving the system in a manner consistent with the system's statutory mandate; and
3. Advise the department on recommended ways of improving the identified characteristics of the system.

### C. Department Contacts:

Prospective responders who have any questions regarding this Request for Proposal may call or write:

Robert Hiller, Director  
Hospital Rate Review Program  
Minnesota Department of Health  
717 S.E. Delaware Street  
P.O. Box 9441  
Minneapolis, Minnesota 55440  
(612) 623-5572

Please Note: Other department personnel are not allowed to discuss the project with responders before the submittal of proposal deadline.

### D. Submission of Proposals:

All proposals must be sent to and received by Mr. Hiller at the above address no later than 4:00 p.m., November 22, 1982. Late proposals will not be accepted. Submit five copies of proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed in ink, by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

### E. Project Costs:

The department has estimated that the cost of this project should not exceed \$5000.

### F. Project Completion Date:

The project will be completed by June 30, 1983; or within nine months from the date of project authorization.

### G. Proposal Contents:

The following will be considered minimum contents of the proposal:

1. A restatement of the objectives, goals and tasks to show or demonstrate the responder's view of the nature of the project.
2. A description of the products to be provided by the responder.
3. An outline of the responder's background and experience with particular emphasis on local, state and federal government work. Identify personnel to conduct the project and detail their training and work experience. (No change in personnel assigned to the project will be permitted without the approval of the Hospital Rate Review Program, Minnesota Department of Health).
4. A detailed cost and work plan.
5. Identification of the level of participation of the Department of Health in the project as well as any other services to be provided by the Department.

### H. Evaluation:

All proposals received by the deadline will be evaluated by December 1, 1982. Results will be sent immediately by mail to all responders. Factors upon which proposal will be judged include, but are not limited to, the following:

1. Expressed understanding of project objectives,
2. project work plan,
3. project cost detail, and
4. qualifications of both company and personnel.

### I. Workers' Compensation:

The successful responder will be required to submit acceptable evidence of compliance with applicable workers' compensation insurance coverage requirements prior to execution of the contract.



## **Department of Health**

### **Notice of Request for Proposals for Program Planning Services**

The Minnesota Department of Health will be developing and conducting an annual conference for the Minnesota Community Health Services System scheduled for August 31–September 2, 1983. The department is requesting proposals for program planning services to develop and implement this conference.

This Request for Proposal does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

#### A. Scope of Project

The Sixth Annual Boards of Health Meeting must be planned with the input of a planning committee and the Minnesota Department of Health, all details of the meeting must be addressed and appropriately arranged to meet the needs of the Minnesota Department of Health, Boards of Health and the local community health services agencies. The meeting will be held on August 31–September 2, 1983, and a final report will be completed along with all financial matters related to the Annual Meeting by September 30, 1983.

#### B. Goals and Objectives

Goal: The Sixth Annual Boards of Health Meeting will be conducted on August 31–September 2, 1983

Objectives: to develop program content for the Annual Meeting with the consultation of a planning committee and Minnesota Department of Health staff

- to contact and arrange for speakers/presenters and moderators for the Annual Meeting
- to develop program agenda for Annual Meeting including scheduling of events and developing printed program and pre-registration materials
- to make all facilities' arrangements with the hosting establishment, including meeting room arrangements, audio-visual equipment and other arrangements necessary to the conducting of the meeting
- to develop meeting packets and registration materials, including evaluation forms
- to make arrangements for CEU's/CME's and implement the process
- to conduct and oversee the registration process prior to and at the Annual Meeting.
- to submit a final report on the Annual Meeting which would include the compilation of the evaluation forms, a financial report, and recommendations for future meetings.

#### C. Project Tasks

1. Staff up to six meetings of the Planning Committee.
2. Develop entire program for the Annual Meeting—speakers, events, timetable, etc.
3. Make all facilities arrangements with hosting establishment—meeting rooms, food and beverage arrangements as needed, audio-visual equipment.
4. Develop pre-registration, registration, printed program, and other written materials essential to the operation of the meeting.
5. Conduct and oversee registration process.
6. Establish CEU/CME process and implement that process.
7. Submit final report on Annual Meeting by September 30, 1983.

Responder may propose additional tasks or activities if they will substantially improve the results of the project.

#### D. Department Contacts

Prospective responders who have any questions regarding this Request for Proposal may call or write:

Deborah A. Plumb, M.P.H.  
Supervisor, Program and Policy Development  
Minnesota Department of Health

# STATE CONTRACTS

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Office of Community Development  
717 Delaware Street, S.E.  
Minneapolis, MN 55440  
612/623-5543

Please note: Other Department personnel are not allowed to discuss the project with responders before the submittal of proposal deadline.

## E. Submission of Proposals

All proposals must be sent to and received by:

Deborah A. Plumb, M.P.H.  
Supervisor, Program and Policy Development  
Minnesota Department of Health  
Office of Community Development  
717 Delaware Street, S.E.  
Minneapolis, MN 55440

—Not later than 4:30 p.m., November 29, 1982.

Late Proposals will not be accepted. Submit four (4) copies of the proposal. Proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed, in ink, by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

## F. Project Costs

The department has estimated that the cost of this project should not exceed \$6,000.

## G. Project Completion Date

The project will be completed by September 30, 1983; or 10 months from the date of project authorization.

## H. Proposal Contents

The following will be considered minimum contents of the proposal:

1. Outline the responder's background and experience with particular emphasis on local and state government work. Identify personnel to conduct the project and detail their training and work experience. No change in personnel assigned to the project will be permitted without the approval of the Project Director.

2. Identify and describe the deliverables to be provided by the responder.

3. Responder will prepare a detailed cost and work plan which will identify the major tasks to be accomplished and be used as a scheduling and managing tool.

4. Identify the level of the Minnesota Department of Health's participation in the project as well as any other services to be provided by the Department.

## I. Evaluation

All proposals received by the deadline will be evaluated by representatives of the Department of Health. In some instances, an interview will be part of the evaluation process. Factors upon which proposals will be judged include, but are not limited to, the following:

1. Expressed understanding of project objectives.

2. Project work plan.

3. Project detail.

4. Qualifications of both company and personnel. Experience of project personnel will be given greater weight than that of the firm.

Evaluation and selection will be completed by December 6, 1982. Results will be sent immediately by mail to all responders.

## J. Workers' Compensation

The successful responder will be required to submit acceptable evidence of compliance with workers' compensation insurance coverage requirements prior to execution of the contracts.

## **Higher Education Coordinating Board Policy Planning and Research Division**

### **Notice of Opening for A Programmer to Assist with Conversion to Student Record Enrollment Survey**

The Coordinating Board is seeking an experienced programmer to assist on a contract basis with the conversion to a student record enrollment survey. Services sought under this contract include:

1. Write programs to generate enrollment reports consistent with existing reports formats.
2. Advise staff of the Coordinating Board on data base management alternatives for different hardware configurations.

Qualified applicants for this contract should contact:

Susan Rustad, Manager of Information Services  
Suite 400  
Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101  
Phone: (612) 296-9687

Applicants will be required to meet with board staff to review the project prior to submission of bids. Interested applicants should contact the Manager of Information Services by November 15, 1982.

## **North Hennepin Community College**

### **Notice of Request for Proposals for Professional and Technical Services**

North Hennepin Community College is required to produce a variety of public information products relating to the programs and services available to students and the general public from the College.

Lack of facilities, a large workload and the need to meet deadlines require the Public Information Office to contract with an outside agency for professional, technical and creative services, as needed.

This request for proposal does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

#### I. Scope of Contract

The contract covers consultation, creation, production and delivery of various creative services, as assigned. Vendor provides staff, materials, production facilities and equipment, pick-up and delivery, as requested.

#### II. Contract Tasks

Vendor must have the capability to provide the following creative services:

Creative consultation and concept development  
Audio-visual script preparation  
Graphic design and layout  
Photography (black & white, and color) (studio & location)  
Photograph retouching (air brush)  
Illustration  
Graph, chart and table design and artwork  
Display art

Responder may propose additional tasks or activities that substantially improve the capabilities of the vendor.

#### III. Contract Costs

The cost of professional services and expenses produced under this contract will not exceed a total of \$7,500.

#### IV. Project Completion Date

Assignments within the scope of the project will be made on an as-needed basis. The College is not obligated to spend the entire contract amount.

## STATE CONTRACTS

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The initial contract will be through June 30, 1983. Upon mutual agreement of the State and the vendor, and subject to the availability of funds, a new contract for a one year extension may be entered into for the time period July 1, 1983 through June 30, 1984.

### V. Proposal Contents

The proposal must, at a minimum:

- A. Identify and describe the services to be provided by the responder.
- B. Outline the responder's background and experience, including state and federal government work, particularly work in higher education, if any, and identify personnel who will conduct the project, their training and their work experience. References are preferred. No change in personnel assigned to the project will be permitted without the approval of the College Public Information Director.
- C. Include a detailed list of costs and turnaround time for services offered. This information will be a scheduling and management tool as well as the basis for invoicing.

### VI. Submission of Proposals

All proposals must be sent to and received by:

Bob Schmidt, Director  
Public Information Office  
North Hennepin Community College  
7411 85th Avenue North  
Minneapolis, Minnesota 55445

—not later than 4:30 p.m., November 29, 1982.

Late proposals will not be accepted. Three copies of proposals are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Each copy of the proposal must be signed by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

### VII. Evaluation

All proposals received by the deadline will be evaluated by representatives of North Hennepin Community College Public Information Office. In some instances, interviews and portfolio reviews will be part of the evaluation process.

Factors upon which proposals will be judged include—but are not limited to—the following:

- A. Presentation of portfolio
- B. Cost detail and turnaround time.
- C. Qualifications of both company and personnel; experience of project personnel will be given greater weight than that of the firm.

Evaluation and selection will be completed by December 6, 1982. Responders will be notified of the results immediately by mail.

### VIII. Department Contacts

Prospective responders who have any questions regarding this request for proposal may call or write:

Bob Schmidt  
Public Information Director  
North Hennepin Community College  
7411 85th Avenue North  
Minneapolis, Minnesota 55445

This Request for Proposal does not obligate the State to complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

## **Department of Public Welfare Systems and Data Flow Division**

### **Notice of Request for Proposals for Software Development**

The Department of Public Welfare (DPW) is requesting proposals for the development of software for the Public Welfare State Institutions System (PWSIS). This software is to operate on Texas Instruments Model 990/10 mini-computers utilizing the DX10 operating system, 1974 ANSI COBOL, and Texas Instrument utilities (TI-FORM, SORT/MERGE). The scope of this development is limited to Phases 3 through 7 of the state systems development methodology (PRIDE).

DPW is continuing the development of four of twelve modules of the planned PWSIS with this proposal. The Security/Menu Module is the primary "housekeeping" portion of the system which will allow or prohibit access to programs, functions and files based on the identity of the user; and call the programs, procedures and files requested by the authorized user. The Resident ID Module will consist of the procedures and data required to establish and update a master control and index file for all data pertaining to an individual resident. The Resident Status Module will record location and status data in order to support aggregate population reporting and statistics, and provide individual resident histories. The Resident Banking Module will process the deposit and withdrawal of resident and social welfare monies, resident purchase orders, interest posting, periodic statements, and provide for auditing, balancing and control functions. These 4 modules are currently in Phase 2 design stage under a contract awarded to a private software development firm.

A contract will be awarded to the lowest bidder submitting a detailed work plan and time line, and demonstrating the necessary skills and experience to successfully complete the contract. Specific proposal response and contractual requirements are defined in the Request for Proposal. The maximum value of this contract is estimated at \$35,000. Inquiries and requests for proposal will be available through November 29, 1982. Closure for responses will be 3:30 p.m. December 6, 1982. Notification of award will follow within 10 working days.

Inquiries and requests for proposals are available from:

Jeff Carman  
Minnesota Department of Public Welfare  
Mental Health Bureau Section  
Space Center Building  
444 Lafayette Road, 1st Floor  
Saint Paul, Minnesota 55101  
(612) 296-0981

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## **OFFICIAL NOTICES**

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

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## **Department of Commerce Banking Division**

### **Bulletin No. 2664: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of November 1982**

Notice is hereby given that pursuant to Section 47.20, Subd. 4a, Minnesota Statutes 1980, the maximum lawful rate of interest for conventional home mortgages for the month of November 1982 is fourteen (14.00) percentage points. Further, pursuant to Section 47.20, Minnesota Statutes, the maximum lawful rate of interest for contracts for deed for the month of November 1982 is fourteen (14.00) percentage points.

## OFFICIAL NOTICES

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It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contracts for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

This is based on the Federal National Mortgage Association (FNMA) October 25, 1982, auction results and an average yield for conventional mortgage commitments of 13.917%. Current rates regarding the monthly publication are available by telephoning the Banking Division's 24-hour information number (612) 297-2751.

October 27, 1982

Michael J. Pint  
Commissioner of Banks

### **Department of Energy, Planning and Development Office of Local Government Planning Division**

#### **Notice of Meeting**

The Juvenile Justice Advisory Committee will meet on Friday, November 12, 1982 at 9:00 a.m., in Training Room 1, Third Floor, Space Center, 444 Lafayette Road, St. Paul, Minnesota.

### **Minnesota Environmental Quality Board Power Plant Siting and Transmission Line Routing Program**

#### **Notice of Annual Hearing**

Notice is hereby given that the Minnesota Environmental Quality Board will hold its Annual Public Hearing as required by the Power Plant Siting Act, Minnesota Statutes, § 116C.58, on Saturday, November 20, 1982, at 9:00 a.m., at the Capitol Square Building, First Floor Conference Room, 550 Cedar Street, St. Paul, Minnesota.

The public hearing is designed to afford interested persons the opportunity to be heard regarding the board's inventory of study areas, route and site designation process and other activities and duties performed pursuant to the act, and on policies set forth in its rules.

All persons will be afforded the opportunity to be heard through the presentation of oral or written statements. Direct all inquiries to:

George Durfee  
Manager, Power Plant Siting Program  
Minnesota Environmental Quality Board  
100 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101  
Telephone: (612) 296-2878

### **Department of Natural Resources**

#### **Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Anoka County**

##### **Notice of and Order for Hearing**

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minn. Stat. § 105.391, subd. 1 (1980) will be held in the County Board Room, 2nd Floor, Courthouse, Anoka, MN, on December 1, 1982, commencing at 6:00 p.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Edward Fields, 15421 Round Lake Boulevard, Anoka, MN 55303, Department of Natural Resources representative Karen Loechler, 1200 Warner Road, St. Paul, MN 55106, and County Soil and Water Conservation District representative Alan Vokaty, 4487-148th Ave. N.W., Anoka, MN 55303.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minn. Stat. § 105.391 (1980) and the criteria contained in Minn. Stat. § 105.37, subs. 14 and 15 (1980). Please take notice that waters listed in para. A.2. may sometimes also be considered for designation, in the alternative, as wetlands.

**A. PUBLIC WATERS**

## 1. Watercourses.

<u>Name</u>	<u>Section</u>	<u>From</u> <u>Township</u>	<u>Range</u>	<u>Section</u>	<u>To</u> <u>Township</u>	<u>Range</u>
None						

## 2. Preliminarily designated under section 105.37, subs. 14(a)-14(h).

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
2-497: Unnamed	14, 15, 22	33 (Linwood)	22
2-499: Unnamed	15, 22	33 (Linwood)	22
2-514: Unnamed	4, 5	32 (Columbus)	22

**B. WETLANDS**

<u>Number and Name</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>
2-18 : Columbus Lake	22, 23	32 (Columbus)	22
2-74 : Unnamed	30, 31; 36	32 (Ham Lake; Andover)	23; 24
2-470: Unnamed	34	33 (East Bethel)	23
2-486: Unnamed	8	32 (Ham Lake)	23
2-539: Unnamed	5	31 (City of Lino Lakes)	22
2-574: Unnamed	32, 33	32 (Ham Lake)	23
2-575: Unnamed	31	32 (Ham Lake)	23
2-618: Unnamed	31	32 (Ham Lake)	23
2-619: Unnamed	31	32 (Ham Lake)	23
2-748: Unnamed	4, 5	31 (City of Lino Lakes)	22
*2-749: Unnamed	W 1/2 9	32 (Ramsey)	25
82-195: Unnamed	7, 18; 12, 13	31 (City of Lino Lakes)	21; 22

\*petitioned to be added.

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minn. Stat. §§ 15.0424 and 15.0425 (1980).

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minn. Stat. § 105.42, subd. 1 (1980). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minn. Stat. § 105.391, subs. 10 and 12 (1980).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles  
DNR—Division of Waters  
Third Floor, Space Center Building  
444 Lafayette Road  
St. Paul, MN 55101  
Telephone: 612/297-2835.

October 29, 1982

Joseph N. Alexander, Commissioner  
Department of Natural Resources

## OFFICIAL NOTICES

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### Department of Public Welfare Bureau of Support Services Long-Term Care Division

#### Notice of Intent to Revise (12 MCAR § 2.052) DPW Rule 52

Notice is hereby given that the Minnesota Department of Public Welfare plans to revise (12 MCAR § 2.052) DPW Rule 52.

This rule governs reimbursement to intermediate care facilities for the mentally retarded (ICF/MR) by the Medical Assistance program.

All interested or affected persons or groups are requested to participate by providing information or comments on the issues surrounding specific areas of the rule.

Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Maria Gomez  
Long-Term Care Rates Division  
Department of Public Welfare  
4th Floor, Centennial Building  
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-5724.

All statements of information and comment must be received by November 30, 1982.

### Office of the Secretary of State

#### Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is November 30, 1982.

POISON INFORMATION CENTER ADVISORY COUNCIL has 1 vacancy open for a medical doctor in the field of toxicology. Applicants can not reside in Chippewa, St. Louis, Olmsted, Scott or Clay counties and may not be affiliated with the designated poison information center. The council advises the Commissioner of Health on establishing a poison information center to provide educational services to the public and to health professionals. Members receive no compensation. For specific information contact the Poison Information Center Advisory Council, 717 Delaware Street, S.E., Mpls 55414; (612) 296-5460.

### Department of Transportation

#### Petition of the County of Hubbard for a Variance from State Aid Standards for Design Speed

Notice is hereby given that the County Board of Hubbard County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project along CSAH 18 between CSAH 7 and Nevis Township Road No. 118.

The request is for a variance from 14 MCAR § 1.5032 H.1.d., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit a design speeds of 37, 38 and 43 miles per hour instead of a required design speed of 45 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.



If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 18th day of October, 1982.

Richard P. Braun  
Commissioner of Transportation

## **Department of Transportation**

### **Petition of the County of Wright for a Variance from State Aid Standards for Design Speed**

Notice is hereby given that the County Board of the County of Wright has made a written request to the Commissioner of Transportation for a variance from minimum design standards for design speeds along CSAH 37 from T.H. 25 to County Road No. 119; along CSAH 39 from T.H. 24 to CSAH 8 and along CSAH 37 from CSAH 5 to CSAH 6.

The request is for a variance from 14 MCAR § 1.5032 H.1.a., Rules for State Aid Operations under Minnesota Statutes, Chapters 161 and 162 (1978) as amended, so as to permit minimum design speeds of 40 MPH and 37 MPH instead of a required design speed of 45 MPH.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 18th day of October, 1982.

Richard P. Braun  
Commissioner of Transportation

## **Department of Transportation**

### **Petition of the City of Red Wing for a Variance from State Aid Standards for Design Speed**

Notice is hereby given that the City Council of the City of Red Wing has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for improvements on a portion of Tile Drive, West Main Street, Levee Road and T.H. No. 61 access and egress ramps.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statutes, Chapter 161 and 162 (1978) as amended, so as to permit design speeds of 27 and 18 miles per hour instead of a required design speed of 30 miles per hour.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 26th day of October, 1982.

Richard P. Braun  
Commissioner of Transportation

# OFFICIAL NOTICES

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## Department of Transportation

### Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832

#### Order No. 67224

Whereas, the Commissioner of Transportation has made his Order No. 66400 as amended by Orders Nos. 66446, 66550, 66628, 66690, 66768, 66807, 66920, 60962, 67065 and 67142 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, the commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.832.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 66400 is amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

#### TRUNK HIGHWAYS

T.H. 62 From Jct. T.H. 59 to Jct. T.H. 71 (Seasonal).

Dated this 29th of October, 1982.

Richard P. Braun  
Commissioner of Transportation

STATE OF MINNESOTA

State Register and Public Documents Division  
117 University Avenue  
St. Paul, Minnesota 55155

**ORDER FORM**

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Attention of: \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

**Briefly/Preview**—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

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