

# STATE REGISTER

STATE OF MINNESOTA



**VOLUME 8, NUMBER 26**

**December 26, 1983**

**Pages 1501-1556**



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### Printing Schedule for Agencies

| Issue Number          | *Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules | *Submission deadline for State Contract Notices and other **Official Notices | Issue Date    |
|-----------------------|---|--|---------------|
| SCHEDULE FOR VOLUME 8 |   |  |               |
| 27                    | Friday Dec 16   | Friday Dec 23  | Monday Jan 2  |
| 28                    | Friday Dec 23   | Friday Dec 30  | Monday Jan 9  |
| 29                    | Friday Dec 30   | Monday Jan 9   | Monday Jan 16 |
| 30                    | Monday Jan 2  | Monday Jan 16  | Monday Jan 23 |

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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# CONTENTS

## MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for issues 14-26 ..... 1504

## PROPOSED RULES

### Energy & Economic Development Authority

Proposed Temporary Rules for the Administration  
of the Public School Energy Conservation  
Investment Loan Program ..... 1506

### Medical Examiners Board

Proposed Rule Regarding Changes in the  
Continuing Medical Education Requirement  
Necessary for Physicians and Osteopaths to  
Retain Their Licenses to Practice Medicine ..... 1509

### Medical Examiners Board

Proposed Rule Regarding the Establishment of an  
Emeritus Registration Status for Those  
Physicians or Osteopaths No Longer Wishing to  
Remain in Practice ..... 1512

### Medical Examiners Board

Proposed Rule Regarding Changes in the Initial  
Licensure Requirements, Specifically Regarding  
the Use of Examinations and the Citizenship  
Requirements, for Those Physicians and  
Osteopaths Seeking Licensure to Practice  
Medicine in Minnesota ..... 1513

### Medical Examiners Board

Proposed Rule Regarding the Practice of Physical  
Therapy ..... 1521

## ADOPTED RULES

### Health Department

Adopted Schedule of Fines for Noncompliance  
with Correction Orders Issued to Nursing  
Homes ..... 1524

### Housing Finance Agency

Adopted Rule Relating to Income Limits for the  
Rollover Housing Loan Program ..... 1537

### Public Welfare Department

Adopted Amendment to Rule Governing Foster  
Care for Children ..... 1537

## OFFICIAL NOTICES

### Commerce Department

Notice of Intent to Solicit Outside Opinion  
Concerning the Adoption of Uniform  
Conveyancing Blanks ..... 1538

### Ethical Practices Board

Opinion Solicited Regarding Voluntary  
Contribution Plan, Minnesota Trial Lawyers  
Association ..... 1538

### Metropolitan Council

Notice of Public Hearing on an Implementation  
Plan for the 1983-84 Biennium of the Regional  
Recreation Open Space Capital Improvement  
Program ..... 1539

### Metropolitan Council

Notice of Public Hearing on a Revised Recreation  
Open Space Capital Improvement Program ..... 1539

### Minnesota State Agricultural Society

Minnesota State Fair  
Annual Meeting Notice ..... 1540

### Minnesota State Retirement System

Board of Directors  
Notice of Special Board Meeting ..... 1540

### Public Welfare Department

Support Services Bureau  
Long-Term Care Rates Division  
Public Notice Regarding Changes in Rate Setting  
Procedures for Intermediate Care Facilities for  
Mentally Retarded ..... 1540

### Transportation Department

Petition of the City of St. Louis Park for a  
Variance from State Aid Standards for Street  
Width ..... 1545

### Transportation Department

Petition of Murray County for a Variance from  
State Aid Standards for Design Speed ..... 1545

### Waste Management Board

Notice of Hearing Concerning Hazardous Waste  
Management Plan & Draft Certificate of Need ..... 1545

## STATE CONTRACTS

### Labor and Industry Department

Notice of Availability of Contracts for Consultant  
Services ..... 1547

### Metropolitan Council

Request for Proposals for Technical and Financial  
Proposals for Feasibility Study of Transit Link  
Between Downtown Minneapolis and  
Downtown St. Paul Skyway Systems ..... 1548

### Public Welfare Department

Health Care Programs Division  
Notice of Availability of Marketing Broker  
Contract ..... 1549

### Transportation Department

Notice of Availability of a Request for Proposal  
for Consulting Services to Evaluate  
Metro-Mobility Project ..... 1550

## SUPREME COURT

### Decisions Filed Wednesday, December 14, 1983

C7-83-1208 Peoples Natural Gas Company, a  
Division of InterNorth, Incorporated, Petitioner,  
Appellant, v. Minnesota Public Utilities  
Commission, Respondent ..... 1550

C1-83-1253 Group Health Plan, Inc., Relator, v.  
Louise Lopez, Respondent, and Commissioner  
of Economic Security, Respondent ..... 1550

C4-83-1800 In Re Estate of Kenneth G. Edstrom,  
Deceased ..... 1550

### Decisions Filed Friday, December 16, 1983

CX-83-232 State of Minnesota, Respondent, v.  
Cheryl Ann Westergaard, Appellant ..... 1550

CX-83-859 In Re Charges of Unprofessional  
Conduct Against RICHARD W. JOHNSON,  
Richard W. Johnson, Petitioner, v. Director of  
Professional Responsibility, Respondent ..... 1551

C4-83-923 In the Matter of the Alleged Mental  
Illness of Manuel Tirso Robledo ..... 1551

C4-82-1494 Minnesota Power & Light Company,  
Respondent, v. Minnesota Public Utilities  
Commission, et al., Appellants ..... 1551

CX-82-186 Albert J. Bilotta, Jr., et al.,  
Respondent, v. Kelley Company, Inc., et al.,  
Appellant ..... 1551

C1-82-853 State of Minnesota, Respondent, v.  
Gordon Melvin Gale Broten, Jr., Appellant ..... 1551

## NOTICE

### 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* and filed with the Secretary of State before September 15, 1982, are published in the *Minnesota Code of Agency Rules 1982 Reprint*. **ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES** filed after September 15, 1982, will be included in a new publication, *Minnesota Rules*, scheduled for publication in spring of 1984. In the **MCAR AMENDMENT AND ADDITIONS** listing below, the rules published in the *MCAR 1982 Reprint* are identified with an asterisk. Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the *1982 Reprint* 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:

Issues 1-13, inclusive

Issues 14-25, inclusive

Issue 26, cumulative for 1-26

Issue 27-38, inclusive

Issue 39, cumulative for 1-39

Issues 40-51, inclusive

Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

# MCAR AMENDMENTS AND ADDITIONS

## TITLE 1 CONSTITUTIONAL OFFICES

### Part 2 Secretary of State

1 MCAR § 2.4001-2.4012, 2.0101-2.1101, 2.2101-2.2115,  
2.3101-2.3907, 2.4101-2.4205 (adopted) ..... 1348

## TITLE 2 ADMINISTRATION

### Part 1 Administration

2 MCAR § 1.16007-1.16008 (adopted) ..... 1229  
2 MCAR § 1.16001-1.16006 (repealed) ..... 1229

### Part 2 Personnel Department

2 MCAR §§ 2.225, 2.2301, 2.303, 2.406, 2.409,  
2.413 (adopted) ..... 1479

### Part 3 Minnesota State Retirement System

2 MCAR § 3.5001, 3.5002, 3.5004, 3.5005  
[amendments] (adopted) ..... 1403

## TITLE 3 AGRICULTURE

### Part 1 Agriculture Department

3 MCAR § 1.0090-1.0100 (proposed) ..... 1290  
3 MCAR §§ 1.0129-1.0130, 1.0132-1.0133, 1.0135  
(proposed) ..... 670  
3 MCAR § 1.0172 [Temp] (adopted) ..... 1078  
3 MCAR § 1.1160 (proposed) ..... 1185  
3 MCAR §§ 1.1340 [Temp]-1.1348 [Temp] (proposed) ..... 1251  
3 MCAR §§ 1.4060 [Temp]-1.4070 [Temp] (proposed) ..... 665

## TITLE 4 COMMERCE

### Part 1 Commerce Department

SDiv 2117-2118, 2021, 2034 (adopted) ..... 1009  
4 MCAR §§ 1.0001 [Temp]-1.0022 [Temp], 1.00225 [Temp],  
1.0023 [Temp], 1.0031 [Temp] (adopted) ..... 1006  
4 MCAR § 1.850-1.866 [Temp] (proposed) ..... 1387  
4 MCAR §§ 1.9011-1.9028 (proposed), 1.90281 (proposed) ... 1256  
4 MCAR §§ 1.9081 [Temp]-1.9089 [Temp], 1.90891 [Temp]-  
1.90892 [Temp] (adopted) ..... 1006  
4 MCAR §§ 1.9260-1.9269 [Temp] (proposed) ..... 1102  
4 MCAR § 1.9401-1.9409 (proposed) ..... 1374  
4 MCAR § 1.9500-1.9505 (proposed) ..... 1294  
4 MCAR § 1.9504 Amend (proposed) ..... 1418

### Racing Commission

4 MCAR §§ 15.001-15.050 (proposed) ..... 1162

### Part 2 Energy & Economic Development Department

4 MCAR §§ 2.501-2.508 (repealed) ..... 1011

### Part 3 Public Utilities Commission

4 MCAR §§ 3.0450-3.0463 [Temp] (adopted) ..... 1095

### Part 4 Cable Communications Board

4 MCAR §§ 4.240-4.243 (proposed) ..... 1069

### Part 11 Electricity Board

4 MCAR § 11.033-11.038 (adopted) ..... 1228

# MCAR AMENDMENTS AND ADDITIONS

## Energy & Economic Development Authority

|  |      |
|--|------|
| 4 MCAR § 14.051-14.059 [Temp] (adopted)..... | 1340 |
| 4 MCAR § 14.071-14.080 [Temp] (adopted)..... | 1343 |

## TITLE 5 EDUCATION

### Part 1 Education Department

|   |      |
|---|------|
| 5 MCAR §§ 1.0100-1.01101 (proposed), 1.0111-1.0117 (proposed).....  | 1260 |
| 5 MCAR §§ 1.0120-1.0122, 1.01222-1.01224, 1.0125, 1.01226, 1.01228-1.01229, 1.01232-1.01234, 1.0124, 1.0126-1.0127 (adopted)..... | 596  |
| 5 MCAR § 1.0807 [Temp] (adopted).....   | 692  |

### Part 2 Higher Education Coordinating Board

|   |      |
|---|------|
| 5 MCAR § 2.2101-2.2106, 2.2204 (adopted)..... | 1346 |
|---|------|

## TITLE 6 ENVIRONMENT

### Part 1 Natural Resources Department

|   |     |
|---|-----|
| 6 MCAR § 1.0057 (proposed).....         | 677 |
| 6 MCAR §§ 1.5600-1.5603 (proposed)..... | 995 |

### Part 2 Energy and Economic Development

|   |      |
|---|------|
| 2 MCAR § 1.16007-1.16008 (adopted).....   | 1229 |
| 2 MCAR § 1.16001-1.16006 (repealed).....  | 1229 |
| 6 MCAR §§ 2.2500-2.2509 [Temp] (proposed).....                                  | 1506 |
| 6 MCAR §§ 2.2300-2.2314 (proposed).....   | 1106 |
| 6 MCAR §§ 2.4045 [Temp], 2.4047 [Temp]-2.4048 [Temp] ...                        | 1262 |
| 6 MCAR §§ 2.2500-2.2509 (withdrawn).....  | 673  |
| 6 MCAR §§ 2.2502, 2.2503 (withdrawn).....                                       | 994  |
| 10 MCAR §§ 1.500, 1.505-1.506, 1.510, 1.520, 1.525, 1.546, 1.550 (adopted)..... | 1263 |

### Part 4 Pollution Control Agency

|   |      |
|---|------|
| APC 2 (6 MCAR § 4.002) (proposed).....  | 682  |
| 6 MCAR § 4.0041 (proposed).....   | 678  |
| 6 MCAR § 4.8034 (adopted).....  | 694  |
| 6 MCAR §§ 4.9006-4.9007 & APC 3 (proposed repeal); 4.4001-4.021 (proposed), 4.201-4.4224 (proposed), 4.4301-4.305 (proposed), 4.4311-4.4321 [Amend] (proposed)..... | 1419 |
| 6 MCAR §§ 4.9100-4.9104, 4.9128-4.9137, 4.9200-4.9222, 4.9250-4.9259, 4.9280-4.9322, 4.9380-4.9422, 4.9480-4.9481, 4.9559-4.9560 (proposed).....                    | 732  |
| 6 MCAR §§ 4.9701-4.9706 (proposed).....   | 1071 |

### Part 8 Waste Management Board

|  |      |
|--|------|
| 6 MCAR §§ 8.403-8.404, 8.408 (proposed)..... | 1004 |
|--|------|

## TITLE 7 HEALTH

### Part 1 Health Department

|                                       |      |
|---------------------------------------|------|
| 7 MCAR § 1.059 (adopted).....         | 1524 |
| 7 MCAR § 1.2395, 1.314 (adopted)..... | 1346 |

### Part 4 Medical Board

|  |      |
|--|------|
| 7 MCAR §§ 4.002, 4.004-4.008 (proposed)..... | 1513 |
| 7 MCAR § 4.012 (proposed).....               | 1510 |
| 7 MCAR § 4.0121 (proposed).....              | 1512 |
| 7 MCAR §§ 4.013-4.029 (proposed).....        | 1522 |

### Part 6 Board of Examiners for Nursing Home Administrators

|   |      |
|---|------|
| 7 MCAR §§ 6.003, 6.006-6.007, 6.010-6.011, 6.013-6.020 (adopted)..... | 1480 |
|---|------|

## TITLE 8 LABOR

### Part 1 Labor and Industry Department

|  |      |
|--|------|
| 8 MCAR §§ 1.7200-1.7209 (adopted).....                 | 622  |
| 8 MCAR §§ 1.8003-1.8004, 1.8006-1.8007 (proposed)..... | 742  |
| 8 MCAR § 1.9001-1.9010 [Temp] (proposed).....          | 1399 |
| 8 MCAR §§ 1.9001 [Temp]-1.9023 [Temp] (proposed).....  | 562  |
| 8 MCAR §§ 1.7250-1.7255 (adopted).....                 | 1482 |

### Part 4 Economic Security Department

|                                       |      |
|---------------------------------------|------|
| 8 MCAR § 4.0101 [Temp] (adopted)..... | 1093 |
| 8 MCAR § 4.0102 [Temp] (adopted)..... | 1229 |

### Occupational Safety & Health Division

|                                 |      |
|---------------------------------|------|
| 8 MCAR § 1.7001 (proposed)..... | 1338 |
|---------------------------------|------|

### Division of Workers' Compensation

|  |      |
|--|------|
| 8 MCAR § 1.9001-1.9025 (proposed)..... | 1296 |
|--|------|

## TITLE 10 PLANNING

### Part 1 Energy and Economic Development

|   |      |
|---|------|
| 10 MCAR §§ 1.500, 1.505-1.506, 1.510, 1.520, 1.525, 1.546, 1.550 (adopted)..... | 1263 |
|---|------|

## TITLE 11 PUBLIC SAFETY

### Part 1 Public Safety Department

|   |      |
|---|------|
| 11 MCAR § 1.2094, 1.2140 (adopted).....           | 1352 |
| 11 MCAR §§ 1.8025, 1.8058, 1.8084 (proposed)..... | 730  |

### Part 2 Corrections Department

|  |     |
|--|-----|
| 11 MCAR §§ 2.001-2.012 (adopted).....  | 601 |
| 11 MCAR §§ 2.601-2.622 (proposed)..... | 981 |

### Board of Peace Officer Standards & Training

|                                 |      |
|---------------------------------|------|
| 4 MCAR § 13.040 (proposed)..... | 1337 |
|---------------------------------|------|

## TITLE 12 SOCIAL SERVICE

### Part 1 Human Rights Department

|  |      |
|--|------|
| 12 MCAR § 1.061-1.076 [Temp] (proposed)..... | 1395 |
|--|------|

### Part 2 Public Welfare Department

|   |      |
|---|------|
| 12 MCAR §§ 2.0300-2.0304 [Temp] (proposed).....                         | 1154 |
| 12 MCAR §§ 2.04422 [Temp], 2.05501 [Temp]-2.05509 [Temp] (adopted)..... | 698  |
| 12 MCAR §§ 2.05301-2.05315 [Temp] (proposed).....                       | 1134 |
| 12 MCAR §§ 2.05401 [Temp]-2.05501 [Temp] (adopted).....                 | 959  |
| 12 MCAR § 2.204 [Amend] (adopted).....                                  | 1537 |
| 12 MCAR § 2.207 (adopted).....  | 1079 |
| 12 MCAR § 2.264 [Temp] (adopted).....                                   | 602  |
| 12 MCAR § 2.494, 2.840 (adopted).....                                   | 1352 |

### Part 3 Housing Finance Agency

|   |      |
|---|------|
| 12 MCAR § 3.002 [extended] 3.133-3.134 (Temp) [extended]..... | 1346 |
| 12 MCAR § 3.037 (adopted).....                                | 1402 |
| 12 MCAR § 3.038 (adopted).....                                | 1537 |
| 12 MCAR § 3.120 (adopted).....                                | 1402 |
| 12 MCAR §§ 3.170-3.174 (adopted).....                         | 646  |
| 12 MCAR § 3.180 [Temp] (adopted).....                         | 1346 |

## TITLE 13 TAXATION

### Part 1 Revenue Department

|   |      |
|---|------|
| 13 MCAR §§ 1.0010-1.0014 (withdrawn)..... | 596  |
| 13 MCAR § 1.6016 (repealed).....          | 1079 |

# PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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.

## Energy and Economic Development Authority

464T

### Proposed Temporary Rules for the Administration of the Public School Energy Conservation Investment Loan Program

#### Request for Public Comment

Notice is hereby given that pursuant to Minn. Stat. § 14.30 (1982), the Energy and Economic Development Authority is proposing the following temporary rules for the purpose of administering the public school energy conservation investment loan program. Authority for the adoption of these rules is contained in Minn. Stat. § 116J.37 Section 1, subdivision 7. A copy of the proposed rules is attached to this notice.

Persons interested in these rules have 20 days from this publication to submit data and views on the proposed temporary rules in writing. Comments should be submitted to:

Marsha K. Battles  
Energy Finance Division  
980 American Center Building  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101  
(612) 297-3789

Proposed temporary rules for this program were originally published in the October 17, 1983 *State Register*. Changes to the proposed temporary rules included here are based on comments submitted. The proposed temporary rules as published here may be modified if the modifications are supported by the data and views submitted to the Authority and do not result in a substantial change in the proposed language.

These proposed temporary rules, with modifications, if any, shall be submitted to the Attorney General for final approval as to form and legality. The temporary rules shall take effect immediately upon the Attorney General's approval.

These temporary rules shall then be effective for 180 days or until they are replaced by permanent rules, whichever occurs first.

Mark B. Dayton, Chairman  
Energy and Economic Development Authority

#### Temporary Rules as Proposed (all new material)

##### 6 MCAR § 2.2500 [Temporary] Purpose.

The purpose of 6 MCAR §§ 2.2500-2.2509 [Temporary] is to establish procedures for application by school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for program monitoring, evaluation, and closure of loan account.

##### 6 MCAR § 2.2501 [Temporary] Definitions.

- A. Scope. For the purposes of 6 MCAR §§ 2.2500-2.2509 [Temporary], the following terms have the meaning given them.
- B. Authority. "Authority" means the Energy and Economic Development Authority.

C. Building. "Building" means an existing building owned and operated by a public school district for district purposes.

D. Maxi-audit. "Maxi-audit" means a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating, and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The purpose of a maxi-audit is to quantify the economic and engineering feasibility of energy-saving improvements or major operational modifications. A maxi-audit must be performed by or under the direction of a professional mechanical or electrical engineer or an architect registered in Minnesota. The minimum requirements for an approvable maxi-audit are given at Code of Federal Regulations, title 10, section 455.42 (May 21, 1981).

E. Payback. "Payback" means the average simple payback that is equal to the design, acquisition, and installation costs of an energy saving building improvement divided by the estimated first year energy cost savings attributable to that measure.

F. Project. "Project" means all proposed work in an application for a loan to a school district.

#### **6 MCAR § 2.2502 [Temporary] Loan funds.**

A. Use of loan. A loan based on an approved loan application may be awarded by the authority to a school district to cover the costs of making energy conservation investments that are capital expenditures associated with conservation measures to improve the energy efficiency of an existing school building, to reduce the energy costs of existing school buildings, or both, and that have paybacks of ten years or less as specified in the approved maxi-audits.

Loans are available to school districts that have not previously received or been offered loan funds in this program, for new projects in school districts that previously received or were offered loan funds through this program, and as amendments for projects in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved and funded project. Any additional work must be substantiated by engineering analysis and must meet loan program review criteria. With the exception of amendments as described above, a school district shall not be approved for or awarded more than one loan for the same energy conservation measure in the same building.

B. Issuing of loan funds. Funds will be issued as loans on a first-come-first-served basis based on the date of loan application approval by the authority.

C. Prior approval required. Except for a loan amendment to cover cost overruns or costs associated with previously unidentified but related work necessary to the successful implementation of a previously approved and funded project, loans may not be awarded retroactively. Loan projects may not be contracted for or begun prior to a school district's notification of the loan application's approval. This prior approval requirement applies to the design, acquisition, and installation costs as identified in the maxi-audit.

D. Existing buildings; new construction. Loans shall be approved only for existing school district buildings and not for new construction, except if new construction is a necessary part of successful implementation of an energy conservation measure and is included in the approved application.

E. Loan repayment schedule. A loan repayment schedule based on the approved loan application must be attached to the loan contract that is sent to the school districts for signature.

#### **6 MCAR § 2.2503 [Temporary] Application procedures.**

A. Forms. All required forms must be provided by the authority.

B. Submission. The authority shall begin to accept applications on the date these temporary rules become effective and shall continue to accept applications until these temporary rules expire or until permanent rules that replace these temporary rules expire.

C. Approval. The requirements of 6 MCAR §§ 2.2504-2.2506 must be met by an applicant in order for the authority to approve an application. An applicant whose application is approved will be sent a loan contract with the loan repayment schedule to sign and return to the authority for signatures by state officials and for issuing of the loan.

D. Rejection and resubmission. An applicant whose application is rejected will be given written notice of problems encountered in the review process and options available to correct them for resubmission of the application. If only certain of the measures included in the project are rejected or modified, the applicant may decide to accept a loan for the approved portions or resubmit the entire project proposal at a later date after making the necessary changes.

**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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### 6 MCAR § 2.2504 [Temporary] Administrative criteria.

A. Required application contents. An application must be submitted to the authority on a form provided by the authority.

The application must contain at a minimum: the school district or vocational center number; complete mailing address of school district including the county; contact person's name, title, and telephone number; federal employer identification number; project start and estimated completion dates; list of buildings included in the request and the dollar amount requested per building; name and address of each building, including the county; the total floor area in square feet for each building; original construction date for each building and building additions; the state legislative district; and a summary description of each energy conservation measure, its maxi-audit item number, its estimated cost, the loan amount requested, its estimated annual energy cost savings, its estimated annual fuel and electric savings, its estimated payback, and the estimated dates the energy conservation measure will be started and completed. The application must have an original, ink signature by an authorized official of the school district, must include the authorized official's title, and must be dated.

The following must be submitted with an application: an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment and a maxi-audit for each building involved in the project. One copy of the application is required.

B. Review by authority. The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the school board on school district or school board letterhead is included, and that the estimated start and end dates of the energy conservation measures included in the project are reasonable.

### 6 MCAR § 2.2505 [Temporary] Technical criteria.

A. Contents of technical support materials. A technical review must be based on the maxi-audit submitted for each building included in a loan application. The maxi-audit must be submitted with the loan application on forms provided by the authority.

B. Project eligibility limitations. Only energy conservation investments with ten year or less paybacks identified and described in maxi-audits are eligible. Loans may not be awarded to buildings with a remaining useful life less than the payback of the energy conservation investments proposed. Loans may not be awarded for energy conservation measures if the payback of the energy conservation investments proposed is greater than the life of the measure.

C. Review by authority. The authority shall examine a maxi-audit that accompanies a loan application to verify that energy conservation investments requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible. The authority may accept, reject, or modify a loan application request as necessary based on this review.

### 6 MCAR § 2.2506 [Temporary] Financial criteria.

A. Maximum loan amount. To assure equitable statewide distribution of loan funds, given that loans will be issued on a first-come-first-served basis, the authority shall establish three equal allocations of the available funds to be divided between small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to \$250,000 per district. Large districts are defined as having greater than 5,000 students or greater than ten classroom buildings. Large districts are eligible for up to \$1,000,000 per district. All other districts are defined as medium size school districts and are eligible for up to \$500,000 per district. Cooperative vocational centers and any other eligible educational facilities not included in school districts are limited to \$250,000. If less than 33 percent of any of the three allocations is used within a year from the effective date of these rules, the authority may redistribute funds between the three allocations.

B. Guaranteed repayment. An irrevocable resolution of the school board must guarantee loan repayment.

### 6 MCAR § 2.2507 [Temporary] Reports and monitoring.

A. Annual project status report. The school district shall submit to the authority on forms provided by the authority an annual project status report covering the period July 1 through June 30. These reports are due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. If the school district has not demonstrated substantial progress towards completion of the project after 18 months, or anytime thereafter, the entire loan amount may become due and payable at the discretion of the authority.

B. Quarterly financial reports. Quarterly financial status reports that indicate expenditures of loan funds through the last date of each quarter are due within 30 days of the end of each calendar quarter until the project is completed. These reports must be submitted to the authority.

C. Final report. Within 60 days of the completion of the project, the school district shall submit to the authority on forms

provided by the authority a final project status report and a financial status report that gives actual expenditures of the measures implemented.

D. Annual energy report. The school district shall submit to the authority on forms provided by the authority an annual energy use and energy expenditure report by fuel type due each October 31 for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is prepaid in less than three years, unless the authority cancels this requirement statewide prior to the end of the loan contract period.

**6 MCAR § 2.2508 [Temporary] Program evaluation.**

The authority shall design and implement by rule an evaluation of the loan program. Loan recipients shall agree to provide to the authority in a timely manner the information that is reasonably needed to evaluate the loan program.

**6 MCAR § 2.2509 [Temporary] Closure of loan account.**

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

304

## **State Board of Medical Examiners**

### **Proposed Rule Regarding Changes in the Continuing Medical Education Requirement Necessary for Physicians and Osteopaths to Retain Their Licenses to Practice Medicine**

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Board of Medical Examiners proposes to adopt the above entitled rules without a public hearing. The Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982).

Minnesota Statutes section 214.12 establishes the authority for health manpower regulatory authorities to implement Continuing Education requirements as a means of improving the professional skills of the licensees or registrants on an ongoing basis. The Board has promulgated continuing medical education rules which fulfill the intent of section 214.12. However, through the administration of the existing continuing medical education rules the Board, with the assistance of a continuing medical education sub-committee, developed these revisions to the rules based upon the Board's experience with the rules. Additionally, a statement of need and reasonableness that describes the need and reasonableness of the proposed rules has been prepared and is available for inspection by the public during regular business hours or may be provided upon request, at the address below.

Persons interested shall have 30 days, specifically until January 25, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the below address.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982). The agency asks that persons requesting a public hearing identify the particular provisions objected to, the suggested modifications to the proposed rules, and the reasons or data relied on to support the suggested modifications.

Please be advised that Minn. Stat. chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. § 10A.01. subdivision 11 defines a lobbyist as an individual:

**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

(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 travel expenses and membership dues in any year, for the purpose of attempting to influence legislative administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practice Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

A copy of the proposed rule follows this notice. Additional copies may be obtained at the address below.

Persons who wish to submit comments or a written request for a public hearing, or who wish to receive a copy of the final rule or to be informed when the rule is submitted to the Attorney General, should submit such comments to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 Delaware Street SE, Suite #352  
Minneapolis, MN 55414

### Rules as Proposed

#### 7 MCAR § 4.012 Continuing medical education.

A. Continuing education cycles. During three-year cycles, each physician licensed to practice by this board shall obtain ~~450~~ 75 hours of continuing medical education credit as required by this rule.

~~1-~~ For the purpose of administering this rule, ~~the board will establish three classes of licensees as follows: each individual initially licensed after the effective date of this rule commences his or her first three-year cycle on January 1 following the date of initial licensure. Future cycles will run consecutively from that point. Continuing medical education taken between the date of initial licensure and the January 1 following the date of initial licensure may be credited towards the first cycle.~~

~~Those individuals assigned three-year reporting prior to the effective date of this rule shall remain in their assigned reporting cycle.~~

~~a. Class I. Licensees in this class will be required to complete 50 hours of continuing education by December 31, 1978. These hours shall include at least 20 hours of Category 1 credit. However, no more than 15 hours of credit may be obtained in any one of the other categories. Thereafter, the licensees in this class shall report to the board at three year intervals.~~

~~b. Class II. Licensees in this class will be required to complete 100 hours of continuing education by December 31, 1979. These hours shall include at least 40 hours of Category 1 credit. However, no more than 30 hours of credit may be obtained in any one of the other categories. Thereafter, the licensees in this class shall report to the board at three year intervals.~~

~~c. Class III. Licensees in this class shall be required to complete 150 hours of continuing education by December 31, 1980. These hours shall be obtained in such a way as to fully comply with the requirements of 7 MCAR § 4.012 B. Thereafter, the licensees in this class shall continue to report to the board at three year intervals.~~

~~2- The board shall place licensees in these three classes so as to create classes that are approximately equal. No other standard shall be used in determining the class into which licensees shall be placed.~~

~~3- Each person initially licensed after the effective date of this rule shall commence his or her first three year cycle on January 1 following the date of initial licensure.~~

B. Activities for which credit may be obtained. Continuing medical education credit may be obtained from the following activities:

1. Category 1. No less than ~~60~~ 45 hours of credit ~~shall~~ must be obtained in any cycle by attendance at educational activities approved by the board pursuant to 7 MCAR § 4.012 D.

2. Category 2. No more than ~~45~~ 20 hours of credit may be obtained in any cycle through educational activities sponsored by a hospital, clinic, or medical or osteopathic society and not meeting the standards contained in category 1.

3. Category 3. No more than ~~45~~ 20 hours of credit may be obtained in any cycle through medical teaching of medical students, residents, practicing physicians, and allied health professionals.

4. Category 4. No more than ~~40~~ 20 hours of credit may be obtained in any cycle for papers, publications, books, lectures, and exhibits.

a.-c. [Unchanged.]

5. Category 5. No more than 45 ~~20~~ hours of credit may be obtained by engaging in professional reading, peer patient care review activities, self-assessment examinations sponsored by a professional organization recognized by the board as maintaining a significant level of quality control, and preparation for certification or recertification examinations administered by a national specialty board.

Approval of courses for credit.

C. Approval of courses for credit. Persons or organizations intending to offer courses for continuing education credit not included under ~~7 MCAR § 4.012~~ D.6. may apply to the board in advance for approval. Any person or organization may submit a course for approval by the board. The following information shall be provided to the board, as well as any other information which the board may reasonably require for the purpose of evaluating the course for which approval is sought.

1.-4. [Unchanged.]

D. Category 1 credit. The board shall grant Category 1 continuing education credit for any educational activity which meets the following standards:

1.-5. [Unchanged.]

6. Any course planned, sponsored, or co-sponsored by a medical or osteopathic medical school, state or national medical or osteopathic association, or a national medical specialty ~~board~~ society shall be presumed to meet the above standards. This presumption may be withdrawn by the board if it determines that a school, association, or specialty ~~board~~ society has sought credit for a course not meeting these standards.

E. [Unchanged.]

F. Alternative compliance. The board may accept certification or recertification by an American specialty board in lieu of compliance with the continuing education requirements during the cycle in which certification or recertification is granted. ~~The board may also accept certification of other state or national medical groups whose continuing medical education requirements are the equivalent of or greater than those of this board in lieu of compliance with these standards.~~

G. ~~Upon application, the board shall issue retroactive approval of any educational activity offered after January 1, 1977 which meets the standards for approval contained in this rule.~~

H. Verification of compliance. Licensees shall, at the relicensure period coinciding with the end of their cycle, provide a signed statement to the board on a form provided by the board indicating compliance with this rule. The board may, in its discretion, require such additional evidence as is necessary to verify compliance with the rule. The board may also accept certification of other state or national medical groups whose continuing medical education requirements are the equivalent of or greater than those of this board in lieu of compliance with these standards.

A licensee failing to submit a statement or who submits a statement which, on its face, indicates noncompliance with this rule may be subject to the disciplinary provisions contained in ~~7 MCAR § 4.012~~ J. I.

~~H.~~ H. Exemptions.

1. The board may grant an exemption from ~~these~~ the continuing education requirements of this rule to a licensee for full-time participation in residency or fellowship training at a professionally accredited institution.

2. Physicians under emeritus registration status as provided in 7 MCAR § 4.013 are exempt from the continuing medical education requirements of this rule.

~~J. I.~~ J. I. Penalties for noncompliance. The board may refuse to renew, suspend, condition, limit, or qualify the license of any person whom the board determines has failed to comply with the requirements of this rule.

If the board refuses to renew a license, a hearing ~~shall~~ must be held only if the licensee submits a written request for a hearing within 30 days after receiving notice of the refusal to renew. ~~Any such~~ The hearing ~~shall~~ must be conducted pursuant to the provisions of the Minnesota Administrative Procedure Act.

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.

304

**State Board of Medical Examiners**

**Proposed Rule Regarding the Establishment of an Emeritus Registration Status for Those Physicians or Osteopaths no Longer Wishing to Remain in Practice**

**Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Board of Medical Examiners proposes to adopt the above entitled rules without a public hearing. The Board has determined that the proposed adoption of the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982).

Minnesota Statute section 147.02 establishes the authority for the Board of Medical Examiners to license physicians and osteopaths, which includes establishing licensure requirements which are deemed to be in the interest and protection of the public. The Board has developed a rule for the regulation of physicians who no longer wish to practice medicine which falls under the requirements of 147.02. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of the proposed rules has been prepared and is available for inspection by the public during regular business hours or a copy may be provided upon written request to the address below.

Persons interested shall have 30 days, specifically until January 25, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the address below.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982). The agency asks that persons requesting a public hearing identify the particular provisions objected to, the suggested modifications to the proposed rules, and the reasons or data relied on to support the suggested modifications.

Please be advised that Minn. Stat. chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. § 10A.01, subdivision 11 defines a lobbyist as an 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 travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative administrative action by communicating 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) 296-6515.

A copy of the proposed rule follows this notice. Additional copies may be obtained at the address below.

Persons who wish to submit comments or a written request for a public hearing, or who wish to receive a copy of the final rule or to be informed when the rule is submitted to the Attorney General, should submit such comments to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 Delaware Street SE, Suite #352  
Minneapolis, MN 55414

**Rules as Proposed (all new material)**

**7 MCAR § 4.0121 Emeritus registration for retired physicians.**

A. Application. Any physician duly licensed to practice medicine in the state pursuant to Minnesota Statutes, chapter 147, who declares that he or she is retired from the active practice of medicine may apply to the board for physician emeritus registration. The physician may do so by indicating on his or her annual registration form or by petitioning the board if he or she is in fact completely retired and has not been the subject of disciplinary action resulting in the suspension, revocation, qualification, condition, or restriction of the physician's license to practice medicine.

B. Status of registrant. The emeritus registration is not a license to engage in the practice of medicine as defined in Minnesota Statutes, chapter 147, or in the rules of the board. The registrant shall not engage in the practice of medicine.

C. Continuing education requirements not applicable. The continuing medical education requirements of 7 MCAR § 4.012 are not applicable to emeritus registration.

D. Change to active status. A registrant who desires to change to active status may do so by providing the following materials, pending the approval of these materials by the board:

1. completion of a form prepared by the board which includes name, basic medical education, medical license number, duration of medical licensure, date of emeritus registration, membership in medical societies, information on the applicant's physical and mental health, and information on any disciplinary action taken against the physician in regards to his or her medical practice;

2. complying with the continuing medical education requirements for the time period in which one's license was in inactive status and under the emeritus registration pursuant to 7 MCAR § 4.012 A. This requirement must be fulfilled prior to submission of the application;

3. submission of all back licensure fees while one's license was under inactive status and the emeritus registration;

4. submission of references by two physicians licensed to practice medicine in Minnesota verifying that the registrant has the capacity to practice medicine; and

5. submission of a notarized, completed, and signed information release form, listing all schools attended, hospitals and clinics served at, and branch of military served in.

E. Documentation of status. A physician granted emeritus registration shall, upon payment of a fee, receive a document certifying that he or she has been registered as emeritus and has completed his or her active professional career licensed in good standing with the Minnesota Board of Medical Examiners. The fee for such a document shall be \$5. The document fee shall not be a prerequisite for consideration of an application for emeritus registration.

F. Renewal cycle or fees not applicable. Being registered as emeritus will not subject a person to the annual renewal cycle or renewal fees.

363

## **State Board of Medical Examiners**

### **Proposed Rule Regarding Changes in the Initial Licensure Requirements, Specifically Regarding the Use of Examinations and the Citizenship Requirements, for Those Physicians and Osteopaths Seeking Licensure to Practice Medicine in Minnesota**

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Board of Medical Examiners proposes to adopt the above entitled rules without a public hearing. The Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982).

Minnesota Statute section 147.02 establishes the authority for the Board of Medical Examiners to license physicians and osteopaths, which includes establishing licensure requirements which are deemed to be in the interest and protection of the public. The Board has promulgated rules which provide five alternative means of licensure which fulfill the intent of 147.02. However, through the administration of the licensure rules the Board developed these revisions to the rules based upon the Board's experience with the rules. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of the proposed rules has been prepared and is available for inspection by the public during regular business hours or a copy may be provided upon request, at the address below.

Persons interested shall have 30 days, specifically until January 25, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for

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## PROPOSED RULES

review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the address below.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982). The agency asks that persons requesting public hearing identify the particular provisions objected to, the suggested modifications to the proposed rules, and the reasons or data relied on to support the suggested modifications.

Please be advised that Minn. Stat. chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. § 10A.01, subdivision 11 defines a lobbyist as an 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 travel expenses or membership dues, in any year, for the purpose of attempting to influence legislative administrative action by communicating 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.

A copy of the proposed rule follows this notice. Additional copies may be obtained at the address below.

Persons who wish to submit comments or a written request for a public hearing or who wish to receive a copy of the final rule or to be informed when the rule is submitted to the Attorney General, should submit such comments to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 Delaware Street SE, Suite #352  
Minneapolis, MN 55414

### Rules as Proposed

#### ~~ME 2 7~~ MCAR § 4.002 Application for licensure to practice medicine and surgery.

~~(a)~~ A. Filing; date and place of examination. An application for admission to a licensing examination as provided in ~~MSA Minnesota Statutes, section 147.02~~ shall be filed with the board as hereinafter prescribed. If the board finds that the application is complete and that all of the requirements of ~~MSA Minnesota Statutes, section 147.02;~~ and of these ~~regulations~~ rules have been met, it shall advise the applicant of the date and place of the examination.

~~(b)~~ Such B. Form and content. The application ~~shall~~ must be submitted on forms prepared by the board and ~~shall~~ must include the following information:

~~(1)~~ 1. If the applicant is a graduate of a medical or osteopathic college approved by the board, an original or certified copy of the diploma from such the medical or osteopathic college, as the case may be, indicating that the applicant has satisfactorily completed a course of study acceptable to the board and that he or she has received from such the college the degree of Doctor of Medicine or Doctor of Osteopathy.

~~(2)~~ 2. If the applicant is currently enrolled in the final year of study at an approved medical or osteopathic college, a transcript of his or her credits, together with evidence, satisfactory to the board, that the applicant has satisfactorily completed the course of study prior to such the final year at an approved medical or osteopathic college. Prior to admission to the licensing examination, the applicant shall file with the board the original or certified copy of a diploma from a medical or osteopathic college approved by the board indicating that the applicant has satisfactorily completed a course of study acceptable to the board and that he or she has received from such the college the degree of Doctor of Medicine or Doctor of Osteopathy.

~~(3)~~ Evidence satisfactory to the board of the applicant's United States or Canadian citizenship. ~~In the event applicant is not a citizen of the United States or Canada, he shall submit, with his application, evidence that he is a lawful permanent resident of the United States and has made a declaration of intent to become a citizen of the United States. In the event applicant is not legally authorized to make a declaration of intent to become a citizen of the United States, he shall submit, with his application, evidence that the Immigration and Naturalization Service of the United States Department of Justice has approved his petition for a preference visa and granted permission to him to remain in the United States until further notice, awaiting the issue to him of an immigrant visa, which would make him eligible for adjustment of his status to that of a lawful permanent resident.~~

~~(4)~~ 3. A certificate of good moral character signed by two persons licensed to practice medicine and surgery by any a recognized and accredited licensing authority within the United States or Canada.

(5) 4. An unmounted recent photograph of the applicant with an affidavit on the reverse side ~~thereof~~ of it made by the applicant that the photograph is that of the applicant.

(6) ~~Such~~ 5. Other information as the board ~~shall from time to time, deem~~ deems necessary in order to evaluate the qualifications of the applicant.

(c) C. Additional evidence. An applicant who has passed the examination prepared and graded by either the Federation of State Medical Boards or the National Board of Medical Examiners shall include in ~~his~~ the application, in addition to the information required under ~~ME 2(b) B.~~, evidence satisfactory to the board that within three years before or five years after being granted the degree of Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.), the applicant satisfactorily passed an examination prepared and graded ~~in accordance with the provisions of Minn. Stat.~~ according to Minnesota Statutes, section 147.02.

(d) D. Ineligible applicants. An applicant whose credentials are determined by the board to indicate ineligibility for examination shall be notified of ~~such~~ this determination and the grounds ~~therefore~~ for it and may be granted a hearing ~~there on~~ in accordance with the provisions of ~~on this determination under ME, 63, by filing a statement of issues with the board within twenty (20) days after receipt of such~~ the notice from the board. After ~~such~~ the hearing the board shall notify the applicant in writing of its decision ~~thereon~~.

(e) E. Evidence of training. An applicant who has satisfactorily completed the licensing examination, and who has fulfilled all the requirements of ~~MSA~~ Minnesota Statutes, chapter 147, and ~~of these rules and regulations~~, shall be considered by the board for licensure to practice medicine and surgery upon submitting to the board evidence satisfactory to the board that the applicant has satisfactorily completed either one year of graduate training in an institution in the United States or Canada approved for internship or graduate training by the board or other graduate training approved by the board.

(f) ~~All~~ F. Filing deadline. Applications for examination must be fully completed and forwarded to the secretary of the board, or postmarked not later than thirty (30) days before the date of examination.

(g) A license issued to an applicant whose petition for a preference visa has been approved is valid only so long as the licensee is a resident of the State of Minnesota; is not valid for the purpose of reciprocity with any other state, territory or country and is conditioned upon: (a) the approved petition remaining in full force and effect, (b) his obtaining the status of a lawful permanent resident of the United States as soon as he is eligible therefor, (c) his making a declaration of intent to become a citizen of the United States as soon as practicable thereafter, and (d) his naturalization as a citizen of the United States, as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects or refuses, for reasons within or beyond his control, to become a lawful permanent resident of the United States, to make a declaration of intent to become a citizen of the United States and to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. A license issued to an applicant who is a lawful permanent resident of the United States and who has made a declaration of intent to become a citizen of the United States is conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon a licensee described in the first sentence of this paragraph becoming a lawful permanent resident of the United States and making a declaration of intent to become a citizen of the United States, his license shall be valid irrespective of his status as a resident of the State of Minnesota, shall be valid for the purpose of reciprocity with any other state, territory or country and shall be conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon any licensee described in this paragraph becoming a naturalized citizen of the United States, the restrictions contained in this paragraph shall be of no further force or effect.

ME-4 7 MCAR § 4.004 License by reciprocity to practice medicine and surgery.

(a) A. Who may apply. An application for a license to practice medicine and surgery without written examination, ~~in accordance with MSA~~ according to Minnesota Statutes, section 147.03, may be made by any a physician duly licensed by an accredited state licensing board or agency.

(b) ~~Such~~ B. Submission and contents of application. The application ~~shall~~ must be submitted on forms prepared by the board and ~~shall~~ must include the following information:

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## PROPOSED RULES

~~(1)~~ 1. An original or certified copy of the applicant's then current license originally obtained by examination, together with evidence at the time of submission that the ~~same~~ license is in good standing. If the applicant is a graduate of a foreign medical school, he or she shall also submit the information required by ~~ME 7(a)(4), ME 7(a)(5)~~ 7 MCAR § 4.007 A.4. and 5., and the original or a certified copy of a birth certificate.

~~(2)~~ 2. An original or certified copy of a diploma from a medical or osteopathic college, ~~as the case may be,~~ duly accredited by the board, indicating that the applicant has satisfactorily completed a course of study acceptable to the board, and that he or she has received from ~~such~~ the college the degree of Doctor of Medicine, or Doctor of Osteopathy. If the applicant is a graduate of a foreign medical school, he or she shall submit ~~in lieu thereof~~ instead the information required by ~~ME 7(a)(2)~~ 7 MCAR § 4.007 A.2.

~~(3)~~ 3. Evidence satisfactory to the board that the applicant has satisfactorily completed either one year of graduate training in an institution in the United States or Canada approved for internship or graduate training by the board, or other graduate training approved by the board.

~~(4)~~ 4. If the applicant is a graduate of a foreign medical school, evidence satisfactory to the board that the applicant has been awarded a certificate by the Educational Council for Foreign Medical Graduates, certifying to the applicant's formal education; ~~his having passed and passage of the ECFMG English test and his having passed the ECFMG, examination. Such~~ This evidence ~~shall is not be required, however,~~ if the applicant: (a) was licensed by examination in a state which at the time of applicant's licensure ~~therein~~ in the state did not require that he or she had been awarded a certificate by the Education Council for Foreign Medical Graduates, or (b) is a diplomate of a medical specialty board approved by the American Medical Association.

~~(5)~~ 5. The information required by ~~ME 2(b)(3), ME 2(b)(4), ME 2(b)(5), and ME 2(b)(6)~~ 7 MCAR § 4.002 B.3., 4., and 5.

(e) C. Passing grade. A FLEX weighted average of 75.0 or a grade average of 75.0 on examinations other than FLEX shall be the passing grade on all examinations graded by the board. A minimum general average of 75 in all subjects shall constitute a grade satisfactory for licensure. An applicant may fall below 75 in one subject and still be licensed by the board. If an applicant falls below 75 in more than two subjects, it shall constitute a failure and require that the applicant retake the entire examination with passing grades in order to be eligible for licensure. An applicant failing two subjects may retake the two subjects at the next examination and upon receiving a minimum grade of 75 in each may be eligible for licensure.

(d) A license issued to an applicant whose petition for a preference visa has been approved is valid only so long as the licensee is a resident of the State of Minnesota, is not valid for the purpose of reciprocity with any other state, territory or country and is conditioned upon: (a) the approved petition remaining in full force and effect, (b) his obtaining the status of lawful permanent resident of the United States as soon as he is eligible therefor, (c) his making a declaration of intent to become a citizen of the United States as soon as practicable thereafter, and (d) his naturalization as a citizen of the United States as soon thereafter as authorized by the statutes of the United States, and if he fails, neglects or refuses, for reasons within or beyond his control, to become a lawful permanent resident of the United States, to make a declaration of intent to become a citizen of the United States and to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. A license issued to an applicant who is a lawful permanent resident of the United States and who has made a declaration of intent to become a citizen of the United States is conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon a licensee described in the first sentence of this paragraph becoming a lawful permanent resident of the United States and making a declaration of intent to become a citizen of the United States, his license shall be valid irrespective of his status as a resident of the State of Minnesota, shall be valid for purpose of reciprocity with any other state, territory or country and shall be conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon any licensee described in this paragraph becoming a naturalized citizen of the United States, the restrictions contained in this paragraph shall be of no further force or effect If the applicant fails the examination, he or she shall repeat the entire examination. An applicant may take the test not more than five times, at which point he or she is no longer eligible to take the examination. An applicant who has failed the examination five times is not eligible for licensure by the board.

ME 5 MCAR § 4.005 License by endorsement without examination to practice medicine and surgery.

~~(a)~~ A. Who may apply. An application for a license to practice medicine and surgery by endorsement without written examination, may be made by ~~any~~ an applicant who is a diplomate of the National Board of Medical Examiners or of the

National Board of Examiners for Osteopathic Physicians and Surgeons, or who has passed a licensing examination given by the appropriate board or agency of ~~any~~ a state which the board ~~may from time to time determine to be~~ determines acceptable; as provided in MSA Minnesota Statutes, section 147.03; provided however, that the board may require the applicant to be examined in ~~such~~ subjects which, in the opinion of the board, have not been satisfactorily covered.

(b) ~~Such~~ B. Submission and contents of application. The application ~~shall~~ must be submitted on forms prepared by the board and ~~shall~~ must include the following information:

(1) ~~1.~~ 1. The information required by ~~ME 2(b)(3), ME 2(b)(4), ME 2(b)(5), ME 2(b)(6) and ME 4(b)(2)~~ 7 MCAR § 4.002 B.3., 4., and 5..

(2) ~~2.~~ 2. An original or certified copy of the certificate or diploma from the appropriate national or state board or agency, as referred to in ~~ME 5(a) A.~~ A., evidencing satisfactory completion of the licensing examination ~~therein~~ referred to in A.

(3) ~~3.~~ 3. If the applicant is a graduate of a foreign medical school: (a) evidence satisfactory to the board that the applicant has been awarded a certificate by the Education Council for Foreign Medical Graduates, certifying to the applicant's formal education; ~~his having passed and passage of~~ the ECFMG English test and his having passed the ECFMG examination, (b) an original or certified copy of a birth certificate, and (c) the information required by ~~ME 7(a)(4) 7~~ MCAR § 4.007 A.4. and ME 7(a)(5) A.5. The evidence required in clause (a) ~~hereof shall is not be~~ required; ~~however,~~ if the applicant is a diplomate of a medical specialty board approved by the American Medical Association.

(4) ~~4.~~ 4. Evidence satisfactory to the board that the applicant has satisfactorily completed either one year of graduate training in an institution in the United States or Canada approved for internship or graduate training by the board, or other graduate training approved by the board.

(c) C. Ineligible applicants. An applicant whose credentials are determined by the board to indicate ineligibility for licensure shall be notified of ~~such~~ this determination and the grounds ~~therefor~~ for it and may be granted a hearing ~~thereon~~ in accordance with the provisions of on this determination according to ME 63; by filing a statement of issues with the board within twenty ~~(20)~~ days after receipt of ~~such~~ this notice from the board. After ~~such~~ the hearing the board shall notify the applicant; in writing; of its decision ~~thereon~~.

(d) A license issued to an applicant whose petition for a preference visa has been approved is valid only so long as the licensee is a resident of the State of Minnesota; is not valid for the purpose of reciprocity with any other state, territory or country and is conditioned upon: (a) the approved petition remaining in full force and effect, (b) his obtaining the status of lawful permanent resident of the United States as soon as he is eligible therefor, (c) his making a declaration of intent to become a citizen of the United States as soon as practicable thereafter, and (d) his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States; and if he fails, neglects or refuses, for reasons within or beyond his control, to become a lawful permanent resident of the United States, to make a declaration of intent to become a citizen of the United States, and to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. A license issued to an applicant who is a lawful permanent resident of the United States and who has made a declaration of intent to become a citizen of the United States is conditioned upon his naturalization as a citizen of the United States soon thereafter as is authorized by the statutes of the United States and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon a licensee described in the first sentence of this paragraph becoming a lawful permanent resident of the United States and making a declaration of intent to become a citizen of the United States, his license shall be valid irrespective of his status as a resident of the State of Minnesota, shall be valid for the purpose of reciprocity with any other state, territory or country and shall be conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States; and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon any licensee described in this paragraph becoming a naturalized citizen of the United States, the restrictions contained in this paragraph shall be of no further force or effect.

~~ME 6 7~~ MCAR § 4.006 Temporary permits to practice medicine and temporary certificates for graduate training.

(a) A. Form and content of application for permit. Applications for a temporary permit to practice medicine, ~~pursuant to the~~

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## PROPOSED RULES

~~provisions, of MSA under Minnesota Statutes, section 147.02, shall~~ must be submitted on forms prepared by the board and ~~shall~~ must include the information required in ~~ME 4(b) 7~~ MCAR § 4.004 B.

~~(b) B. Form and content of application for certificate. An application for a temporary certificate for graduate training, pursuant to the provisions of MSA under Minnesota Statutes, section 147.16, may be issued only to a graduate of a foreign medical school. Such~~ The application shall must be submitted on forms prepared by the board, which ~~shall~~ must include the following information:

~~(1) 1.~~ 1. An original or certified copy of a birth certificate.

~~(2) 2.~~ 2. Evidence of good moral character satisfactory to the board.

~~(3) 3.~~ 3. Evidence satisfactory to the board that the applicant is a graduate of a foreign medical school approved by the licensing authority of the jurisdiction or country in which such medical school is located and is the holder of an approved diploma or degree recognized by the board as evidencing a level of training from said approved foreign medical school commensurate with medical training required by approved medical schools in the United States.

~~(4) 4.~~ 4. If the applicant is licensed to practice medicine and surgery in a foreign country, the original or a certified copy of his or her then current license to practice medicine and surgery in ~~such~~ the foreign country, issued by the school from which he or she graduated or by the appropriate licensing body of the country in which he or she was originally licensed. If applicant is not so licensed, evidence satisfactory to the board that the applicant has passed an examination, or is eligible therefor, which is substantially equivalent to the examination given by the board to applicants for a license to practice medicine in all of its branches in Minnesota.

~~(5) 5.~~ 5. Evidence satisfactory to the board that the applicant has been awarded a certificate by the Educational Council for Foreign Medical Graduates, certifying to the applicant's formal education; ~~his having passed and passage of the ECFMG English test and his having passed the ECFMG examination.~~

~~(6) 6.~~ 6. The name and location of the institution at which such graduate training will be taken, and evidence that the institution has accepted the applicant for training.

~~(7) 7.~~ 7. In the case of an applicant for residency training, evidence satisfactory to the board that ~~said~~ the applicant has completed at least ~~twelve~~ (12) months of hospital training as an intern in a hospital acceptable to the board.

~~(8) 8.~~ 8. The information required by ~~ME 2(b)(5) and ME 2(b)(6) 7~~ MCAR § 4.002 B.4. and 5.

~~(c) C. Postgraduate training. Upon issuance of a temporary certificate for graduate training, the holder may take postgraduate training in a teaching institution within the state of Minnesota approved for resident training by the board.~~

~~(d) D. Services allowed. The holder of such a temporary certificate may perform those services incident to the training prescribed by the approved institution while acting under the direction of a person licensed to practice medicine and surgery in this state; provided, however, that no fee or remuneration of any kind shall be collected by the holder of such certificate from any patients treated by him the holder; and, provided, further, that said the holder of the certificate shall confine his or her training and practice to the institution or group of institutions designated in his the original or amended application.~~

~~(e) E. Ineligible applicants. An applicant whose credentials are determined by the board to indicate ineligibility for such a temporary permit or certificate shall be notified of such this determination and the grounds therefor for it and may be granted a hearing thereon in accordance with the provisions of on this determination according to ME 63, by filing a statement of issues with the board within twenty (20) days after receipt of such the notice from the board. After such the hearing, the board shall notify the applicant in writing, of its decision thereon.~~

~~(f) A license issued to an applicant whose petition for a preference visa has been approved is valid only so long as the licensee is a resident of the State of Minnesota, is not valid for the purpose of reciprocity with any other state, territory or country and is conditioned upon: (a) the approved petition remaining in full force and effect, (b) his obtaining the status of lawful permanent resident of the United States as soon as he is eligible therefor, (c) his making a declaration of intent to become a citizen of the United States as soon as practicable thereafter, and (d) his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects, or refuses, for reasons within or beyond his control, to become a lawful permanent resident of the United States, to make a declaration of intent to become a citizen of the United States and to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. A license issued to an applicant who is a lawful permanent resident of the United States and who has made a declaration of intent to become a citizen of the United States is conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon a licensee described in the first sentence of this paragraph~~

becoming a lawful permanent resident of the United States and making a declaration of intent to become a citizen of the United States, his license shall be valid irrespective of his status as a resident of the State of Minnesota, shall be valid for the purpose of reciprocity with any other state, territory or country and shall be conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon any licensee described in this paragraph becoming a naturalized citizen of the United States, the restrictions contained in this paragraph shall be of no further force or effect.

**ME 7-7 MCAR § 4.007 Licensure of foreign graduates in medicine and surgery.**

(a) A. Who may apply. A graduate of a foreign medical school may apply for admission to a licensing examination in accordance with MSA Minnesota Statutes, section 147.02, by filing with the board an application on forms provided by the board, which forms ~~shall~~ must include the following information:

(1) 1. The information required by ~~ME 2(b)(3); ME 2(b)(5); and ME 2(b)(6)~~ 7 MCAR § 4.002 B.3., 4., and 5.

(2) 2. Evidence satisfactory to the board that the applicant is a graduate of a foreign medical school and is the holder of an approved diploma or degree recognized by the board as evidencing a level of training from ~~said~~ the approved foreign medical school commensurate with the medical training required by approved medical schools in the United States.

(3) 3. An original or certified copy of a birth certificate.

(4) 4. If the applicant is licensed to practice medicine and surgery in a foreign country, the original or a certified copy of ~~his~~ the license to practice medicine and surgery in ~~such~~ the foreign country, issued by the school from which he or she graduated or by the appropriate licensing body of the country in which he or she was originally licensed. If the applicant is not so licensed, evidence satisfactory to the board that the applicant has passed an examination, or is eligible ~~therefor~~ for it, which is substantially equivalent to the examination given by the board to applicants for a license to practice medicine in all of its branches in Minnesota.

(5) 5. Evidence satisfactory to the board that the applicant has been awarded a certificate by the Educational Council for Foreign Medical Graduates, certifying to the applicant's formal education, ~~his having passed~~ and passage of the ECFMG English test and ~~his having passed~~ the ECFMG examination.

(6) 6. The name and location of the institution at which ~~such~~ the graduate training will be taken, and evidence that the institution has accepted the applicant for training.

(7) 7. (a) Evidence satisfactory to the board that the applicant has been awarded a certificate by the Educational Council for Foreign Medical Graduates, certifying to the applicant's formal education, ~~his having passed~~ and passage of the ECFMG English test, and ~~his having passed~~ the ECFMG examination, and (b) evidence satisfactory to the board that the applicant has satisfactorily completed either one year of graduate training in an institution in the United States or Canada approved for internship or graduate training by the board, or other graduate training approved by the board. The evidence required in clause (a) ~~hereof shall~~ is not be required; however, if the applicant is a diplomate of a medical specialty board, approved by the American Medical Association, or if the applicant has successfully completed the licensure examination prepared and graded by the Federation of State Medical Boards of the United States.

(b) B. Definition. As used herein, the term "foreign medical school" ~~shall mean~~ means a medical school located outside the United States and Canada.

(c) C. Ineligible applicants. An applicant whose credentials are determined by the board to indicate ineligibility for examination shall be notified of ~~such~~ this determination and the grounds ~~therefor~~ for it and may be granted a hearing ~~thereon~~ in accordance with the provisions of on this determination under ME 63; by filing a statement of issues with the board within ~~twenty~~ twenty (20) days after receipt of ~~such~~ the notice from the board. After ~~such~~ the hearing the board shall notify the applicant, in writing, of its decision ~~thereon~~.

(d) D. Filing deadline. All applications for examination must be fully completed and forwarded to the secretary of the board, postmarked not later than ~~thirty~~ thirty (30) days before the date of the examination.

(e) A license issued to an applicant whose petition for a preference visa has been approved is valid only so long as the licensee is a resident of the State of Minnesota, is not valid for the purpose of reciprocity with any other state, territory or

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## PROPOSED RULES

country and is conditioned upon: (a) the approved petition remaining in full force and effect, (b) his obtaining the status of lawful permanent resident of the United States as soon as he is eligible therefor, (c) his making a declaration of intent to become a citizen of the United States as soon as practicable thereafter, and (d) his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects or refuses, for reasons within or beyond his control, to become a lawful permanent resident of the United States, to make a declaration of intent to become a citizen of the United States and to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. A license issued to an applicant who is a lawful permanent resident of the United States and who has made a declaration of intent to become a citizen of the United States is conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon a licensee described in the first sentence of this paragraph becoming a lawful permanent resident of the United States and making a declaration of intent to become a citizen of the United States, his license shall be valid irrespective of his status as a resident of the State of Minnesota, shall be valid for the purpose of reciprocity with any other state, territory or country and shall be conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon any licensee described in this paragraph becoming a naturalized citizen of the United States, the restrictions contained in this paragraph shall be of no further force or effect.

~~ME § 7 MCAR § 4.008~~ Licensure to practice medicine and surgery by persons licensed to practice osteopathy.

~~(a)~~ A. Who may apply. Any person licensed to practice osteopathy in this state under MSA Minnesota Statutes, sections 148.11 to 148.16, ~~inclusive~~, may apply to this board for admission to a licensing examination to practice medicine and surgery by filing with the board an application as ~~hereinafter~~ prescribed in this rule.

~~(b)~~ B. Form and content of application. The application ~~shall~~ must be submitted on forms prepared by the board and ~~shall~~ must include the following information:

~~(1)~~ 1. An original or certified copy of diploma from an osteopathic college, duly accredited by the board, indicating that the applicant has satisfactorily completed a course of study acceptable to the board, and that he or she has received from such college the degree of Doctor of Osteopathy.

~~(2)~~ 2. An original or certified copy of the applicant's then current license to practice osteopathy in this state.

~~(3)~~ 3. The information required by ~~ME 2(b)(3); ME 2(b)(4); ME 2(b)(5); and ME 2(b)(6)~~ 7 MCAR § 4.002 B.3., 4., and 5.

~~(4)~~ 4. The applicant's statement as to the locations at which he or she has practiced osteopathy from the date of his licensure, showing the beginning and ending dates for each ~~such~~ location.

~~(c)~~ C. Required passage of examination. The applicant, prior to licensure to practice medicine and surgery, shall ~~be required~~ to satisfactorily pass an examination prepared and graded by the Federation of State Medical Boards of the United States.

~~(d)~~ D. Ineligible applicants. An applicant whose credentials are determined by the board to indicate ineligibility for examination shall be notified of ~~such~~ this determination and the grounds ~~therefor~~ for it and may be granted a hearing ~~thereon~~ in accordance with the provisions of on this determination under ME 63, by filing a statement of issues with the board within ~~twenty (20)~~ twenty (20) days after receipt of ~~such~~ the notice from the board. After ~~such~~ the hearing the board shall notify the applicant, in writing, of its decision ~~thereon~~.

~~(e)~~ E. Filing deadline. All applications for examinations must be fully completed and forwarded to the secretary of the board, postmarked not later than ~~thirty (30)~~ thirty (30) days before the date of the examination.

~~(f)~~ A license issued to an applicant whose petition for a preference visa has been approved is valid only so long as the licensee is a resident of the State of Minnesota, is not valid for the purpose of reciprocity with any other state, territory or country and is conditioned upon: (a) the approved petition remaining in full force and effect, (b) his obtaining the status of lawful permanent resident of the United States as soon as he is eligible therefor, (c) his making a declaration of intent to become a citizen of the United States as soon as practicable thereafter, and (d) his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects, or refuses, for reasons within or beyond his control, to become a lawful permanent resident of the United States, to make a declaration of intent to become a citizen of the United States and to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. A license issued to an applicant who is a lawful permanent resident of the United States and who has made a declaration of intent to become a citizen of the United States is conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States

and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon a licensee described in the first sentence of this paragraph becoming a lawful permanent resident of the United States and making a declaration of intent to become a citizen of the United States, his license shall be valid irrespective of his status as a resident of the State of Minnesota, shall be valid for the purpose of reciprocity with any other state, territory or country and shall be conditioned upon his naturalization as a citizen of the United States as soon thereafter as is authorized by the statutes of the United States, and if he fails, neglects or refuses for reasons within or beyond his control to become a naturalized citizen of the United States as above set forth, the board may revoke his license upon proof of the same. Upon any licensee described in this paragraph becoming a naturalized citizen of the United States, the restrictions contained in this paragraph shall be of no further force or effect.

## **State Board of Medical Examiners**

### **Proposed Rule Regarding the Practice of Physical Therapy**

185

#### **Notice of Intent to Adopt Rules without a Public Hearing**

Notice is hereby given that the Minnesota Board of Medical Examiners proposes to adopt the above entitled rules without a public hearing. The Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982).

Minnesota Statutes section 148.70 establishes the authority for the Board of Medical Examiners, with the advice and the assistance of the Physical Therapy Examining Advisory Council (whose existence and role is stipulated by statute) to regulate the practice of physical therapy in the interest and protection of the state. The Board has promulgated rules regulating the practice of physical therapy which fulfill the requirements of 148.70. However, through the administration of the existing physical therapy rules and with the assistance of the Physical Therapy Examining Advisory Council, the Board has developed new rules based upon the Board's experience in regulating physical therapy rules. Additionally, a statement of need and reasonableness that describes the need and reasonableness of the proposed rules has been prepared and is available for inspection by the public during regular business hours or a copy may be provided upon request, at the address below.

Persons interested shall have 30 days, specifically until January 25, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the address below.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota statutes 14.13-14.20 (1982). The agency asks that persons requesting a public hearing identify the particular provisions objected to, the suggested modifications to the proposed rules, and the reasons or data relied on to support the suggested modifications.

Please be advised that Minn. Stat. chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. § 10A.01, subdivision 11 defines a lobbyist as an 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 travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative administrative action by communicating 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.

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## PROPOSED RULES

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A copy of the proposed rule follows this notice. Additional copies may be obtained at the address below.

Persons who wish to submit comments or a written request for a public hearing, or who wish to receive a copy of the final rule or to be informed when the rule is submitted to the Attorney General, should submit such comments to:

Arthur W. Poore, Executive Secretary  
Minnesota Board of Medical Examiners  
717 Delaware Street SE, Suite #352  
Minneapolis, MN 55414

### Rules as Proposed (all new material)

#### 7 MCAR § 4.013 Definitions.

- A. Scope. For the purposes of 7 MCAR §§ 4.013-4.030 the terms defined in B.-D. have the meanings given them.
- B. Board. "Board" means the Board of Medical Examiners.
- C. Physical therapist assistant. "Physical therapist assistant" means a skilled technical worker who is a graduate of a physical therapist assistant educational program accredited by the American Physical Therapy Association or a comparable accrediting agency. The physical therapist assistant performs selected physical therapy treatments and related duties as delegated by the physical therapist to assist the physical therapist in patient/client/resident-related activities.
- D. Physical therapy aide. "Physical therapy aide" means a supportive worker who has been trained on the job to perform tasks assigned by a supervising registered physical therapist.

#### 7 MCAR § 4.014 Application.

An applicant for admission to a registration examination to practice physical therapy shall file an application with the board. If the board finds that the application is complete and that all of the requirements of Minnesota Statutes, section 148.70 and 7 MCAR §§ 4.013-4.030 have been met, it shall advise the applicant of the date and place of the examination.

#### 7 MCAR § 4.015 Contents of application.

The application must be submitted on forms prepared by the board. To be complete, the application must include the following information:

- A. a notarized or certified copy of the original diploma, degree, or certificate or evidence satisfactory to the board, taking into consideration the qualifications for applicants set out in Minnesota Statutes, section 148.70, indicating that the applicant has satisfactorily completed an approved curriculum in physical therapy as set out in Minnesota Statutes, section 148.705, clauses (a) and (b) and has been graduated from a school of physical therapy approved by the board;
- B. a recommendation by one physician duly licensed to practice medicine in the United States or Canada and one physical therapist duly registered to practice physical therapy in the United States or Canada;
- C. a recent full-faced notarized photograph attached to the application; and
- D. an accounting of time beginning with high school education.

#### 7 MCAR § 4.016 Application deadline.

All applications for examination must be fully completed in accordance with 7 MCAR § 4.015 and forwarded to the secretary of the board. An application must be postmarked not later than 30 days before the date of the examination.

#### 7 MCAR § 4.017 Examination.

The examination, as described in Minnesota Statutes, section 148.72, subdivision 3, must be the Professional Examination Service Physical Therapy Examination or a comparable nationally recognized examination. The passing score is one standard deviation below the mean of all persons taking the examination.

#### 7 MCAR § 4.018 Ineligibility for examination.

If the board determines that an applicant is ineligible for examination, the board shall notify the applicant of this determination and the grounds for it. The applicant may be granted a hearing in accordance with the provisions of rule ME 63 of the Board of Medical Examiners by filing a statement of issues with the board within 20 days after receiving notice from the board. After the hearing, the board shall notify the applicant in writing of its decision.

#### 7 MCAR § 4.019 Registration without examination.

The board may register a person as a physical therapist in this statement without examination if that person completes or presents evidence satisfactory to the board of having passed an examination in accordance with Minnesota Statutes, section 148.70 administered by a state licensing agency. An applicant for registration without examination shall submit an application on forms provided by the board with the following information:

A. a notarized or certified copy of a current license or certificate to practice physical therapy, if any, issued by the duly accredited examining agency of the state or foreign country in which the applicant has been licensed or certified;

B. an original or certified copy of a diploma, degree, or certificate or evidence satisfactory to the board indicating that the applicant has satisfactorily completed an approved curriculum in physical therapy as provided in Minnesota Statutes, section 148.70 and has been graduated from a school of physical therapy approved by the board; and

C. a list of the applicant's physical therapy employment during the past five years.

**7 MCAR § 4.020 Requirements for foreign-trained applicants.**

An applicant for registration who is a foreign-trained physical therapist must fulfill the following requirements, providing certified English translations of board-required relevant documentation:

A. The applicant must present evidence of completion of physical therapy schooling equivalent to that required in Minnesota Statutes, section 148.705 and 7 MCAR § 4.017. This evidence will be evaluated by the Physical Therapy Council with the assistance of a credentials evaluation service familiar with educational standards and professional qualification. Agencies providing evaluation services must be approved by the American Physical Therapy Association or meet its standards. The applicant shall be responsible for the expenses incurred as a result of the evaluation.

B. The applicant must achieve a score of at least 550 on the Test of English as a Foreign Language, or a score of at least 85 percent on the Minnesota Battery Test.

C. The applicant must have practiced satisfactorily for at least six months under the supervision of a registered physical therapist at a board-approved facility. A facility that offers such practice must provide a broad base of experience including a variety of physical agents, therapeutic exercises, evaluation procedures, and patient diagnoses. Supervision must be provided by a registered physical therapist with at least three years of clinical experience. A proposed outline of clinical experiences must be approved by the Physical Therapy Council before the facility begins offering the experience.

D. The applicant must satisfactorily complete the board-approved examination as stated in Minnesota Statutes, section 148.72, subdivision 3.

**7 MCAR § 4.021 Address.**

Every physical therapist shall provide the board with a current address. A physical therapist who moves from the address on the physical therapist's registration shall notify the board of the change within 30 days.

**7 MCAR § 4.022 Initiation and termination of treatment.**

A physical therapist may not, without the express direction of the prescribing physician, initiate or terminate treatment. In an emergency, however, the physical therapist may modify or terminate treatment that is not beneficial to the patient or that is not tolerated by the patient. In that case the physical therapist shall notify the prescribing physician promptly.

**7 MCAR § 4.023 Duration of treatment plan.**

The duration of a physical therapy treatment plan shall be designated by the prescribing physician.

**7 MCAR § 4.024 Reports.**

The physical therapist shall submit written reports to the prescribing physician at intervals determined by the prescribing physician concerning the condition and progress of the patient in therapy. Reports should include an initial evaluation, progress notes, and a discharge note. Reports must be made more frequently than designated by the prescribing physician if the patient's condition warrants.

**7 MCAR § 4.025 Prescriptions.**

Every physical therapist shall retain all patient records including prescriptions received for at least seven years, or six years after the patient's majority. The physical therapist shall provide access to these records to the board.

**7 MCAR § 4.026 Delegation of duties.**

The physical therapist may delegate patient treatment procedures only to a physical therapist assistant who has sufficient didactic and clinical preparation. The registered physical therapist may not delegate the following activities to the physical

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## PROPOSED RULES

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therapist assistant or to other supportive personnel: patient evaluation, treatment planning, initial treatment, change of treatment, and initial or final documentation.

The registered physical therapist must observe the patient's status before and after the treatment administered by an aide. The aide may perform tasks related to preparation of patient and equipment for treatment, housekeeping, transportation, clerical duties, departmental maintenance, and selected treatment procedures. The tasks must be performed under the direct supervision of a registered physical therapist who is readily available for advice, instruction, or immediate assistance.

The registered physical therapist is responsible for all duties delegated to the physical therapist assistant or tasks assigned to the physical therapy aide.

### 7 MCAR § 4.027 Observation and documentation of delegated duties.

When components of a patient's treatment are delegated to a physical therapist assistant, a registered physical therapist must provide on-site observation of the treatment and documentation of its appropriateness at least every six treatment sessions.

### 7 MCAR § 4.028 Supervision of physical therapist assistants.

A registered physical therapist may supervise no more than two physical therapist assistants.

### 7 MCAR § 4.029 Renewal of registration.

When they renew their registrations each year in compliance with Minnesota Statutes, section 148.73, physical therapists must submit lists of locations or institutions where they have practiced during the past five years. Applicants for reregistration who have not practiced the equivalent of eight full weeks during the past five years are required to achieve a passing score on retaking the registration examination or complete no less than eight weeks of council approved clinical experience with a broad base of treatment modalities and patient diagnoses.

Repealer. Rule ME 9 of the Board of Medical Examiners is repealed.

## ADOPTED RULES

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

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### Department of Health Health Systems Division

384

### Adopted Schedule of Fines for Noncompliance with Correction Orders issued to Nursing Homes

The rules proposed and published at *State Register*, Volume 8, Number 7, pages 225-240, August 15, 1983 (8 S.R. 225) are adopted with the following modifications:

#### Rules as Adopted

#### 7 MCAR § 1.059 Schedule of fines for uncorrected deficiencies.

A. Scope. The provisions of this rule establish the schedule of fines to be assessed against nursing homes for the failure to comply with a correction order. Penalty assessments are issued under the provisions of Minnesota Statutes, section 144A.10, subdivision 6 and will accrue on a daily basis. This rule supersedes those provisions contained in 7 MCAR § 1.057 which

establish a schedule of fines applicable to nursing homes. The provisions of 7 MCAR § 1.057 which establish fines applicable to boarding care homes remain unchanged.

B. Schedule of fines. Pursuant to the provisions of Minnesota Statutes, section 144A.10, subdivision 6, the commissioner of health shall impose penalty assessments in the amounts specified in 1.-23.

1. 7 MCAR § 1.042:

- a. 7 MCAR § 1.042 B.1., \$50;
- b. 7 MCAR § 1.042 B.2., \$50;
- c. 7 MCAR § 1.042 B.3., \$50; and
- d. 7 MCAR § 1.042 C.1.-C.6., \$100.

2. 7 MCAR § 1.044:

a. 7 MCAR § 1.044 A.:

(1) A \$500 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.044 A. which states: ". . . a registered nurse or a licensed practical nurse shall be employed so that on-site nursing coverage is provided eight (8) hours per day, seven (7) days per week during the day shift."

(2) A \$500 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.044 A. which states: "Provision shall also be made for a registered nurse to be ON CALL during all hours when a registered nurse is not on duty."

- b. 7 MCAR § 1.044 L., \$350;
- c. 7 MCAR § 1.044 M., \$100;
- d. 7 MCAR § 1.044 N., \$100;
- e. 7 MCAR § 1.044 O., \$50;
- f. 7 MCAR § 1.044 P., \$50; and
- g. 7 MCAR § 1.044 U., \$250.

3. MHD 45:

a. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 45(a) which states: "The licensee shall develop written by-laws and/or policies which shall be available to all members of the governing body and shall assure full legal responsibility for matters under its control, for the quality of care rendered and for compliance with applicable laws and regulations of legally authorized agencies."

b. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 45(a)(2) which states that the responsibilities of the licensee include the: "Appointment of a licensed nursing home administrator or a person in charge who shall be responsible for the operation of the home in accordance with law and established policies."

c. A \$50 penalty assessment shall be issued for a violation of that portion of MHD 45 (a)(2) which states: "The authority to serve as administrator or person in charge shall be delegated in writing."

d. MHD 45(a)(3)-(7), \$100.

e. A \$50 penalty assessment shall be issued for a violation of that portion of MHD 45(b) which states: "Copies of these licensing regulations shall be made readily available for the use of all personnel of the facility."

f. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 45(b) which states: "All personnel shall be instructed in the requirements of the law and the regulations pertaining to their respective duties and such instruction shall be documented. All personnel shall be fully informed of the policies of the home and procedure manuals to guide them in the performance of their duties shall be readily available."

g. MHD 45(c), \$100.

h. Except as noted in i., a \$100 penalty assessment shall be issued for a violation of MHD 45(d).

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i. A \$50 penalty assessment shall be issued for a violation of that portion of MHD 45(d) which states: "The name of the person in charge at the time shall be posted at the main entrance."

j. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 45(e) which states: "The administrator, in cooperation with the director of nursing service in a nursing home or the person in charge in a boarding care home shall be responsible for exercising discretion in the type of patients or residents admitted to the home in accordance with the admission policies of the home."

k. A \$250 penalty assessment shall be issued for a violation of that portion of MHD 45(e) which states: "Patients or residents shall not be accepted or retained for whom care cannot be provided in keeping with their known physical, mental or behavioral condition."

- l. MHD 45(f), \$50;
- m. MHD 45(g), \$100;
- n. MHD 45(h)(1), \$50;
- o. MHD 45(h)(2), \$100;
- p. MHD 45(h)(2)(aa)-(cc), \$100;
- q. MHD 45(h)(2)(dd), \$50;
- r. MHD 45(h)(2)(ee), \$100;
- s. MHD 45(h)(2)(ff), \$50;
- t. MHD 45(h)(3), ~~\$100~~ \$50;
- u. MHD 45(h)(4)(aa)-(dd), \$50;
- v. MHD 45(h)(5)(aa), \$100;
- w. MHD 45(h)(5)(bb)-(dd), \$50;
- x. MHD 45(h)(6), ~~\$100~~ \$200; and
- y. MHD 45(h)(7), \$100.

#### 4. 7 MCAR § 1.046:

a. Except as noted in b., a ~~\$350~~ \$250 penalty assessment shall be issued for a violation of 7 MCAR § 1.046 A.;

b. A ~~\$100~~ \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.046 A. which states: "Visiting hours shall be established as a written policy of the home and shall be posted in plain view of visitors.";

- c. 7 MCAR § 1.046 B., \$100;
- d. 7 MCAR § 1.046 C., \$100;
- e. 7 MCAR § 1.046 D., \$500;
- f. 7 MCAR § 1.046 E., \$250;
- g. 7 MCAR § 1.046 F., \$250;
- h. 7 MCAR § 1.046 G., \$100;
- i. 7 MCAR § 1.046 H., \$100;
- j. 7 MCAR § 1.046 I., \$100;
- k. 7 MCAR § 1.046 J., \$100;
- l. 7 MCAR § 1.046 K., \$100;
- m. 7 MCAR § 1.046 L.1., ~~\$350~~ \$500;
- n. 7 MCAR § 1.046 L.1.a.-d., \$300;
- o. 7 MCAR § 1.046 L.2.a., \$500;
- p. 7 MCAR § 1.046 L.2.b., \$350;
- q. 7 MCAR § 1.046 L.2.c.(1)-(4), \$300;
- r. 7 MCAR § 1.046 L.2.d., \$100;
- s. 7 MCAR § 1.046 L.2.e., \$350;

t. 7 MCAR § 1.046 L.2.f., \$300; and

u. 7 MCAR § 1.046 L.3., \$350.

5. 7 MCAR § 1.047:

a. 7 MCAR § 1.047 A., \$100;

b. 7 MCAR § 1.047 A.1., \$100;

c. 7 MCAR § 1.047 A.1.b., \$100;

d. 7 MCAR § 1.047 A.3., \$50;

e. 7 MCAR § 1.047(b), \$100;

f. 7 MCAR § 1.047(c), \$100;

g. 7 MCAR § 1.047(d), \$100; and

h. 7 MCAR § 1.047(e), \$50.

6. 7 MCAR § 1.048:

a. Except as noted in b., a \$300 penalty assessment shall be issued for a violation of 7 MCAR § 1.048 A.

b. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.048 A. which states: "All entries shall be made with a pen and signed by the person making the entry."

c. Except as noted in d., a ~~\$300~~ \$100 penalty assessment shall be issued for a violation of 7 MCAR § 1.048 A.1.

d. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.048 A.1. which states: "At the time of discharge or death, this record shall be complete with the date, time, reason for discharge, discharge diagnosis and condition; or date, time and cause of death. In either case the signature and address of the responsible person to whom released shall be obtained."

e. 7 MCAR § 1.048 A.2., \$300.

f. Except as noted in g., a \$100 penalty assessment shall be issued for a violation of 7 MCAR § 1.048 A.3.

g. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.048 A.3. which states: "The records of discharged patients or residents shall be promptly completed and filed in the home."

h. 7 MCAR § 1.048 A.4., \$100.

i. 7 MCAR § 1.048 A.5.-7., \$50.

j. 7 MCAR § 1.048 A.8.a., \$50.

k. 7 MCAR § 1.048 A.8.b.(1), \$250.

l. 7 MCAR § 1.048 A.8.b.(2), \$50.

m. 7 MCAR § 1.048 A.8.c.(1)-(7), \$100.

n. 7 MCAR § 1.048 A.8.d.-e., \$100.

o. 7 MCAR § 1.048 A.9., \$50.

p. 7 MCAR § 1.048 A.10., \$100.

q. 7 MCAR § 1.048 A.11.a.-h., \$50.

r. Except as noted in s. and t., a \$300 penalty assessment shall be issued for a violation of 7 MCAR § 1.048 B.

s. A \$100 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.048(b) which states: "A detailed incident report of any accident, injury or error in drug administration and the action taken shall be completed immediately."

t. A \$100 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.048(b) which states: "All nurses' notes shall be written and signed by the person giving the medication or making the observation."

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## ADOPTED RULES

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### 7. MHD 49:

a. MHD 49(a), \$300.

b. A \$300 penalty assessment shall be issued for a violation of that portion of MHD 49(b) which states: "Each nursing home or boarding care home shall have an agreement with one or more licensed physicians to provide emergency services and to act in an advisory capacity."

c. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 49(b) which states: "A schedule, which lists the names, telephone numbers and call days of the emergency physician(s) shall be posted in each nurses' or attendants' station."

d. MHD 49(c)(1), \$350.

e. A \$350 penalty assessment shall be issued for a violation of that portion of MHD 49(c)(2) which states: "Each nursing home patient shall be examined by a physician at least every 6 months and each boarding care home resident at least annually or more often if indicated by the clinical condition."

f. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 49(c)(2) which states: "A progress note shall be recorded in the patient's or resident's record at the time of each examination."

g. MHD 49(c)(3), \$350.

h. MHD 49(d), \$350.

i. A \$300 penalty assessment shall be issued for a violation of that portion of MHD 49(e) which states: "Nursing homes and boarding care homes shall have a written agreement with a licensed dentist to provide emergency dental care when necessary."

j. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 49(e) which states: "The name and address of the emergency dentist shall be posted at each nurses' or attendants' station."

k. MHD 49(f), \$100.

l. MHD 49(g), \$350.

m. MHD 49(h), \$100.

n. MHD 49(i), \$300.

o. MHD 49(j), \$300.

### 8. MHD 50:

a. A \$300 penalty assessment shall be assessed for a violation of that portion of MHD 50(a) which states: "Adequate staff shall be provided to meet the nursing and personal care needs and the maintenance necessary for the well-being of the patients and residents at all times."

b. A \$500 penalty assessment shall be issued for a violation of that portion of MHD 50(a) which states: "There shall be at least one responsible person awake, dressed and on duty at all times. These persons shall be at least twenty-one (21) years of age and capable of performing the required duties of evacuating the patients and residents."

c. A \$50 penalty assessment shall be issued for a violation of that portion of MHD 50(a) which states: "Each employee and volunteer shall wear a badge which includes name and position."

d. Except as noted in 7 MCAR ~~d.~~ e., a \$300 penalty assessment shall be issued for a violation of MHD 50(b).

e. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 50(b) which states: "The activities program shall be regularly scheduled at least five (5) days each week with the program posted one week in advance. A sufficient number of personnel shall be assigned to assist with the activities program on a regular basis. Appropriate space, equipment, materials and storage areas shall be provided. This shall include recreational space and activities out-of-doors."

f. MHD 50(c), \$250;

g. MHD 50(d), \$300;

h. MHD 50(e)(1), \$300;

i. MHD 50(e)(2), \$300;

j. MHD 50(e)(3), \$300.

k. MHD 50(e)(4), \$300.

l. MHD 50(e)(5), \$100.

m. MHD 50(e)(6), \$300.

n. MHD 50(f)(1), \$300.

o. MHD 50(f)(2), \$300.

p. A \$300 penalty assessment shall be issued for that portion of MHD 50(f)(3) which states that the responsibilities of the director of nursing include: "Planning and conducting written orientation programs for new nursing personnel, and continuing in-service education for all nursing home personnel, if there is no one designated who is responsible for all in-service education."

q. A \$500 penalty assessment shall be issued for that portion of MHD 50(f)(3) which states: "No nursing personnel shall perform duties for which they have not had proper and sufficient training. Duties assigned to nursing personnel shall be consistent with their training, experience and licensure."

r. MHD 50(f)(4)-(7), \$100;

s. MHD 50(f)(8), \$300.

t. MHD 50(f)(9)-(13), \$100.

u. MHD 50(g), \$350.

v. MHD 50(h), \$300.

w. MHD 50(i), \$350.

x. A \$100 penalty assessment shall be issued for a violation of that portion of MHD 50(j) which states: "The nursing home shall provide opportunities for personnel to attend courses in rehabilitation nursing and other educational programs."

y. A \$350 penalty assessment shall be issued for a violation of that portion of MHD 50(j) which states: "Nursing home personnel shall be trained in nursing skills including demonstrations and practice with supervision as needed and prior to assignment to patient care responsibilities."

9. MHD 51:

a. MHD 51(a), \$350.

b. Except as noted in c., a \$100 penalty assessment shall be issued for a violation of MHD 51(b).

c. A \$200 penalty assessment shall be issued for a violation of that portion of MHD 51(b) which states: "All attached equipment shall be solidly anchored to avoid accidents."

d. Except as noted in e., a \$350 penalty assessment shall be issued for a violation of MHD 51(c).

e. A \$300 penalty assessment shall be issued for a violation of that portion of MHD 51(c) which states: "A full record of the use of restraints or seclusion shall be maintained in the patient's or resident's medical record."

f. MHD 51(d), \$350.

g. MHD 51(e)(1)-(3), \$350.

h. MHD 51(e)(4), \$100.

10. 7 MCAR § 1.052:

a. 7 MCAR § 1.052 A.1. and (2)-(6), \$150;

b. 7 MCAR § 1.052 A.(7), \$350;

c. 7 MCAR § 1.052 A.(8)-(9), \$150;

d. A \$200 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.052 A.(10) which states: "All furnishings and equipment shall be maintained in a usable, safe and sanitary condition.";

e. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.052 A.(10) which states: "All rooms and beds shall be numbered. All beds shall be identified with the name of the patient or resident.";

f. 7 MCAR § 1.052 (b), \$350;

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## ADOPTED RULES

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- g. 7 MCAR § 1.052 (c), \$200;
- h. 7 MCAR § 1.052 (d), \$150;
- i. 7 MCAR § 1.052 (e), \$150;
- j. 7 MCAR § 1.052 (f), \$150;
- k. 7 MCAR § 1.052 (g), \$150;

l. A \$200 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.052 (h) which states: "Cabinets and other suitable space shall be provided and identified for the safe storage of equipment and supplies in a sanitary, convenient and orderly manner. Supplies shall be identified.";

m. A \$300 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.052 (h) which states: "Sterile supplies shall be marked with the latest date of sterilization and shall be stored apart from unsterile supplies.";

- n. 7 MCAR § 1.052 (i), \$200;
- o. 7 MCAR § 1.052 (j), \$200; and
- p. 7 MCAR § 1.052 (k), \$200.

### 11. 7 MCAR § 1.053:

a. A \$500 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 A. which states: "A system shall be developed in each nursing home to assure that all medications are administered safely and properly."

b. A \$300 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 A. which states: "The supervising nurse or other nursing staff trained specifically by the supervising nurse or a physician in the administration<sup>1</sup> of medications and familiar with the expected action of drugs, shall be designated and held responsible for the administration of medications during each eight hour period."

c. A ~~\$100~~ \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 A. which states: "A list of carefully selected personnel, currently employed, who have been so trained, none under eighteen (18) years of age, shall be maintained. The written training program shall be available at each nursing station."

d. A \$500 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 A. which states: "Medications administered by hypodermic may be given only by a physician, registered nurse or licensed practical nurse."

e. A \$350 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 A. which states: "The actual act of swallowing oral medications shall be observed personally by the individual responsible for administering medications. When medications have been added to food, the amount of food consumed shall be recorded by the person designated to administer medications."

f. A \$500 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 A. which states: "All medications shall be administered exactly as ordered by the physician. Any medication errors or patient reactions<sup>2</sup> shall be reported to the physician at once and an explanation made in the patient's care record."

- g. 7 MCAR § 1.053 A.(1), \$350.
- h. 7 MCAR § 1.053 A.(2), \$300.
- i. 7 MCAR § 1.053 A.(3), \$300.
- j. 7 MCAR § 1.053 A.(4), \$300.
- k. 7 MCAR § 1.053 A.(5), \$300.
- l. 7 MCAR § 1.053 B., \$300.
- m. 7 MCAR § 1.053 C., \$300.

n. A \$350 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 D. which states: "All medications administered to each patient shall be recorded on the medication and treatment record or in the nurses' notes on the patient's chart. This information shall include the name and quantity of the drug given and the time administered and shall be initialed by the person giving the drug. Special notations shall be made whenever medications are started or discontinued. Medicine cards or a medicine list shall be maintained to show each medication which is currently being given."

- o. A \$300 penalty assessment shall be issued for a violation of those portions of 7 MCAR § 1.053 D. not identified in
- n.
- p. 7 MCAR § 1.053 E., \$350.
- q. 7 MCAR § 1.053 F., \$300.

r. 7 MCAR § 1.053 G., \$100.

s. 7 MCAR § 1.053 H., \$100.

t. ~~7 MCAR § 1.053 N., \$300~~ Except as noted in u., a \$300 penalty assessment shall be issued for a violation of 7 MCAR § 1.053 N.

u. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.053 N. which states: “The nursing home or boarding care home shall keep written documentation verifying completion of the required course by all unlicensed personnel administering medications.”

12. MHD 54:

a. MHD 54(a)(1), \$200;

b. MHD 54(a)(2), \$200;

c. MHD 54(a)(3), \$200;

d. MHD 54(a)(4), \$300;

e. MHD 54(a)(5), \$300;

f. MHD 54(a)(6), \$100;

g. MHD 54(a)(7), \$50; and

h. MHD 54(a)(8), \$300.

13. 7 MCAR § 1.055:

a. Except as noted in b., a \$350 penalty assessment shall be issued for a violation of 7 MCAR § 1.055(a).

b. A \$100 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.055(a) which states: “There shall be current diet manuals readily available in the kitchen.”

c. 7 MCAR § 1.055(b), \$300.

d. Except as noted in e.-g., a \$350 penalty assessment shall be issued for a violation of 7 MCAR § 1.055(c).

e. A \$300 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.055(c) which states: “The dietary staff shall be adequate in number to provide personnel on duty 12 or more hours per day. They shall be trained in the performance of their assigned duties.”

f. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.055(c) which states: “Work assignments and duty schedules shall be posted in the dietary department.”

g. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.055(c) which states: “The kitchen shall not be used for eating meals or for coffee breaks.”

h. 7 MCAR § 1.055(d), \$350.

i. 7 MCAR § 1.055(e), \$350.

j. A \$350 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.055(f) which states: “At least three meals shall be served at regular times during each twenty-four hour period with a maximum of fourteen (14) hours between a substantial evening meal and breakfast.”

k. A \$100 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.055(f) which states: “Meals shall be served in the dining room and bedroom trays kept to a minimum. Patients or residents shall be encouraged to eat together.”

l. 7 MCAR § 1.055(g), \$350.

m. ~~7 MCAR § 1.055(h), \$300~~ Except as noted in n., a \$300 penalty assessment shall be issued for a violation of 7 MCAR § 1.055 (h).

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## ADOPTED RULES

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n. A \$50 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.055 (h) which requires that menus be dated and posted for a minimum of one week in advance.

o. 7 MCAR § 1.055(i), \$300.

~~e-~~ p. 7 MCAR § 1.055 (j)-(s), \$350.

~~p-~~ q. 7 MCAR § 1.055 (t)-(w) \$300.

r. Except as noted in s., a \$300 penalty assessment shall be issued for a violation of 7 MCAR § 1.055 (u).

s. 7 MCAR § 1.055 (u) 1.-b.(2)(f)(ii), \$50.

t. 7 MCAR § 1.055 (v)-(w), \$300.

14. MHD 56:

a. MHD 56(a), \$200;

b. MHD 56(b), \$100;

c. MHD 56(c), \$200;

d. MHD 56(d), \$200.

e. Except as noted in f., a \$150 penalty assessment shall be issued for a violation of MHD 56(e).

f. A \$200 penalty assessment shall be issued for a violation of that portion of MHD 56(e) which states: "Disinfectants, pesticides and other toxic substances shall be clearly identified and stored in a locked enclosure or cabinet."

g. MHD 56(f), \$150;

h. MHD 56(g), \$200;

i. MHD 56(h), \$50;

j. MHD 56(i), \$200;

k. MHD 56(j), \$350; and

l. MHD 56(k), \$200.

15. MHD 62:

a. MHD 62(b), \$100;

b. ~~MHD 62(e)(1), \$100;~~

~~e-~~ MHD 62(g), \$200;

~~d-~~ c. MHD 62(h)-(m), \$100;

16. 7 MCAR § 1.064:

a. 7 MCAR § 1.064(a)(1)(aa), \$150;

b. 7 MCAR § 1.064(a)(2)(aa), \$200;

c. 7 MCAR § 1.064(a)(2)(bb), \$200;

d. 7 MCAR § 1.064(a)(3)(aa1), \$200;

e. 7 MCAR § 1.064(a)(3)(bb1), \$150;

f. 7 MCAR § 1.064(a)(3)(cc), \$150;

g. 7 MCAR § 1.064(a)(3)(dd1), \$200;

h. 7 MCAR § 1.064(a)(3)(dd2), \$150;

i. 7 MCAR § 1.064(a)(3)(ee1), \$150;

j. 7 MCAR § 1.064(a)(3)(ff1)(a), \$100;

k. 7 MCAR § 1.064(a)(3)(ff1)(b), \$500;

l. 7 MCAR § 1.064(a)(3)(ff2), \$200;

m. 7 MCAR § 1.064(a)(3)(gg1), \$150;

n. 7 MCAR § 1.064(a)(4)(aa), \$150;

- o. 7 MCAR § 1.064(a)(4)(bb), \$200;
- p. 7 MCAR § 1.064(a)(5)(aa), \$300;
- q. 7 MCAR § 1.064(a)(6)(aa)-(bb), \$200;
- r. 7 MCAR § 1.064(a)(7)(aa), \$200;
- s. 7 MCAR § 1.064(a)(9)(aa), \$150;
- t. 7 MCAR § 1.064(a)(10)(aa)-(bb), \$200;
- u. 7 MCAR § 1.064(a)(11)(aa), \$150;
- v. 7 MCAR § 1.064(a)(12)(aa)-(cc), \$150;
- w. 7 MCAR § 1.064(a)(13)(aa), \$150;
- x. 7 MCAR § 1.064(a)(14)(aa1)-(aa4), \$150;
- y. 7 MCAR § 1.064(a)(14)(aa5)-(aa6), \$200;
- z. 7 MCAR § 1.064(a)(14)(aa7)-(aa10), \$150;
- aa. 7 MCAR § 1.064(a)(15)(aa), \$150;
- bb. 7 MCAR § 1.064(a)(15)(aa1)-(aa4), \$150;
- cc. 7 MCAR § 1.064(a)(15)(aa5)-(aa7), \$200;
- dd. 7 MCAR § 1.064(a)(15)(aa8)-(aa11), \$150;

ee. A \$150 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.064(a)(16)(aa) which states: "In a room used by more than one patient, the bathtub or shower area shall be provided with a draw curtain for privacy.";

ff. A \$200 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.064(a)(16)(aa) which states: "Bathtubs and showers shall be provided with a non-slip bottom or floor surface, and the areas shall be provided with grab bars.";

gg. 7 MCAR § 1.064(a)(16)(bb), \$150;

hh. Except as noted in ~~kk~~ ii., a \$150 penalty assessment shall be issued for a violation of 7 MCAR § 1.064(a)(17)(aa).

ii. A \$200 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.064(a)(17)(aa) which states: "Bathtubs and showers shall be provided with a non-slip bottom or floor surface, and at least one grab bar, securely anchored, shall be provided at each fixture."

jj. 7 MCAR § 1.064(a)(17)(bb), \$150;

kk. Except as noted in 11., a \$150 penalty assessment shall be issued for a violation of 7 MCAR § 1.064(a)(17)(bb1).

11. A \$200 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.064(a)(17)(bb1) which states: "A vertical, non-slip grab bar, 24 inches long, shall be provided at the shower and at the shower entrance location. The low end of the grab bar shall be 3'-0" above the floor. Horizontal grab bars inside wet areas shall be mounted at a height of 4'-6" above the floor."

mm. Except as noted in nn., a \$150 penalty assessment shall be issued for a violation of 7 MCAR § 1.064(a)(17)(bb2).

nn. A \$200 penalty assessment shall be issued for a violation of that portion of 7 MCAR § 1.064(a)(17)(bb2) which states: "A vertical, non-slip grab bar, 24 inches long, shall be provided on each side of the tub at the head end. The low end of the grab bar shall be 3'-6" above the floor or 4 inches above the rim of the tub."

oo. 7 MCAR § 1.064(a)(18)(aa)-(bb), \$150;

pp. 7 MCAR § 1.064(a)(19)(aa), \$150;

qq. 7 MCAR § 1.064(a)(20)(aa), \$150;

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## ADOPTED RULES

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- rr. 7 MCAR § 1.064(a)(21)(aa), \$150;
- ss. 7 MCAR § 1.064(a)(22)(aa), \$50; and
- tt. 7 MCAR § 1.064(a)(23)(aa), \$50.

### 17. MHD 65:

- a. MHD 65(a), \$150;
- b. MHD 65(b), \$200;
- c. MHD 65(c)(1)-(5), \$200;
- d. MHD 65(c)(6), \$100;
- e. MHD 65(d), \$150;
- f. MHD 65(e), \$150;
- g. MHD 65(f), \$150;
- h. MHD 65(g), \$150;
- i. MHD 65(h), \$150;
- j. MHD 65(i), \$150;
- k. MHD 65(k)(1)-(2), \$150; and
- l. MHD 65(l), \$150.

### 18. MHD 66:

- a. MHD 66(a)(1), \$200;
- b. MHD 66(b)(1)(aa)-(cc), \$150;
- c. MHD 66(c)(1), \$200;
- d. MHD 66(d)(1), \$150;
- e. MHD 66(e)(1), \$200;
- f. MHD 66(f)(1), \$150;
- g. MHD 66(g)(1), \$200;
- h. MHD 66(h)(1), \$200;
- i. MHD 66(i)(1)-(2), \$200;
- j. MHD 66(j)(1), \$200;
- k. MHD 66(k)(1), \$200;
- l. MHD 66(l)(1), \$150;
- m. MHD 66(m)(1), \$200;
- n. MHD 66(n)(1), \$200;
- o. MHD 66(n)(1)(aa)-(bb), \$200;
- p. MHD 66(o)(1)-(2), \$200;
- q. MHD 66(p)(1)-(2), \$200;
- r. MHD 66(q)(1)(aa)-(bb), \$200;
- s. MHD 66(r)(1), \$200;
- t. MHD 66(s), \$200; and
- u. MHD 66(t), \$200.

### 19. MHD 67:

- a. MHD 67(a)(1)(aa)-(bb), \$200;
- b. MHD 67(a)(1)(cc)-(ee), \$200;
- c. MHD 67(a)(1)(ff)-(ii), \$200;

- d. MHD 67(a)(1)(jj)-(mm), \$200;
- e. MHD 67(a)(1)(n), \$200;
- f. MHD 67(a)(1)(o), \$200;
- g. MHD 67(b)(1), \$200;
- h. MHD 67(c)(1)(aa)-(ff), \$200;
- i. MHD 67(c)(1)(gg)-(hh), \$200;
- j. MHD 67(c)(1)(ii)-(nn), \$200;
- k. MHD 67(d), \$200;
- l. MHD 67(e), \$200;
- m. MHD 67(f)(1)(aa), \$200;
- n. MHD 67(f)(2)(aa), \$50;
- o. MHD 67(f)(2)(bb), \$200;
- p. MHD 67(f)(3)-(5), \$200;
- q. MHD 67(f)(6)(aa), \$200;
- r. MHD 67(f)(7)-(9), \$200;
- s. MHD 67(f)(10)-(12), \$350; and
- t. MHD 67(g), \$200.

20. Minnesota Statutes, chapter 144A:

- a. Minnesota Statutes, section 144A.04, subdivision 4, \$100.
- b. Minnesota Statutes, section 144A.04, subdivision 6, \$100.
- c. ~~Minnesota Statutes, section 144A.08, subdivision 2, \$100.~~

~~d.~~ A \$100 penalty assessment shall be issued for a violation of these portions of Minnesota Statutes, section 144A.10, subdivision 3 which state: “. . . [A] copy of each correction order and notice of noncompliance, and copies of any documentation supplied to the commissioner of health or the commissioner of public welfare under sections 144A.03 or 144A.05 shall be kept on file at the nursing home and shall be made available for viewing by any person upon request. Except as otherwise provided by this subdivision, a copy of each correction order and notice of noncompliance received by the nursing home after its most recent inspection or reinspection shall be posted in a conspicuous and readily accessible place in the nursing home . . . All correction orders and notices of noncompliance issued to a nursing home owned and operated by the state or political subdivision of the state shall be circulated and posted at the first public meeting of the governing body after the order or notice is issued. Confidential information protected by section 13.05 or section 13.46, shall not be made available or posted as provided in this subdivision unless it may be made available or posted in a manner authorized by chapter 13.”

~~e.~~ d. Minnesota Statutes, section 144A.13, subdivision 1, \$100.

~~f.~~ e. Except as noted in g., a \$100 penalty assessment shall be issued for a violation of Minnesota Statutes, section 144A.13, subdivision 2.

~~g.~~ f. A \$250 penalty assessment shall be issued for a violation of that portion of Minnesota Statutes, section 144A.13, subdivision 2 which states: “. . . [N]o controlling person or employee of a nursing home shall retaliate in any way against a complaining nursing home resident and no nursing home resident may be denied any right available to him under chapter 566.”

~~h.~~ g. Minnesota Statutes, section 144A.16, \$100.

21. Minnesota Statutes, section 144.651:

- a. Minnesota Statutes, section 144.651, subdivision 4, \$100;
- b. Minnesota Statutes, section 144.651, subdivision 5, \$250;

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## ADOPTED RULES

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- c. Minnesota Statutes, section 144.651, subdivision 6, \$250;
  - d. Minnesota Statutes, section 144.651, subdivision 7, \$100;
  - e. Minnesota Statutes, section 144.651, subdivision 8, \$100;
  - f. Minnesota Statutes, section 144.651, subdivision 9, \$250;
  - g. Minnesota Statutes, section 144.651, subdivision 10, \$250;
  - h. Minnesota Statutes, section 144.651, subdivision 11, \$100;
  - i. Minnesota Statutes, section 144.651, subdivision 12, \$250;
  - j. Minnesota Statutes, section 144.651, subdivision 13, \$500;
  - k. Minnesota Statutes, section 144.651, subdivision 14, \$500;
  - l. Minnesota Statutes, section 144.651, subdivision 15, \$250;
  - m. Except as noted in n., a \$100 penalty assessment shall be issued for a violation of Minnesota Statutes, section 144.651, subdivision 16.
  - n. A \$250 penalty assessment shall be issued for a violation of that portion of Minnesota Statutes, section 144.651, subdivision 16, which states: "[P]atients and residents shall be assured confidential treatment of their personal and medical records, and may prove or refuse their release to any individual outside the facility. . .";
  - o. Minnesota Statutes, section 144.651, subdivision 17, \$100;
  - p. Minnesota Statutes, section 144.651, subdivision 18, \$100;
  - q. Minnesota Statutes, section 144.651, subdivision 19, \$250;
  - r. Minnesota Statutes, section 144.651, subdivision 20, \$100;
  - s. A \$250 penalty assessment shall be issued for a violation of the portions of Minnesota Statutes, section 144.651, subdivision 21 which state: ". . . [P]atients and residents may associate and communicate privately with persons of their choice and enter and, except as provided by the Minnesota Commitment Act, leave the facility as they choose . . . Personal mail shall be sent without interference and received unopened unless medically or programmatically contraindicated and documented by the physician in the medical record."
  - t. A \$100 penalty assessment shall be issued for a violation of the portions of Minnesota Statutes, section 144.651, subdivision 21 which state: "[P]atients and residents shall have access, at their expense, to writing instruments, stationery, and postage . . . There shall be access to a telephone where patients and residents can make and receive calls as well as speak privately. Facilities which are unable to provide a private area shall make reasonable arrangements to accommodate the privacy of patients' or residents' calls. . ."
  - u. Minnesota Statutes, section 144.651, subdivision 22, \$100;
  - v. Minnesota Statutes, section 144.651, subdivision 23, \$250;
  - w. Minnesota Statutes, section 144.651, subdivision 24, \$100;
  - x. Minnesota Statutes, section 144.651, subdivision 25, \$250;
  - y. Minnesota Statutes, section 144.651, subdivision 26, \$250;
  - z. Minnesota Statutes, section 144.651, subdivision 27, \$100;
  - aa. Minnesota Statutes, section 144.651, subdivision 28, \$250; and
  - bb. Minnesota Statutes, section 144.651, subdivision 29, \$250;
22. Minnesota Statutes, section 144.651, subdivision 1, \$100.
23. Minnesota Statutes, section 626.557:
- a. Minnesota Statutes, section 626.557, subdivision 3, \$250;
  - b. Minnesota Statutes, section 626.557, subdivision 3a, \$100;
  - c. Minnesota Statutes, section 626.557, subdivision 4, \$100;
  - d. Minnesota Statutes, section 626.557, subdivision 9, \$250;
  - e. Minnesota Statutes, section 626.557, subdivision 14, \$100;
  - f. Minnesota Statutes, section 626.557, subdivision 15, \$100; and
  - g. Minnesota Statutes, section 626.557, subdivision 17, \$250.

Minnesota Housing Finance Agency

430

Adopted Rule Relating to Income Limits for the Rollover Housing Loan Program

The rule proposed and published at State Register, Volume 8, Number 15, pages 621-622, October 10, 1983 (8 S.R. 621) is adopted as proposed.

Department of Public Welfare

251

Adopted Amendment to Rule Governing Foster Care for Children

The rule proposed and published at State Register, Volume 8, Number 6, pages 189-195, August 8, 1983 (8 S.R. 189) is adopted with the following modifications:

Rule as Adopted

12 MCAR § 2.204 Foster care—children.

B. Definitions.

16. Residential facility. "Residential facility" means any group home, family foster home, or other publicly supported out-of-home residential facility, including any out-of-home residential facility under contract with the state, county, or other political subdivision, or any agency thereof, to provide those services.

C. Services to children in foster care.

1. Service delivery.

h. Service plan and review. For those children who are placed in foster family homes, group homes or relatives' homes (unless placement with the relative is planned to be permanent) and for whom the local social service agency has placement or supervisory responsibility, the agency shall comply with the requirements in (1)-(4).

(1) Case placement plan. The agency shall prepare a written plan for each child who is placed in a foster home or residential facility. The plan must be prepared before the child is placed unless the child's situation requires immediate placement. If an emergency placement is necessary, the case plan must be prepared within 30 days after the initial placement.

The case placement plan must include the following components:

(b) a signed agreement among the agency, the parents, and, if appropriate able to understand the meaning of this agreement, the child which includes:

(c) an agreement signed by the agency, the parents, the foster parents, and if appropriate able to understand the meaning of this agreement, the child which includes:

(3) Petition for court review. As an alternative to the administrative review for children placed in foster care by voluntary agreement, the local social service agency may petition the court pursuant to Minnesota Statutes, section 260.131, subdivision 1a., for review of the foster care to determine if placement is in the best interests of the child.

(4) Dispositional hearing. For each child in foster care under court order pursuant to Minnesota Statutes, section 260.191, subdivision 1, the local social services agency shall petition the court for a dispositional hearing pursuant to Minnesota Statutes, section 260.191, subdivision 2, no later than 12 months after the initial dispositional hearing and annually thereafter during the continuation of foster care. For each child in foster care whose parental rights have been terminated and the child made a ward of the commissioner of public welfare, the local social services agency shall petition the court pursuant to Minnesota Statutes, section 260.242, subdivision 2, clause (d) for a dispositional hearing. The dispositional hearing must be held in a juvenile court or a tribal court of competent jurisdiction, or by an administrative body appointed or approved by the court.

When the dates of the dispositional hearing and the periodic review coincide, the dispositional hearing may replace the periodic review. A periodic review cannot substitute for a dispositional hearing.

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## ADOPTED RULES

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Children in permanent foster care, whose placement was approved by the court, pursuant to Minnesota Statutes, section 260.242, subdivision 2, clause (d) are excluded from this requirement.

1.

(5) The local social service agency may, through action by the county welfare board, human service board, or board of county commissioners, establish a local fund of county money through which the agency may reimburse foster parents for the cost of repairing damage done to the foster home and contents by the foster child, and the additional care insurance premium cost of a foster child who possesses a permit or license to drive a car.

m. [~~Reletter as n.~~ Unchanged.]

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## OFFICIAL NOTICES

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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

#### Notice of Intent to Solicit Outside Opinion Concerning the Adoption of Uniform Conveyancing Blanks

Notice is hereby given that the Department of Commerce is considering adoption of Uniform Conveyancing Blanks to replace Uniform Conveyancing Blanks 15-M through 26-M (Limited Warranty Deeds), Uniform Conveyancing Blank 63-M (Power of Attorney to Convey Real Property) and a new blank 62½-M (Affidavit by Attorney in Fact). Originals of the current forms are on file with the Secretary of State and copies are set out following M.S.A. Ch. 507.

The proposed adoption is authorized by Minn. Stat. § 507.09 (1982), which allows the Commissioner of Commerce to amend existing forms and adopt new forms. Such adoption of new or amended forms is accomplished by rule in accordance with Chapter 14 of the Minnesota Statutes.

The Department is soliciting opinions and comment pertaining to the adoption of said blanks. All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing and must be received by January 13, 1984. Written statements of information and comments may be addressed to:

Mr. Scott P. Borchert  
Department of Commerce, Enforcement Division  
500 Metro Square Building  
St. Paul, MN 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-4536 and in person at the above address. Any written material received by the above date will become part of any rules hearing which might be held.

December 13, 1983

Scott P. Borchert  
Department of Commerce

### Ethical Practices Board

#### Opinion Solicited Regarding Voluntary Contribution Plan, Minnesota Trial Lawyers Association

The Minnesota Trial Lawyers Association (MTLA), a non-profit corporation, requests an advisory opinion from the Ethical Practices Board on behalf of TRIAL-PAC, the duly registered political fund of MTLA. MTLA is considering a reverse

check-off system for PAC contributions on annual membership dues. Under this new system, the amount of the dues paid by each member would remain the same whether or not the member affirmatively declined to contribute to TRIAL-PAC. If the member does not check "No," a predetermined portion of that member's dues would go to TRIAL-PAC. Pursuant to Advisory Opinion #81, MTLA will establish a separate trust account to screen all PAC contributions so that no corporate money enters the political fund. MTLA members whose dues are paid by employer-corporations will be asked to enclose personal checks instead unless they exercise their options to decline participation.

In accordance with the Minnesota Supreme Court's opinion in *MACI v. Foley* 316 N.W. 2d 524 (Minn. 1982), MTLA has chosen to create a political fund. A political fund may receive financial support from membership dues pursuant to Minn. Stat. 10A.12, Subd. 5. Moreover, Minn. Stat. 10A.01, Subd. 16, defines a political fund as ". . . any accumulation of dues or voluntary donations by an association other than a political committee . . ." It is clear, therefore, that the depositing of membership dues in the political fund is permissible under the Ethical Practices Act. Membership dues may be directed to the political fund at the discretion of the sponsoring association; nowhere does the Act require the sponsoring organization to receive permission from individual members first. Section 10A.01, Subd. 16 describes two methods of financing a political fund: 1) through an accumulation of 2) dues; or 3) voluntary donations.

The Ethical Practices Act does not require an association to poll members. It is the opinion of Steven Zupke, TRIAL-PAC Administrator, that a reverse check-off system is legal. The only conceivable pitfall is found in Minn. Stat. 10A.20, Subd. 11, which prohibits associations from engaging in economic reprisals against someone because of that person's political activity. An argument could be made that MTLA would be penalizing members who choose not to contribute to because they must pay the same dues.

It is Zupke's position that a reverse check-off which introduces voluntariness into a system where voluntariness is not required can never be construed as an economic reprisal. The situation is analogous to the procedure used on our State and Federal tax forms where the taxpayer can choose to direct \$1.00 of taxes to a political campaign fund. If the taxpayer chooses to contribute, taxes do not increase and there is no penalty for not contributing. Zupke urges the Board to apply this same logic to the proposed reverse check-off system.

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its January 12, 1984 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to January 4, 1984.

Steven Zupke  
TRIAL-PAC Administrator

## **Metropolitan Council**

### **Notice of Public Hearing on an Implementation Plan for the 1983-84 Biennium of the Regional Recreation Open Space Capital Improvement Program**

The Metropolitan Council will hold a public hearing on Wednesday, January 11, 1984, at 3:15 p.m. in the Metropolitan Council Conference Room E, 300 Metro Square Bldg., 7th and Robert Sts., St. Paul, Minnesota (use Jackson St. entrance) for the purpose of receiving public comment on an Implementation Plan for the 1983-84 biennium of the Regional Recreation Open Space Capital Improvement Program. This draft plan deals in detail with a schedule for funding acquisition and development in the Regional Recreation Open Space System for the next two years. Copies of the proposed Implementation Plan are available free of charge from the Metropolitan Council's Public Information Office at 291-6464. Persons wishing to speak at the public hearing may register to do so in advance by contacting the Council's public hearing coordinator at 291-6421.

Gerald J. Isaacs  
Chair

## **Metropolitan Council**

### **Notice of Public Hearing on a Revised Recreation Open Space Capital Improvement Program**

The Metropolitan Council will hold a public hearing on Wednesday, January 11, 1984, at 3 p.m. in the Metropolitan Council Conference Room E, 300 Metro Square Bldg., 7th and Robert Sts., St. Paul, Minnesota (use Jackson St. entrance) for the purpose of receiving public comment on a revised Regional Recreation Open Space Capital Improvement Program. This draft

## **OFFICIAL NOTICES**

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plan deals in detail with a revised CIP to carry out the Regional Recreation Open Space System. Copies of the proposed revised CIP are available free of charge from the Metropolitan Council's Public Information Office at 291-6464. Persons wishing to speak at the public hearing may register to do so in advance by contacting the Council's public hearing coordinator at 291-6421.

Gerald J. Isaacs  
Chair

## **Minnesota State Agricultural Society Minnesota State Fair**

### **Annual Meeting Notice**

The 125th annual meeting of the Minnesota State Agricultural Society, governing body of the State Fair, will be held Jan. 15, 16 and 17 at the Radisson St. Paul Hotel. The annual meeting will be followed by meetings of the society's board of managers Jan. 17.

A complete schedule of all scheduled meetings is available during regular business hours at the Administration Building on the fairgrounds, St. Paul, or at the hotel during the meeting.

## **Minnesota State Retirement System Board of Directors**

### **Notice of Special Board Meeting**

A special meeting of the Board of Directors, Minnesota State Retirement System, will be held on Wednesday, January 4, 1984 at 8:30 A.M. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

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

### **Public Notice Regarding Changes in Rate Setting Procedures for Intermediate Care Facilities for Mentally Retarded**

Notice is hereby given to all providers and recipients of Minnesota Medical Assistance, and to the public, of changes in the rate setting method for intermediate care facilities for the mentally retarded (ICF/MRs). These changes are based on Minnesota Laws 1983, Chapter 312.

Rates established for ICF/MR services by the Department of Public Welfare for periods beginning on or after January 1, 1984 will be set pursuant to a rule to be identified as 12 MCAR §§ 2.05301-2.05315 (Temporary) which incorporates these changes. Information on implementation of these provisions will be sent as needed to local welfare agencies via instructional and informational bulletins and to health care providers enrolled in the Medical Assistance Program via provider bulletins. Copies of these materials may be reviewed at the county welfare or social services department. Written comments and questions on the rate setting methods for ICF/MRs may be addressed to:

Long-Term Care Rates Division  
Fourth Floor Centennial Office Building  
St. Paul, Minnesota 55155  
Phone: 612/297-3583

Comments and suggestions received from the public may be viewed at the same address during normal working hours.

This notice is being published pursuant to federal regulations which govern administration of the Medical Assistance Program, 42 CFR 447.205 (1981).

Estimated program expenditures are total state, federal, and county dollars for the period January 1, 1984 through June 30, 1985.

Fiscal Impact of Changes: The Department of Public Welfare estimates that these changes in the rate-setting method will decrease expenditures in the Medical Assistance Program by \$3 million during the 1984-1985 biennium.

Policy Change

Operating Costs

A. Operating cost categories include program, maintenance, and administrative. The following costs items are classified under each operating cost category:

Program

1. Salaries for program staff, including the program director, unit coordinators, and nursing staff;
2. Supplies;
3. Consultant services;
4. Staff training to meet the requirements of federal and state laws, rules, or regulations for keeping an employee's salary, status, or position or to maintain skills needed in performing the employee's present duties.
5. Therapeutic overnight trips, camping, or vacations for residents within given limitations; and
6. Membership or other fees for resident participation in social, sports, health, or similar organizations.

Maintenance

1. Direct costs of dietary services including:
  - a. Salaries of dietary staff;
  - b. Food;
  - c. Supplies;
  - d. Consultant services; and
  - e. Staff training to meet the requirements of federal and state laws, rules, or regulations for keeping an employee's salary, status, or position or to maintain skills needed in performing the employee's present duties.
2. Direct costs of laundry and linen services including:
  - a. Salaries of laundry staff;
  - b. Supplies;
  - c. Linen and bedding; and
  - d. Purchased services.
3. Direct costs of housekeeping services including:
  - a. Salaries of housekeeping staff; and
  - b. Supplies.
4. Plant operations and maintenance services including:
  - a. Salaries of maintenance staff;
  - b. Supplies;
  - c. Utilities and fuel;
  - d. Nondepreciable repairs and equipment not subject to capitalization; and
  - e. Purchased services

Administrative

1. The costs in a.-w. are incurred by the provider for administering the overall activities of the facility including:
  - a. Business office functions;
  - b. Travel expenses except as provided in 12 MCAR § 2.05309 (Temporary) G.;
  - c. Motor vehicle operating expenses;
  - d. Telephone and telegraph charges;

## OFFICIAL NOTICES

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- e. Office supplies;
- f. Licensing and permit fees;
- g. Insurance;
- h. Personnel costs including help wanted ads and the salaries or fees of management personnel, accounting and clerical personnel, data processing personnel, and receptionists;
- i. Professional fees for services such as legal, accounting, and data processing services;
- j. Business meetings and seminars;
- k. Postage;
- l. Training for other than direct resident care related personnel to meet the requirements of federal and state laws or regulations for keeping an employee's salary, status, or position or to maintain skills needed to perform the employee's present duties;
- m. Membership fees for associations and professional organizations which are directly related to the operation of the facility;
- n. Subscriptions to periodicals which are directly related to the operation of the facility;
- o. Telephone, television, and radio services provided in areas designated for use by the general resident population, such as lounges and recreation rooms;
- p. Security services or security personnel;
- q. Employee benefits;
- r. Payroll-related costs;
- s. Management fee of a nonrelated organization;
- t. Purchased services;
- u. Amortization of pre-opening costs;
- v. Working capital interest expense; and
- w. Indirect costs allocated as provided in 12 MCAR § 2.05312 (Temporary) A.2.

### B. Top management compensation is limited as follows:

- 1. A single facility shall not exceed the lesser of \$814 times the number of licensed beds or \$39,072;
- 2. More than one facility with a total bed complement of 48 or fewer beds, shall not exceed the lesser of \$814 times the total number of licensed beds or \$39,072;
- 3. More than one facility with a total bed complement of 48 or more beds, shall not exceed \$39,072 plus an additional \$335 for each licensed bed over 48. The top management compensation for a single facility within the group shall not exceed the lesser of \$814 times the number of licensed beds or \$39,072.

### C. Working capital interest expense is limited as follows:

- 1. For the rate year beginning on or after January 1, 1984 the total amount of working capital interest expense incurred by a facility during a reporting year shall not exceed the amount included in the payment rate in effect on December 31, 1983.
- 2. For the rate year beginning on or after January 1, 1985, the total amount of working capital interest expense incurred by a facility during a reporting year shall not exceed 80 percent of the allowable working capital as determined in 1.

D. For rate years beginning during calendar year 1984, the operating cost payment rate for each facility shall be based on the facility's allowable historical operating cost incurred during the reporting period immediately preceding the rate year for which the payment rate is effective increased by 6 percent. For rate years beginning during calendar year 1985 and thereafter, the operating cost payment rate shall be based on each facility's allowable historical cost incurred during the reporting year immediately preceding the rate year for which the operating cost payment rate is effective increased by the Consumer Price Index.

In addition, all facilities receive \$.25 per resident day as an operating cost adjustment allowance.

E. If a facility is able to keep its operating costs below the operating cost payment rate, the facility may keep the difference as an efficiency incentive. One half of the efficiency incentive will be added to the facility's historical base for the following year.

F. Rationale for changes in operating costs:

The prior reimbursement rule bases the payment rate for operating costs on the historical operating costs of the facility plus the facility's own projection of how much more they would require for the following year. If the facility did not spend the money as projected, all of the savings would have to be paid back to the state. Clearly, this system lacks any incentive for containing costs. The new rule, by indexing these costs using independent indicators of cost changes, will eliminate overprojections of cost and appeals of state decisions in these areas. The efficiency incentive in the new rule will reward efficient providers.

Property-Related Costs

A. Property related costs include depreciation allowance, capital loan interest expense, special assessments, and accrued real estate taxes, rental and lease payments, amortization, and related organization property costs.

B. Limited Recognition of Changes in Ownership:

The new rule does not allow adjustments to the historical capital cost of assets due to changes in ownership unless the change in ownership occurs as the result of the death or disability of the principal owner.

Rationale:

Experience in other states indicates that in the absence of a freeze on facility sales, major changes in property-related cost reimbursement precipitate an increase in the turnover rate of facilities with a corresponding increase in cost. Therefore, a temporary freeze on property-related costs is necessary to enable the Department to move toward a prospective system of reimbursement for property-related costs which is indifferent to sales and similar transactions.

C. Allowable Interest:

The new rule limits interest expense as follows:

a. Interest expense for obligations entered into prior to the effective date of the new rule will be allowed as recognized under the prior rule.

b. For obligations entered into on or after the effective date of the new rule:

—The interest rate will be limited to 2.5 percentage points above the Federal Home Loan Mortgage Corporation rate.

—Interest expense will be allowed only on the portion of the capital loan that together with all other outstanding capital loans does not exceed 100 percent of the historical capital cost of the facility's capital assets.

—A 20 percent down payment will be assumed on all capital assets purchased after the effective date of the new rule.

Rationale:

The prior rule contains no effective limits on interest rates, interest expense, or amount of indebtedness. Consequently, the industry is very highly leveraged and overly reliant on public funds which raises concerns regarding the industry's long-term stability. Furthermore, the state has found itself committed to reimburse excessive amounts for interest without any clear benefit to resident care.

D. Changes in Interest Expense:

The new rule does not recognize increases in interest expense due to refinancing. Providers who reduce their interest expense by refinancing will be allowed to keep one-half of the total savings as a refinancing allowance.

Rationale:

This provision is designed to encourage sound management practices by discouraging refinancing at high interest rates and rewarding refinancing at low interest rates. The provisions ensure the prudent management of limited state resources.

E. The new rule requires providers to fund depreciation for reducing capital loans and replacing or repairing capital assets.

Rationale:

This provision is necessary to increase the stability in the industry. Many providers have been spending their depreciation allowance without reducing their capital loans or providing for the purchase, replacement, and repair of capital assets. As their principal payments increase, these providers will have difficulty meeting their future capital financial obligations unless they begin to develop a managerial strategy for meeting future principal payments.

F. Capital Loan Reduction Allowance

Under the new rule each facility shall receive a capital loan reduction allowance as follows:

# OFFICIAL NOTICES

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| <u>Percentage of Equity</u> | <u>Allowance Per Resident Day</u> | <u>Amount Which Must Be Applied to Reduction of Principal</u> |
|-----------------------------|-----------------------------------|---|
| 0 through 10.00             | 50¢                               | 50¢   |
| 10.01 through 20.00         | 50¢                               | 25¢   |
| 20.01 through 30.00         | 50¢                               | 0   |
| 30.01 through 40.00         | 75¢                               | 0   |
| over 40                     | \$1.00                            | 0   |

## Rationale:

This provision requires the building of equity while allowing an increase in flexibility for those who already have adequate equity.

## G. Leases and Rental Costs

The new rule allows leases and rentals to the extent that the lease or rental does not exceed the cost of ownership. The costs of leases or rentals which last less than 60 days in a fiscal year or office equipment rentals are allowed without regard for ownership cost. Leases or rentals existing prior to the effective date of the new rule will be reimbursed pursuant to rules and regulations in effect prior to the effective date of this rule.

## Rationale:

This provision encourages providers to purchase assets when the purchase is less costly than the lease thereby providing an incentive for sound management practices.

## Nonallowable Costs

The new rule clearly defines the costs which are not reimbursable under the Medical Assistance Program. The costs listed are standard costs which are disallowed by most states and in many cases by federal regulations. They include costs such as political contributions, expenses for unsuccessful challenges to governmental agencies, business meals, employee parties, and undocumented costs. Most of these costs are currently disallowed under Rule 52. Any additional disallowances will not take effect until 1985.

## Rationale:

The purpose of the Medical Assistance Program is to reimburse for the care needs of disabled persons. Any expenditure which is not related to resident care cannot be paid under this program regardless of how worthwhile the activity may be. These costs have been specifically identified in response to provider's requests for more clarity in the state's criteria for disallowing costs.

## Related Organization Costs

The new rule controls the costs of services provided by related organizations. However, if the related organization, in the normal course of business, sells at least 50 percent of its goods or services to nonrelated organizations, the price charged to nonrelated organizations will be allowed.

## Rationale:

The purpose of this provision is to prevent the inflation of costs which may result from transactions which are not conducted at arm's length. A similar provision is contained in the prior rule.

## Reporting Requirements

The new rule clearly defines reporting requirements.

## Rationale:

The purpose of this provision is to ensure fiscal accountability for the use of public funds and to protect providers from requirements which are left to the discretion of auditing staff. Most of the required documentation was required under the prior rule. Additional documentation has been added in response to auditing difficulties.

## **Department of Transportation**

### **Petition of the City of St. Louis Park for a Variance from State Aid Standards for Street Width**

Notice is hereby given that the City Council of the City of St. Louis Park made a written request to the Commissioner of Transportation for a variance from minimum street width standards for a reconstruction project on Municipal State Aid Street 276 (Louisiana Avenue) from CSAH 16 (Cedar Lake Road) to Trunk Highway 12.

The request is for a variance from 14 MCAR § 1.5032, H.,1.,c., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of 48 feet with no parking instead of the required 52 feet with no parking.

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.

December 15, 1983

Richard P. Braun  
Commissioner of Transportation

## **Department of Transportation**

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

Notice is hereby given that the County Board of Murray County has made a written request to the Commissioner of Transportation for a variance from minimum design speed standards for a special resurfacing project on CSAH 3 from CSAH 39 to CSAH 42.

The request is for a variance from 14 MCAR § 1.5032, H.,1.,d., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a design speed of 44 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.

December 15, 1983

Richard P. Braun  
Commissioner of Transportation

## **Waste Management Board**

### **Notice of Hearing Concerning Draft Hazardous Waste Management Plan and Draft Certificate of Need**

It is hereby ordered and notice is hereby given that a hearing concerning the above-entitled matter will be held by the Waste Management Board pursuant to Minn. Stat. 115A.11 subd. 2 on January 16, 1984 in Room 112 of the State Capitol. The hearing will commence at 9:00 a.m. and continue until all present have been given an opportunity to present testimony.

The purpose of the hearing is to obtain comments on the Draft Hazardous Waste Management Plan and Draft Certificate of Need.

Under Minn. Stat. 115A.11 the Waste Management Board is required to prepare a Hazardous Waste Management Plan. The Plan must include:

- (a) an estimate of the types and volumes of hazardous waste which will be generated in the state through the year 2000;

## OFFICIAL NOTICES

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(b) specific and quantifiable objectives for reducing to the greatest feasible and prudent extent the need for and practice of disposal, through waste reduction, pretreatment, retrievable storage, processing, and resource recovery;

(c) a description of the minimum disposal capacity and capability needed to be developed within the state for use through the year 2000, based on the achievement of the objectives under clause (b);

(d) a description of implementation strategies required to develop the needed disposal capacity under clause (c) and to achieve the objectives under clause (b), including: the necessary private and government actions; development schedules for facilities, services, and regulations; revenue-raising and financing measures; levels of public and private effort and expenditure; legal and institutional changes; and other similar matters.

The plan shall provide for the orderly development of hazardous waste management sites and facilities to protect the health and safety of rural and urban communities. In preparing the plan the Board shall consider its impact upon agriculture and natural resources.

The plan shall require the establishment in the state of at least one commercial retrievable storage or disposal facility and shall recommend and encourage methods and procedures that will insure the establishment of at least one facility for the recycling, re-use, recovery, conversion, treatment, destruction, transfer, or storage of hazardous waste. The Board may make the implementation of elements of the plan contingent on actions of the legislature which have been recommended in the draft plan and certification of need and considered in the reports submitted pursuant to section 115A.08.

Under Minn. Stat. 115A.24 the Waste Management Board is required to prepare a Certificate of Need. The Certificate must indicate the types and volumes of waste for which disposal facilities are and will be needed through the year 2000 and the number, types, capacity, and function or use of the disposal facilities needed in the state. The Board shall certify need only to the extent that the Board has determined that there are no feasible and prudent alternatives including waste reduction, separation, pretreatment, processing, and resource recovery which would minimize adverse impact upon air, water, land and all other natural resources, provided that the Board shall require the establishment of at least one commercial disposal facility in the state.

Please be advised that this hearing is neither a contested case hearing nor a rulemaking hearing. Therefore, the procedural rules applicable to contested case and rulemaking hearings are inapplicable. The following procedures shall be followed:

1. The hearing shall be conducted by a hearing examiner from the Office of Administrative hearings.
2. A majority of the permanent WMB members shall be present at the hearing.
3. The hearing shall be opened by the hearing examiner who will explain the hearing procedures.
4. The WMB staff will explain the purpose of the hearing and briefly summarize the conclusions of the draft plan and certificate of need.
5. Members of the public will be given an opportunity to make oral statements, to offer written documents into the record and to direct questions to the WMB staff or the hearing examiner. Members of the WMB and WMB staff may address questions to members of the public.
6. The hearing examiner may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature.
7. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing.
8. A transcript of the hearing shall be prepared.
9. Following the end of the hearing, members of the public will have ten working days in which to submit additional documents and written comments to the WMB.
10. Comments received during the comment period will be given the same consideration as comments received at the hearing.
11. Copies of all hearing materials will be available for inspection at the WMB offices.
12. Within 15 days following close of the hearing comment period the PCA shall issue a hazardous waste pollution control report to the Legislative Commission on Waste Management.
13. Within 30 days following the close of the hearing comment period the WMB shall submit to the Legislative Commission on Waste Management the revised draft plan and certification of need, a report on the testimony received at the hearing, and the WMB response to that testimony.
14. Persons wishing to be notified of the availability of the WMB revised draft plan and certificate of need and report to the Legislative Commission on Waste Management may so indicate at the hearing.

15. The hearing examiner will not prepare a report for the hearing.

These procedures have been reviewed by the Legislative Commission on Waste Management pursuant to Minn. Stat. 115A.11, subd. 2.

Copies of the draft plan and draft certificate of need will be available at:

- regional libraries throughout the state
- courthouses in counties containing potential hazardous waste disposal sites
- public libraries and city offices in the cities located with the vicinity of potential hazardous waste disposal sites
- city offices and public libraries in cities containing or within the vicinity of preferred areas for processing facilities.

Copies of the draft plan and draft certificate of need will be available at the WMB offices or upon written request to the WMB. A nominal fee to cover postage and handling must be charged to persons receiving individual copies.

Following the hearing the Waste Management Board will review the testimony received at the hearing and revise the draft Plan and draft Certificate of Need and prepare a report on the testimony received at the hearing, the Board response and the results of the hearing process. The Board will submit the revised draft Plan and revised draft Certificate of Need and the above report to the Legislative Commission on Waste Management within 30 days following the hearing.

Questions concerning the procedures indicated in this notice and order may be directed to Special Assistant Attorney General Alan Williams, 1935 West County Road B-2, Roseville, Minnesota 55113, telephone (612) 379-0424. To submit documents, obtain copies of the draft Hazardous Waste Management Plan and draft Certificate of Need, or for additional information, please contact Sharon Decker at the Waste Management Board, 7323 58th Avenue North, Crystal, Minnesota 55428, telephone (612) 536-0816 or 1-800-652-9747.

December 20, 1983

Robert G. Dunn  
Chairman

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## STATE CONTRACTS

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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### Department of Labor and Industry

#### Notice of Availability of Contracts for Consultant Services

The Department of Labor and Industry requests statements of qualifications from consultants to assist the agency in the following areas:

1. Stress Management
2. Human Relations (Ethnicity, Gender and Race)
3. Mediation and Conflict Management
4. Team Building and Management Development
5. Career Development and Renewal

It is anticipated that the agency will be initiating training and development activities in these areas during calendar year 1984. Individual contracts are likely to be for program development, workshops, and materials and will run \$2,000.00 to \$10,000.00 each.

## STATE CONTRACTS

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Individuals or firms desiring consideration should express their interest by submitting a cover letter and qualifications by 4:00 p.m. January 23, 1984 to:

Dr. John Mirocha  
Manager, Organization Development  
Minnesota State Department of Labor and Industry  
444 Lafayette Road  
St. Paul, Minnesota 55101

### Metropolitan Council

#### **Request for Proposals for Technical and Financial Proposals for Feasibility Study of Transit Link Between Downtown Minneapolis and Downtown St. Paul Skyway Systems**

The Metropolitan Council of the Twin Cities area, with the support of Minnesota Governor Rudy Perpich, Minneapolis Mayor Don Fraser and St. Paul Mayor George Latimer, solicits technical, cost and financial proposals addressing the feasibility of a self-supporting transit link connecting the St. Paul and Minneapolis downtown skyway systems.

Proposals should outline, at a general level, the steps necessary to ensure successful implementation, including planning, construction and operation of the system. They should include the level of participation of the private and public sectors.

Proposals will be evaluated on the basis of the submitter's technical, managerial and financial qualifications to carry out the proposed work. They also will be evaluated on the basis of the proposed transit system and its ability to meet the specific requirements stated in the technical specifications.

The Council, by this Request for Proposals, does not promise to accept any proposals, and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, and to investigate the qualifications of any proposer.

##### Purpose

The purpose of the proposed transit link would be to provide a fast, climate-controlled transit connection between the Minneapolis and St. Paul downtowns. The existing skyway systems already provide a high level of accessibility for pedestrians in both downtowns on a year-round basis. About 20 million square feet of commercial, office and residential space is currently encompassed by skyways in both downtowns. The proposed link would bring together this existing development as well as more than 7,000 residents and 166,000 employees living and working in the two downtowns. The proposed transit line would serve a wide range of trip purposes including work, business, shopping, cultural activities, recreation, tourism and convention activities.

##### Specifications

###### Alignment

No specific alignment has been identified.

###### Technology

A wide range of technology including, but not limited to, high-speed trains, conventional rapid transit, bus and automated guideway transit system can be considered.

###### Termini

The terminus should, at a minimum, coincide with one of the outermost skyways in each city.

###### Level of Service

Service would be provided on an all-day basis at intervals of approximately 15 minutes.

###### Right-of-Way

The right-of-way would be provided by the appropriate public sector from existing available land under public ownership.

###### Length

The length of the system between termini would be approximately 9.5 miles.

###### Stations

Only two intermediate stops (for on-line systems), one at the Capitol complex north of downtown St. Paul and one at the University of Minnesota, should be provided. The end stations in both downtowns are to be fully integrated with the skyway

system. It should, therefore, be possible to gain access from the skyway to the system platform by using an enclosed escalator, elevator or stairway.

#### Speed/Travel Time

A travel time of no more than 15 minutes between the 2 downtown stations should be achieved to make the system competitive with the private automobile. Such a travel time would require a minimum average speed of approximately 38 mph.

#### Capacity/Market Potential

The capacity of the system should be sufficient to handle up to 4,000 passengers per hour. Such capacity may not be necessary at opening date, but should be readily achievable without major system modification. Initial ridership is estimated at between 10,000 and 20,000 daily passengers.

#### Proposal Content

1. System Description
2. Market Potential
3. Costs
  - Capital
  - Operating and maintenance
4. Financing
  - Financing of capital costs
  - Financing of operating costs
5. Management and Operation
6. Timetable

Proposals should be submitted to Gerald Isaacs, Chairman, Metropolitan Council of the Twin Cities Area, Suite 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101 U.S.A.

Proposals must be received by March 30, 1984. For more information about preparing a proposal, contact Natalio Diaz.

## **Department of Public Welfare Health Care Programs Division**

### **Notice of Availability of Marketing Broker Contract**

The Department of Public Welfare intends to issue a contract for the purpose of providing services in the development of marketing materials and strategy to be used for the education of Medical Assistance (MA) consumers taking part in a prepaid health care demonstration project. The contractor will be developing an audio/visual presentation, a complementary brochure and an informational piece listing an array of prepaid health care plans being offered to MA consumers. The contractor will also recommend strategies for addressing difficult marketing issues (e.g. how to educate consumers with communication barriers, such as deafness). The contract will be awarded to an organization based on: (1) relevant experience (2) creativity in approaches to education/marketing materials (3) creativity in formulating strategies to deal with difficult marketing issues, and (4) price.

The Department of Public Welfare shall issue a Request for Proposal (RFP) to all interested parties. Final selection from among RFP respondees will be made on 2-16-84 with the contract period to begin 4-1-83.

Proposals and Inquiries should be directed to:

Ms. Cherie May  
Health Care Programs Division  
Space Center  
444 Lafayette Road  
St. Paul, MN 55101  
(612) 296-9940

## STATE CONTRACTS

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### Department of Transportation

#### Notice of Availability of a Request for Proposal for Consulting Services to Evaluate Metro-Mobility Project

Notice is hereby given that a Request for Proposal is available from the Minnesota Department of Transportation, which seeks the services of a qualified consultant to assist in the evaluation of the Metro Mobility coordinated special transportation service in the Minneapolis-St. Paul area. This evaluation project would seek to identify possible service improvements and cost efficiencies for the Metro Mobility project and would explore other service alternatives. The expected result of the evaluation is a revised service delivery scheme and a transition plan to implement the recommended alternative.

The Department of Transportation estimates that the project will cost \$50,000. Funding will be provided through Section 8 of the Urban Mass Transportation Act. The successful responder will be required to submit acceptable evidence of compliance with workers' compensation insurance coverage requirements prior to execution of a contract. The submission date for completed proposals is February 6, 1984. 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 copy of the Request for Proposal may be received by contacting Nancy Moore, Special Projects Coordinator, Office of Transit, 815 Transportation Building, St. Paul, Minnesota 55155, telephone (612) 296-7590.

## SUPREME COURT

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### Decisions Filed Wednesday, December 14, 1983

#### Compiled by Wayne O. Tschimperle, Clerk

C7-83-1208 Peoples Natural Gas Company, a Division of InterNorth, Incorporated, Petitioner, Appellant, v. Minnesota Public Utilities Commission, Respondent.

1. In a rate-making proceeding, the Public Utilities Commission may impute a hypothetical capital structure to a company that does not have an objective capital structure of its own but uses its parent corporation's capital structure.
2. An agency decision is not arbitrary and capricious unless that decision was clearly wrong or it represents the agency's will and not its judgement.
3. A reviewing court is empowered to modify an agency's decision where it is not supported by substantial evidence.

Affirmed. Popovich, C.J.

C1-83-1253 Group Health Plan, Inc., Relator, v. Louise Lopez, Respondent, and Commissioner of Economic Security, Respondent.

An employee is not guilty of misconduct permitting denial of unemployment benefits where the employer hospital has not clearly enunciated its policy of patient confidentiality.

Affirmed. Popovich, C.J.

C4-83-1800 In Re Estate of Kenneth G. Edstrom, Deceased.

Denied. Popovich, C.J.

### Decisions Filed Friday, December 16, 1983

#### Compiled by Wayne O. Tschimperle, Clerk

CX-83-232 State of Minnesota, Respondent, v. Cheryl Ann Westergaard, Appellant.

Defendant's plea to felony offense of distributing marijuana was valid, and trial court was entitled to sentence defendant as a

felon and impose, in lieu of sentence, a probationary term limited only by the statutory maximum for the offense rather than by the presumptive sentence duration.

Affirmed. Amdahl, C.J.

**CX-83-859 In Re Charges of Unprofessional Conduct Against RICHARD W. JOHNSON, Richard W. Johnson, Petitioner, v. Director of Professional Responsibility, Respondent.**

Minnesota DR 2-105(B) prohibiting lawyer advertising of a legitimate specialization certification is unconstitutional.

Todd, J.

**C4-83-923 In the Matter of the Alleged Mental Illness of Manuel Tirso Robledo.**

1. The language of Minn. Stat. § 253B.07, subd. 7(a) (1982), requiring that no proposed patient be held pursuant to subdivision 6 for longer than 72 hours is mandatory and failure of the court to hold a preliminary hearing or extend the time therefor pursuant to the standards set forth in *State ex rel. Doe v. Madonna*, 295 N.W.2d 356 (Minn. 1980) will result in a release of the proposed patient.

2. However, under the particular circumstances presented, the commitment order is affirmed.

Affirmed. Todd, J.

**C4-82-1494 Minnesota Power & Light Company, Respondent, v. Minnesota Public Utilities Commission, et al., Appellants.**

1. Upon remand, the substantial evidence test can be met, without the submission of further evidence, by an agency's expert analysis of the record, setting forth adequate explanations which enable this court to understand the agency's conclusion.

2. The agency's findings are supported by substantial evidence.

Reversed. Scott, J.

**CX-82-186 Albert J. Bilotta, Jr., et al., Respondent, v. Kelley Company, Inc., et al., Appellant.**

1. In design-defect cases, a jury must be instructed on the manufacturer's duty of care to produce a reasonably safe product. We adopt as additional instructions, to be substituted for the consumer-expectation standard, set out in paragraph 2 of JIG II 118, the definition of that duty of care which we approved in *Holm v. Sponco*, 324 N.W. 2d 207 (Minn. 1982).

2. An erroneous instruction requires a new trial where conscious design defect was one of two issues submitted to the jury on a single interrogatory and the evidence on the other issue is not conclusive against appellant as a matter of law.

3. Because a manufacturer may not delegate its duty to produce a reasonably safe product, the offer by a manufacturer of an optional safety device without which the product is unreasonably dangerous does not relieve a manufacturer of liability.

4. An instruction on express warranty should be given only if the trial court finds that the evidence supports the giving of such an instruction and if, on the verdict form, a special interrogatory is submitted to the jury on that issue.

5. Third-party negligence and OSHA violations which were reasonably foreseeable do not entitle a manufacturer to an instruction on superseding cause.

6. The evidence of causation was sufficient to submit the issue to the jury.

7. The negligence of the defendants will be resubmitted to the jury on retrial.

Reversed and remanded for a new trial. Wahl, J.

**C1-82-853 State of Minnesota, Respondent, v. Gordon Melvin Gale Broten, Jr., Appellant.**

Defendant was properly charged and fairly tried and convicted of charges of burglary and theft.

Affirmed. Kelley, J.

STATE OF MINNESOTA

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**ORDER FORM**

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