

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Minn Health Dept
(Agency or Board)

Regulation No. MHO 57

Subject: Schedule of fines

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

DEC 8 1975

BY Eda Staudenmaier R.S. 4:15 PM
AUTH. SIGNATURE

Stamped and filed with the Secretary of State Dec 8, 1975 4:00 pm

Rev. 9-72

ORIGINAL COPY

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
STATE BOARD OF HEALTH

In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

Transcript of public hearing held pursuant to Minnesota Statute §§ 15.0412 Subdivision 4(1974), as amended by Minnesota Laws 1975, Chapter 380 in the above-entitled matter, in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on October 3rd, 1975, commencing at approximately 9:30 o'clock a.m., and taken before Richard K. Huff, a notary public in and for the County of Ramsey, State of Minnesota.

* * *

FILLERS FALLS
PLEASE
SECTION CONTENT

A P P E A R A N C E S

Mr. David J. Giese

Mr. H. Michael Tripple

Mr. Jack Breviu

Ms. Clarice Seufert

* * *

WHEREUPON, the following proceedings were duly had:

* * *

MR. GIESE: The hearing will come to order. There is a registration sheet on the table to the entrance to the hearing room. If you have not signed that sheet, I would like to ask you to pleace do so now. There are also additional copies of the proposed regulations there should you be in need of one.

My name is David Giese, and I am the Hearing Officer this morning. On my right is Mr. Jack Breviu, who is a Special Assistant Attorney General assigned to the Department of Health. On my immediate left is Mr. Michael Tripple, who is a consultant for the Department of Health. And on his left is Mrs. Clarice Seufert, who is the chief of the survey and compliance section here in the Department of Health.

Ladies and gentlemen, the purpose of this

hearing is to provide an opportunity for public comment on the State Board of Health's proposed rule relating to a schedule of fines for non-compliance with correction orders issued to nursing homes and boarding care homes. Let me assure you that the Department will give serious consideration to all observations and comments offered at today's hearing. You will note that procedural rules were included with the Notice of Hearing, and it is our intent to adhere to those rules as follows:

Anyone wishing to be heard should indicate by signing the speaking sheet, listing his name, address and the group which he represents. The speaking sheet will be available at the main entrance to the hearing room. It is requested that each group select one speaker only to present its views.

The first time the witness makes a statement, he should spell his name and identify the group he is representing. Prior to making any subsequent statements, he should state his name and the group which he represents. He may be sworn upon his request, but it is not required. If he elects not to be sworn, that may be considered in determining the weight to be given to his testimony.

By giving testimony, a witness, including one who may also be a member of the panel, subjects himself to questioning by the panel. However, he is subject to cross-examination by non-members of the panel only if he affirmatively consents to being so examined. A refusal to be cross-examined may be considered in determining the weight to be given to his testimony.

All parties interested in introducing any

written matter may do so by having it marked as an exhibit and then introduced for the record. Unsworn written matter may be received, but the fact that it is unsworn may be considered in determining the weight to be given it.

At this time I would like to call upon Mr. Breviu, Special Assistant Attorney General, to introduce the exhibits which evidence the State Board of Health's compliance with the Administrative Procedures Act. Mr. Breviu.

MR. BREVIU: Thank you, Mr. Hearing Officer. The State Administrative Procedures Act, Chapter 15 of Minnesota Statutes, requires that any State agency follow certain steps, certain procedures, in promulgating a regulation. I offer the following documents into evidence to indicate compliance by the Board of Health with certain of those requirements.

A document which has been marked for identification by the court reporter as MHD Exhibit #1 constitutes the proposed regulation under consideration today.

MHD Exhibit 2 is the Order for Hearing, setting the hearing for today, signed by Warren R. Lawson, M.D., Secretary and Executive Officer of the Minnesota State Board of Health.

Board Exhibit #3 is the Notice of Hearing, signed again by Warren R. Lawson, dated August 14th, 1975.

Board Exhibit #4 is an affidavit of mailing. Attached to the affidavit of mailing is a copy of the Notice of Hearing and is also attached as Exhibit A is

a certificate of the Secretary of State. Included with that exhibit are Xeroxed copies of the Secretary of State's list. This affidavit of mailing indicates that copies of the proposed regulations and of the Notice of Hearing were sent to all individuals on the Secretary of State's list as well as all persons and associations listed on the specific Health Department list at the Secretary of State's office.

I should note at this point that Minnesota Law requires any State agency in promulgating rules to send Notice of Hearing to all interested parties. Interested parties are defined as those individuals who have signed up with the Secretary of State's office or had their name placed on the Secretary of State's list. And any individual wishing to receive Notice of Hearings held by State administrative agencies may simply give the Secretary of State's office their name and address and indicate their interest.

MHD Exhibit #5 is some letters. It contains copies of Notices of Hearing that were sent out to individuals on the Secretary of State's list but were returned to the Health Department with the address noted as not being current.

Board Exhibit #6 is the Statement of Need setting forth briefly the Health Department's reasons for having this hearing today, for promulgating these regulations.

Board Exhibit #7 is the appointment of David J. Giese as Hearing Officer, signed by Warren R. Lawson, Secretary and Executive Officer of the Board of Health,

dated October 1st, 1975.

Board Exhibit #8 is a Statement of the Board's reasons for these particular rules. It's entitled "Justification." In this document the Board has set forth the reasoning behind each part of the rule which is being promulgated today. This document, incidentally, as well as all others that are being offered into evidence, are available for anyone in this room to peruse.

Board Exhibit #9 is a letter received by the Health Department, addressed to Warren R. Lawson, Commissioner. It was sent by Vera Likins, and it relates to these rules, the rules which are being proposed today. I will not attempt to summarize this letter. It is a matter of public record at this point.

Mr. Hearing Officer, I would request that all of these documents be accepted into evidence.

MR. GIESE: Thank you, Mr. Breviu. The aforementioned exhibits are hereby entered into the record.

It is our intent this morning to proceed with receiving testimony by taking each section of the regulations and calling for comments on the regulations that are with penalty assessments. We will be proceeding at the 250 level first and then those within that regulation with the penalty assessments are proposed at the $50 level. If there are general comments relating to this kind of system of penalty assessment, I would ask you to please hold those comments until we have completed the testimony, the specific testimony on each

section. And I would also ask that if you would please avoid being redundant. If there are those of you who are in general support of comments that have been made by others, you need only indicate that you are in such support rather than completely repeat the statements that have been previously made.

Prior to getting into the testimony itself this morning, I would like to ask Mr. Tripple, who has developed the justification for these regulations, to make some preliminary comments. Mr. Tripple.

MR. TRIPPLE: Minnesota Statutes 1974, Section 144.653, Subdivision 5, authorize the State Board of Health to issue correction orders whenever it was found that a licensee of a facility was not in compliance with regulations promulgated by the Board. Subdivision 6 of that law allowed the Board to assess fines of up to $250 if upon reinspection it was found that the licensee of the facility had failed to comply with the correction order. That law was amended by Minnesota Laws 1975, Chapter 310, Section 7. That amendment raised the maximum amount of the penalty assessment from $250 to $1,000. The amendment however also requires the fine schedule be promulgated in accordance with the Minnesota Procedures Act. The new amendment which became effective on June 5th of this year had the effect of ending the Board's previous authority to assess fines for failure to comply with correction orders until a fine schedule could be promulgated in accordance with the APA.

The purpose of this hearing is to receive

testimony on the proposed rules, which when they become effective will reestablish the Board's authority to assess fines for non-compliance with correction orders. The proposed rule MHD 57 is based with some changes on previous policy of the State Board of Health which established two levels of assessment; the first at $50, the second at $250.

While the Board now has the authority to establish fines of up to a thousand dollars, it was felt that at this time it would be more appropriate to use existing Board policy as a basis for this new regulation.

There were two reasons for this decision: The first being the time factor involved in developing criteria, justification and a regulation using the $1,000 limit. The Department felt that the importance of reestablishing the correction order tagging law system was a sufficient reason for using this existing Board policy.

The second reason that should be noted now is that a revision of the existing nursing home and boarding home care regulation is now being undertaken, and it was felt that when these regulations were reviewed and revised, it would be more appropriate to establish a new fine schedule based on the new regulation.

The new fine schedule will be based on the Board's authority to assess fines up to a thousand dollars.

At this time the work on the revision is still in a very preliminary stage. However, at the close of the hearing, I will be willing to listen to or answer

anyone's questions on new regulations including the new development of the fining system.

I will also accept any written comments or suggestions that you might have concerning changes in the regulation. However, I am asking that you save any comments or questions until the end of this hearing, since this hearing concerns only the promulgation of MHD 57. That's all I have, Mr. Hearing Officer.

MR. GIESE: Thank you, Mr. Tripple. Some persons have entered the hearing room since we commenced. For those of you that have, I would like to remind you again that if you have not signed the registration sheet that is available at the entrance to the hearing room, I would like you to do so now. I would also like to remind you as we now begin taking public testimony that the first time you make an appearance, please state your name, spell your last name and indicate the group whom you are representing. For each subsequent appearance, simply state your name and indicate whom you are representing.

We will now begin with MHD 44, and I would like to call for comments on the regulation within MHD 44, at which the penalty assessments which will be issued are proposed at the $250 level for non-compliance with correction orders. Are there any comments on this section of the regulations? If so, please indicate by raising your hand and I will call upon you. Mr. Lemieux.

MR. HARRY J. LEMIEUX: Good morning. I am Harry Lemieux, L-e-m-i-e-u-x, president of the Minnesota Association of Health Care Facilities. I would like to

be sworn.

HARRY J. LEMIEUX,

after having been first duly sworn, testified under oath as follows:

MR. LEMIEUX: In addition to the statements that we will be making today, our association will have written input of the regulations in accordance with Procedural Rule 4. These will be on other items that we feel should be included in the lower assessment of the fine. First of all, I want you to realize that our association in no way condones having facilities having deficiencies and not making corrections, but also feels that the Board should graduate fines as to the statutory language which states up to $250. As it stands, we end up with only two categories of fines. And using the criteria set forth by the Board to determine which section of nursing home and board care regulations will be subject to $50 penalty assessments, I believe the following section, MHD 44, "Definitions, General Provisions, Issuance of Licenses" falls under the criteria established by the Board, mandating $250 fine should be a $50 fine.

I don't feel that there is any place in there that goes beyond what the criteria is has a definite effect with quality of care.

MR. GIESE: Thank you, Mr. Lemieux. Are there further comments on MHD 44, for those sections of it in which the proposed rule provides for assessments at

the $250 level? The record will reflect that there are none.

Are there any comments on the sections within MHD 44, at which the proposed penalty assessment level for non-compliance with correction orders is established at $50? The record will reflect that there are none.

We will now move on to MHD 45. Are there any comments relating to the sections of MHD 45, in which penalty assessment is proposed to be issued at the $250 level for non-compliance with correction orders. Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, Minnesota Association of Health Care Facilities. MHD 45h2(bb), requiring a written job description for all positions which define responsibilities, duties and qualifications. There are many other regulations which relate to the quality and capabilities of the nursing home staff as well as a means for measuring the adequacy of patient care rendered by such staff. Since the presence of a written job description does not determine either the quality of the staff or the quality of patient care rendered by the staff and since there are regulations which more adequately and thoroughly cover these areas, this should be a $50 fine since it does not fall into any of the five criteria formulated by the Board.

MR. GIESE: Thank you, Mr. Lemieux. Are there any additional comments relating to MHD 45 and the sections therein which are proposed at the $250 assessment level?

MR. LEMIEUX: Again -- or can I continue?

Harry Lemieux --

MR. GIESE: No, I am still at the $250 level at MHD 45. Do you have other comments?

MR. LEMIEUX: Right.

MR. GIESE: Okay.

MR. LEMIEUX: MHD 45h2(cc), requiring work assignments. The quality of care provided by the staff and the manner in which such care is provided does not relate to the fact that the work assignments exist. Again, the quality of the actual patient care rendered rather than the facility's written schedule for performing such care should be a criteria reviewed in determining if such adequate patient care is being provided. Do you want me to continue on 45?

MR. GIESE: Yes, if you have others.

MR. LEMIEUX: MHD 45h2(dd), maintenance of weekly time schedule. A weekly time schedule is for the employee's use and convenience and it does not relate to the patient care. And carrying that just a little bit further: In an inspection of the weekly time schedule is checked, it is also related to the time cards. And the time cards, I feel, are the ones that would justifiably show that the schedules are being followed and that you do have the sufficient number of hours.

MHD 45h5(bb), (bb), (cc), and (dd), relating to promoting the sharing of services and facilities, cooperative educational programs, area-wide planning activities. None of these activities directly relate to the provisions of patient care or in any other criteria developed in the Board policy which would

mandate a $250 fine. That's all I have on 45.

MR. GIESE: Thank you, Mr. Lemieux. Are there other comments on MHD 45 relating to those sections of MHD 45 that are proposed at the $250 assessment level? The record will reflect that there are none.

Are there any comments on MHD 45 in relationship to those sections that are proposed at the $50 level? The record will reflect that there are none.

Are there any comments on MHD 46 and the sections thereof that are proposed to be established at the $250 level for penalty assessments? Mr. Lemieux.

MR. LEMIEUX: All right. Now, it looks like we should have sat down right across the table from each other.

Harry Lemieux, Minnesota Association of Health Care Facilities. MHD 461, relating to the availability of records to the Health Department. This regulation relates to matters of convenience for MHD rather than patient care, health or safety. That's all on 46.

MR. GIESE: Thank you, Mr. Lemieux. Are there any further comments on MHD 46, the sections thereof in which the penalty assessments are proposed at $250? The record will reflect that there are none.

Are there any comments on the sections of MHD 46 at which the proposed assessments are to be established at $50? The record will reflect that there are none.

Are there any comments on MHD 47 and the sections thereof which are proposed to be established at the $250 assessment level? The record will reflect that there are none.

Are there any comments on MHD 47, the sections thereof that are proposed to be established at the $50 penalty assessment level? The record will reflect that there are none.

Are there any comments on MHD 48 and the sections thereof that are proposed to be established at the $250 assessment level? Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, Minnesota Association of Health Care Facilities. MHD 48a(1), I believe it is, or (1), relating to admission records for each person. If this regulation was not fully complied with, it would not substantially affect the capacity of the facility to provide an overall high quality of care to the patient, nor would it directly relate to the provisions of patient care. Any information contained in the record which is pertinent to patient care, the name of the attending physician for example, would be found elsewhere in the patient medical record. That's all on 48.

MR. GIESE: Thank you, Mr. Lemieux. Are there additional comments on MHD 48 with regard to the sections thereof that are proposed to be assessed at the $250 level? The record will reflect that there are none.

Are there any comments on MHD 48 with regard to the sections that are proposed to be assessed at the $50 level? The record will reflect that there are none.

All sections of MHD 49 are proposed to be assessed at the $250 level. Are there any comments on MHD 49? Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, Minnesota Association of Health Care Facilities. MHD 49h, relating to the identification of dentures. The identification of dentures per se does not relate to patient care, and a $50 fine should apply for non-compliance with this regulation. However, if the patient is using wrong dentures, this would relate to patient care and perhaps a higher fine would be more appropriate.

MHD 49j, relating to telephone orders. That portion of the regulation which relates to counter-signature of a physician within seven days does not relate to patient care and should only be subject to a $50 fine. Normally when you send in for the patient's signature, you keep a copy of it in your file - of the phone order. And at times not the facility, but the physician is at fault for not requiring it within the seven-day period. Thank you.

MR. GIESE: Thank you, Mr. Lemieux. Are there additional comments on MHD 49? The record will reflect that there are none.

Are there comments on MHD 50 and the sections thereof which are proposed to be assessed at the $250 level? The record will reflect that there are none.

MR. LEMIEUX: Would you repeat which one you are on?

MR. GIESE: MHD 50 at the $250 level. Mr. Lemieux.

MR. LEMIEUX: MHD 50c, spiritual needs. The home should provide adequate facilities and arrange for personnel to meet the spiritual needs of the patients or

the residents. I think most of our homes do take care of this, but we have the problem that at times we cannot find the minister, the priest, the rabbi or whatever it may be to carry on this need. And I do feel that this should not hold for a $250 fine.

MR. GIESE: Thank you, Mr. Lemieux. Are there additional comments on MHD 50, the sections thereof which are proposed to be assessed at the $250 level? The record will reflect that there are none.

Are there any comments on MHD 50 for those sections thereof which are proposed to be assessed at the $50 level? The record will reflect that there are none.

MHD 51 in its entirety is proposed to be assessed at the $250 level. Are there any comments on MHD 51? The record will reflect that there are none.

Are there any comments on MHD 52 or the sections thereof that are proposed to be assessed at the $250 level? Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, president of the Minnesota Association of Health Care Facilities. MHD 52f relating to other areas. The appropriateness of furnishing and equipment of other areas, office space, utility rooms does not relate to patient care and should not be subject to the $250 fine.

MR. GIESE: Thank you, Mr. Lemieux. Are there additional comments on MHD 52 and the sections thereof which are proposed to be established at the $250 level? The record will reflect that there are none.

Are there any comments on MHD 52 in regard to

those sections which are proposed to be assessed at the $50 level? The record will reflect that there are none.

MHD 53 is proposed to be assessed in its entirety, the sections of it, at the $250 level. Are there any comments on MHD 53? The record will reflect -- Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, president of the Minnesota Association of Health Care Facilities. On the $250 fine, the objection on MHD 53a(3) relating to the dating of stock supplies, since most stock supply medications are not subject to deterioration. Since those that are would be dated by the pharmacy with the in-use date, this should be subject to a $50 fine for non-compliance.

Violation of MHD 53c(3) requiring medications having specific expiration dates should not be used after such expiration date properly protects the use of any outdated or deteriorated drugs.

MHD 53a(4) relating to the emergency medication kit. The maintenance of the emergency medication kit itself does not relate to patient care. The only relationship that emerges through medication kit could possibly have to the patient care would be if the medication was misadministered or were administered without the doctor's orders, in which case other regulations would be violated; hence the maintenance of the emergency kit itself should not be subject to a $250 fine.

MHD 53a(5) relating to the use of prescription drugs for one patient for another patient. So long as the

prescriptions are identical, the violation of this would not relate to the quality of care to the patient or to the residents or to their health and safety.

MR. GIESE: Thank you, Mr. Lemieux. Are there additional comments on the sections of MHD 53, or on MHD 53, the entire regulation which is proposed to be assessed at $250? The record will reflect that there are none.

Are there any comments on MHD 54 or the sections thereof which are proposed to be assessed at the $250 level? Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, Minnesota Association of Health Care Facilities. MHD 54a(1), (2) and (3) relating to linen service. Non-compliance of these regulations is not directly related to patient care and non-compliance would not present a hazard to the patient's health or safety. The regulations relating to contaminated linen and actual laundering of linen, MHD 54a(4) and (5) sufficiently protect the patient's health and safety.

MHD 54a(6) relating to outside linen services. Since MHD 46j relating to outside services is subject to a $50 fine, MHD 54a(6) should also be subject to a $50 fine since it's the same regulation.

MHD 54d(1), (2), (4), relating to laundry in boarding and care homes should be subject to a $50 fine for the same reason as discussed above. Thank you.

MR. GIESE: Thank you, Mr. Lemieux. Are there additional comments on the sections of MHD 54 which are proposed to be assessed at the $250 level? The record

will reflect that there are none.

Are there any comments on the sections of MHD 54 which are proposed to be assessed at the $50 level? The record will reflect that there are none.

Are there any comments on MHD 55 and the sections thereof which are proposed to be assessed at the $250 level? Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, Minnesota Association of Health Care Facilities. MHD 55b relating to the dietary supervisor. Compliance with this regulation does not correctly relate to the provisions of patient care or patient health and safety. If various aspects of the dietary service are inadequate, the higher assessment would be more proper in other areas.

MHD 55c relating to the dietary staff. Some of the requirements of this regulation do not relate to the patient care. Such areas should be separately identified and subject to a $50 fine.

MHD 55m relating to food containers. Non-compliance with this regulation would not present a hazard to patient health or safety. If the manner of storing food has in any way rendered food products unsafe for human consumption, the facility would be assessed under MHD 55k.

MHD 55(o) relating to the storage of non-perishable foods. It would be the same as MHD 55, and that we have just covered.

MHD 55q would also fall into the same category as 55n. Thank you.

MR. GIESE: Thank you, Mr. Lemieux. Are there

additional comments on the sections of MHD 55 which are proposed to be assessed at the $250 level? The record will reflect that there are none.

Are there any comments on those sections of MHD 55 which are proposed to be assessed at the $50 level? The record will reflect that there are none.

Are there any comments on MHD 56 and the sections thereof which are proposed to be assessed at the $250 level? Mr. Lemieux.

MR. LEMIEUX: Harry Lemieux, Minnesota Association of Health Care Facilities. MHD 56b relating to the establishment of a housekeeping program. Non-compliance of this regulation per se would not present a hazard to patient health and safety or relate to patient care. If a facility did not have an adequate housekeeping program, an assessment would be more appropriate under MHD 56a.

MHD 56d relating to garbage containers. This regulation does not relate to patient care or present a hazard to patient health and safety. If the garbage was being stored and disposed of in a hazardous manner, an assessment would be appropriate under MHD 56c.

This concludes any of the comments we have. We will be making further comments in writing under your proposed rule for the hearing, item #4. Thank you.

MR. GIESE: Thank you, Mr. Lemieux. Are there any additional comments on the sections of MHD 56 which are proposed to be assessed at the $250 level? The record will reflect that there are none.

Are there any comments on those sections of

MHD 56 which are proposed to be assessed at the $50 level? The record will reflect that there are none.

MHD 62 in its entirety is proposed to be assessed at the $250 level. Are there any comments on MHD 62? The record will reflect that there are none.

MHD 63 is proposed to be assessed in its entirety at the $250 level. Are there any comments on MHD 63? The record will reflect that there are none.

Are there any comments on MHD 64 and the sections thereof which are proposed to be assessed at the $250 level? The record will reflect that there are none.

Are there any comments on MHD 64, on sections thereof which are proposed to be assessed at the $50 level? The record will reflect that there are none.

MHD 65 in its entirety is proposed to be assessed at the $250 level. Are there any comments on MHD 65? The record will reflect that there are none.

MHD 66 is proposed to be assessed in its entirety at the $250 level. Are there any comments on MHD 66? The record will reflect that there are none.

MHD 67 is proposed to be assessed in its entirety at the $250 level. Are there any comments on MHD 67? The record will reflect that there are none.

This concludes the portion of the testimony relating to comments on the specific sections of the regulation. At this time I would like to call for any general comments that any of you may have that you wish to express relating to the entire concept embodied within the proposed MHD 57. If you wish to make any general comments, please raise your hand. Mr. Lemieux.

MR. LEMIEUX: I believe we are still a little bit puzzled. Harry Lemieux, Minnesota Association of Health Care Facilities. I believe we are still a little bit puzzled why the Board has taken the actions of setting only two grades of fine in this particular time. We feel that there is many of the rules and regulations, even some of those that I have mentioned today, that could fall into a higher category of 50. There is also rules and regulations that we feel that should go under 50 in some of these cases. And if I understood the statute correctly, it said up to $250 fine. I don't believe that we have heard in our profession the reason why it was adopted of not following that statute.

MR. TRIPPLE: I guess I really can't answer your question why the original Board policy was developed along those lines. I can kind of comment on the reason why it was not done at this time. I guess I mentioned before in my introductory comments that the Department felt that the reestablishment of the penalty assessment system was very important and that was the reason for using the Board policy. The existing Board policy, the development of new categories, different levels, would take a considerable amount of work because you would have to develop the criteria, develop the justifications, set some standards why something would be, say, a hundred dollars or why something would be $200. And it was always felt that since we are revising the regulations, that at that time that would be the best time to do something like that; is when the regs are revised, one of the things that will be done, they will be broken down

into smaller sections. You will also not have the paragraphs with many types of items that have to be required. This would make the development of the fining system much easier, much easier to understand. And it was felt that when we get the regs done, we will, you know, think and seriously consider how we want to develop a fine schedule. No decision has really been reached on this. It's still pretty much up in the air. We really want to get some sort of a rough draft of the new regs developed before we actually sit down and say, you know, do we want seven levels, do we want eight levels or do we want ten levels. We would be more than willing to take input on that. That is as much as I can respond to it since I was not around -- well, I was not responsible for as much at the time the Board policy was developed.

MR. LEMIEUX: Realizing that this is a hearing, I thank you for the explanation. I thank you for having an opportunity to appear at the hearing and giving our input. And I feel that this is the way it should be done. We can make it happen. Thank you.

MR. GIESE: Thank you, Mr. Lemieux. Are there any additional general comments that anybody would like to make? The record will reflect that there are none.

For the purpose of receiving oral testimony, the hearing is concluded. However, the record will remain open for twenty days for the purpose of receiving written statements, which may be submitted either to Mr. Tripple or to Mr. Breviu.

At this time I would like to ask Mr. Breviu to provide a brief explanation of the procedure to be followed in order to complete the formal promulgation process of this rule. Mr. Breviu.

MR. BREVIU: Thank you, Mr. Hearing Officer. As the Hearing Officer noted, the record will remain open for twenty days for the submission of written testimony. At that time the Health Department will review the record and make whatever changes are deemed necessary and appropriate and in accordance with the testimony submitted here today and in the next twenty days and revise the rule as is appropriate. The rule will then go up to the Board of Health for approval. If the Board approves the rule, it should go to the Attorney General's office. Our office then has twenty days in which to review the rule as to legality and compliance with the rule making procedures. If at the end of the twenty days the rule is approved, it will be filed with the Secretary of State and the Department of Administration. At that point it becomes law. Mr. Hearing Officer.

MR. GIESE: Thank you, Mr. Breviu. I would like to point out that copies of the transcript of this hearing may be ordered from the court reporter at, of course, your own expense. Are there any questions? Hearing none, we stand adjourned. Thank you very much.

* * *

REPORTER'S CERTIFICATE

I, Richard K. Huff, do hereby certify that I recorded in Stenotypy the hearing before the Minnesota Board of Health on the 3rd day of October, 1975, at Minneapolis, Minnesota;

That I was then and there a Notary Public in and for the County of Ramsey, State of Minnesota, and that by virtue thereof I was duly authorized to administer an oath;

I further certify that thereafter and on that same date I transcribed into typewriting under my direction the foregoing transcript of said recorded hearing, which transcript consists of the preceding 24 typewritten pages;

I further certify that the transcript of said hearing is true and correct to the best of my ability.

Richard K. Huff,
Court Reporter

Dated this 7th day of
October, 1975.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of the Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Minnesota State Board of Health on the 3rd day of October, 1975, at 9:30 A.M. in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. Section 15.0412 (1974), as amended by Minn. Laws 1975, Chapter 380, was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, the Board makes and enters the following findings:

1. Authority to adopt the regulation establishing a Schedule of Fines for Non-compliance with Correction Orders is contained in Minnesota Laws 1975, Chapter 310, Section 7. This law amended Minn. Stat., Section 144.653 subd. 6, which authorized the Board to impose fines of up to $250 for the failure to comply with a correction order. The new amendment increased the amount of the fine from $250 to $1000, but at the same time required that "the Board of Health shall promulgate by rule and regulation a Schedule of Fines applicable for each type of uncorrected deficiency." The Board finds that this rule conforms to that legislative mandate.

2. Testimony was received concerning the propriety of establish-

ing a dual-level Schedule of Fines as opposed to a multi-level Schedule of Fines. The statute, while giving the Board the authority to impose fines of up to $1000, establishes no procedural or structural system for the Board to follow. The Board finds that the development of the dual-level Schedule of Fines is reasonable and within the Board's authority and discretion.

3. Existing statutory authority allows the Board to impose fines of up to $1000 for the failure to comply with correction order. In order to reimplement the provisions of Minnesota Statutes, Section 144.653 (1974) as soon as possible, the decision was made to adopt existing Board policy which established the levels of fines at $50 and $250. The Board finds that the establishment of this Schedule of Fines using the maximum of only $250 is extremely fair and reasonable.

4. Testimony was received alleging that the criteria developed by the Board should have been promulgated as rules as a part of the hearing process and that the criteria are clearly rules within the meaning of the Administrative Procedures Act, Minn. Stat., Section 15.0411. The Board finds that the criteria developed and approved by the Board were used solely as guidelines in order to develop, in a reasonable and consistent manner, a method to determine which sections of the regulations governing nursing homes and boarding care homes would be assessed at the $50 level. These guidelines do not constitute an agency statement of general applicability or future effect made to implement or make specific the law administered or enforced by it. For this reason and for the reasons stated in the attached memorandum, the Board finds that the criteria need not be promulgated in accordance with the Administrative Procedures Act.

5. There is a need for this regulation: Minn. Stat., Section 144.653 subd. 5 (1974) authorizes the Board to issue correction orders to the licensee of a nursing home or boarding care home if it is found, upon inspection, that the licensee has not complied with the regulations promulgated by the Board.

Subdivision 6 of that law allowed the Board to assess a penalty of up to $250 if, upon reinspection, it was found that the licensee had not yet complied with the correction order. The enactment of this law gave the Board an effective enforcement mechanism to assure compliance with the regulations governing nursing homes and boarding care homes. Prior to the enactment of this law, the only mechanism available to assure full compliance was through the licensure revocation proceeding, often a cumbersome and time-comsuming procedure.

Section 144.653 was amended by Minnesota Laws 1975, Chapter 310 Section 7. That section increased the amounts of the allowable fines from $250 to $1000. However, this law required that the fine schedule be adopted in accordance with the provisions of the APA. This rule is therefore necessary in order to implement that Schedule of Fines.

The legislature has therefore indicated that this rule is needed. The Board finds this regulation, as adopted, is reasonable and necessary and that its implementation will once again provide the Board with an effective mechanism to assure that nursing homes and boarding care homes are operated in full compliance with the Board's regulations.

6. MHD 44 contains definitions, general provisions and the procedures to be followed to obtain a license. Testimony was received stating that all of the sections in MHD 44 fell within the criteria used to determine which sections in the regulations would be assessed at the $50 level. Thus, according to the testimony received, the imposition of a $250 fine for the failure to comply with any section found in MHD 44 would not be justified.

It should be noted that a number of the sections contained in MHD 44 cannot be fined since they are definitional in nature or relate to procedures to be followed in order to obtain a license. However, the Board finds that there still remains at least four items in MHD 44 which justify the imposition of the $250 fine. Those sections are MHD 44 (l), (m), (n) and (r).

7. MHD 44 (l) and (m) (Justification p. 45-46) list certain categories of individuals who are not to be admitted to a boarding care home or to a nursing

home. Examples are maternity patients, disturbed mental patients, children, or patients having or suspected of having communicable diseases. The Board finds that the reasons stated in the justification; that this regulation is necessary in order to protect the patients and residents in the facility from harm, to limit the spread of communicable disease, and to assure that a facility does not admit individuals who cannot receive proper and adequate care, justify the imposition of the $250 fine.

8. MHD 44 (n) requires that each licensee specify the maximum allowable number of patients or residents to be cared for and prohibits a facility from admitting a greater number of patients or residents than specified on the license. (J. p. 46). The Board finds that this rule is important to prevent overcrowding and also assures that a facility will only admit the number of patients that can be properly and adequately care for. For this reason, the Board finds that the $250 fine is reasonable.

9. MHD 44 (r) requires that facilities be subject to evaluation and approval prior to a change in ownership, classification, capacity or service. (J. p. 46). The Board finds that the $250 fine is reasonable and justified since any change in classification, capacity or service must be based on a consideration of whether the facility is capable of handling such a change. The evaluation supplies this information.

10. MHD 45 (h)(2)(bb) requires the preparation of written job descriptions for all positions in the facility. Testimony was received that this section should fall within the criteria established by the Board for the selection of $50 fines and thus, the $250 fine is not appropriate. The Board finds that the development of written job descriptions are important and failure to do so could affect the quality of care. Failure to clearly describe the duties of the employees in a facility could result in the overlooking of types of care and services that should normally be provided to the patients and residents in a facility. (J. p. 49-50). For this reason the Board finds that the imposition of the $250 fine for this section is valid.

11. MHD 45 (h)(2)(cc) requires the establishment of work assign-

ments consistent with the qualifications and work load of the employees. Testimony was received that the imposition of the $250 fine for a violation of this section would not be justified. The Board finds that the establishment of work assignments will greatly aid in the quality of care rendered by the staff of the facility. (J. p. 50). Specific work assignments are a means to help assure that the care and services required in a facility are provided on a regular basis. For this reason the Board finds that the imposition of the $250 fine is justified.

12. MHD 45 (h)(2)(dd) requires the maintenance of weekly time schedules. The imposition of a $250 fine for a violation of this section was contested on the grounds that this section did not relate to the quality of patient care but was required for the convenience of the facility and the Department in determining the number of hours of patient care provided. The Board finds that this requirement is important in order to assess the quality of care provided in a facility. (J. p. 50). Under the requirements of MHD 50 (e)(1), nursing homes are required to render two hours of nursing care per patient per day. The weekly time schedules are used in calculating whether this level of nursing care is provided. For this reason, the Board finds that the imposition of the $250 fine is justified.

13. MHD 45 (h)(5) requires the establishment and maintenance of effective working relationships with hospitals and other health care facilities. Included under this section is the development of specific transfer procedures, promoting the sharing of services, conducting cooperative educational programs and participating in areawide planning activities. Testimony was received stating that some of these activities did not directly relate to the provision of patient care and thus should not be assessed at the $250 level. The Board finds that the development of proper working relationships with hospitals and other health care facilities in the area is important to the health and safety of patients and residents in order to assure that steps are taken to provide for any necessary consultation and/or sharing of services. (J. p. 1-2). For the reasons stated in the justification the

Board finds that the imposition of the $250 fine for this section is reasonable.

14. MHD 46 (g) states that no animals, birds, turtles or reptiles shall be housed in a nursing home or in a boarding care home. Testimony was received that non-compliance with this section would not present a hazard to patient health and safety. The Board finds that this section is necessary in order to prevent any possible transmission of disease and to protect patients or residents from any possible allergy reaction. (J. p. 1-2). For these reasons, the Board finds that the $250 is justified.

15. MHD 46 (i) requires that all areas of a facility and all records relating to the care and protection of patients be opened for inspection by the Department at all times. Testimony was received that this section of the regulations relates to matters of convenience for the Department rather than to patient care, health or safety. Thus, the $250 fine would not be justified. The Board finds that without this broad access to a facility, it would be impossible for the Department to determine the level and type of care that is provided. (J. p. 52). For that reason the Board finds that the $250 fine is justified.

16. MHD 48 (a)(1) requires that an admission record shall be initiated for each patient and resident within 72 hours after admission. Testimony was received that this section does not substantially affect the capacity of the facility to provide an overall high quality of care to the patient, nor would it directly relate to the provisions of patient care. The Board finds, however, that this section requires information which is important in order to provide the staff of a facility with the proper information as to the patient's identity and also to provide information relating to the person or persons to contact in the case of an emergency. (J. p. 4). For these reasons, the Board finds that the $250 fine for this section is justified.

17. MHD 49 (h) requires that a procedure shall be established for the accurate identification of dentures. Testimony was received stating that the $250 fine for a violation of this section is not justified. The Board finds that the proper identification of dentures is important to the provision of patient care, and for the reasons stated in the justification (J. p. 31) finds

that the $250 fine is justified.

18. MHD 49 (j) requires that telephone orders received from a physician shall be immediately recorded in the patient's record and countersigned by the physician within seven days. Testimony was received that this requirement does not relate to patient care and should only be subject to a $50 fine. The Board finds that this section is important in order to assure that all changes in the treatment of a patient shall be properly and correctly recorded and verified within a reasonable period of time. (J. p. 6). Thus, the regulation does directly relate to patient care. For this reason, the Board finds that the $250 fine for this section is justified.

19. MHD 50 (c) requires that a facility shall provide adequate facilities and arrangements to meet the spiritual needs of patients and residents. Testimony was received stating that this section did not justify the imposition of a $250 fine. The Board finds that the requirements of this section help to assure that the personal religious perferences of patients and residents are guaranteed, and that the personal rights and dignity of the patients and residents is maintained. (J. p. 35). For this reason, the Board finds that the imposition of the $250 fine is justified.

20. MHD 52 (f) requires that various areas in a facility be maintained in a proper manner and appropriately furnished and equipped. Testimony was received stating that this section does not relate to patient care and that this section should not be subject to the $250 fine. While the areas specified under this section do include administrative sections in the facility, this section also requires that areas such as treatment rooms and nurses' and attendants' stations, areas which do relate to patient and resident care, be properly maintained and furnished. The Board finds that the purpose of this section is to assure that these areas, and the other areas listed in this section, are maintained in a sanitary manner and have the necessary equipment for the furnishing of treatment and care to patients. (J. p. 54). For this reason, the Board finds that the $250 fine is justified.

31. MHD 53 (a)(3) requires that any medications that can be purchased

without a prescription be dated upon receipt in the facility. Testimony was received that this section of the regulation should not be assessed at the $250 level. The Board finds that this section is necessary to assure that drugs, kept in stock supply, shall be used within their effective time period in order to prevent the use of outdated or deteriorated items. (J. p. 10). For this reason, the Board finds that the $250 fine is justified.

22. MHD 53 (a)(4) provides that a licensed physician may maintain a minimum supply of medications in a nursing home to be used for emergency situations only, and also requires that the physician shall accept the responsibility for those drugs. Testimony was received that the maintenance of this emergency medication kit does not relate to patient care and thus, this section should not be subject to a $250 fine. The Board finds that this regulation is necessary in order to prevent the misuse of the medications contained in the emergency medication kit. (J. p. 10). For that reason, the Board finds that the $250 fine is justified.

23. MHD 53 (a)(5) states that a prescription drug, supplied for one patient, shall not be used or saved for the use of other patients in a nursing home. Testimony was received stating that the imposition of the $250 fine is not justified. The Board finds that this section is important in order to prevent the indiscriminate use of prescription drugs by individuals other than the person for whom the drug was specifically prescribed. (J. p. 11). For this reason, the Board finds that the $250 fine is justified.

24. MHD 54 (a)(1), (a)(2) and (a)(3) relate to linen service provided by a facility; (a)(1) requires that there shall be a complete separation of soiled and clean linen; (a)(2) requires the proper cleaning and handling of linen; and (a)(3) requires that soiled linen shall be removed from a patient's bed without undue agitation and placed directly into a hamper or similar container. Testimony was received that non-compliance with these regulations did not directly relate to patient care and that non-compliance would not present the hazard to patients' health or safety. The Board finds that these sections are important in order to prevent any possible cross-contamination of

soiled and clean linen, to prevent odors and to assure that linen used in a facility is cleaned and handled in a sanitary and safe manner. (J. p. 14 and 55). For these reasons, the Board finds that the $250 fine is justified.

25. MHD 54 (a)(6) relates to facilities using outside linen services and requires that those services be subject to the laundering standards of the regulations. Testimony was received stating that since MHD 46 (j), which also relates to outside services is proposed for a $50 fine, MHD 54 (a)(6) should also be subject to the same level of fine. The Board finds that there is a substantial difference between these two sections and that this difference justifies the higher assessment for MHD 54 (a)(6).

MHD 46 (j) requires that when an outside agency or establishment provides laundry or food services, such service shall be provided pursuant to a written agreement stating that the service will comply with standards established in the regulations. This section requires the existence of the written agreement and the failure to obtain a written agreement is the offense which subjects a facility to a penalty. Failure to obtain the written agreement falls within the criteria established by the Board, thus only the $50 fine is appropriate. (J. p. 41).

MHD 54 (a)(6) requires that outside linen services comply with the regulations. The offense would be the failure to comply with the requirements of MHD 54, regardless of whether there was a written agreement in existence. (J. p. 56). For this reason, the $250 fine is justified.

26. MHD 54 (b)(1), (b)(2) and (b)(4) relates to laundry services provided in boarding care homes. These sections are very similar to those contained in MHD 54 (a)(1), (a)(2) and (a)(3) and for the reasons stated in Paragraph 24 above, the Board finds that the imposition of the $250 fine is justified.

27. MHD 55 (b) relates to the designation of an individual as the dietary supervisor. Testimony was received that compliance with this regulation does not directly relate to the provisions of patient care or patient health and safety. The Board finds that in order to assure the quality of foods served

in a facility a trained and experienced dietary supervisor is necessary. (J. p. 56). For this reason the Board finds that the imposition of the $250 penalty assessment is justified.

28. MHD 55 (c) outlines the requirements that must be met by the dietary staff in a boarding care or nursing home. Testimony was received that some sections in this regulation do not relate to patient care, and thus should be assessed at the $50 level. The Board finds that this section is necessary in order to protect the patient and resident from any possible contamination of their food sources. (J. p. 15). For this reason the Board finds that the $250 fine is justified.

29. MHD 55 (n) requires that all food or food products shall be stored in approved covered containers after the opening of the original container. Testimony was received that the non-compliance with this section would not present a hazard to patient health or safety and thus, the maximum fine of $250 is not appropriate. It was stated that if, for any reason, food products are not safe for consumption, the facility would be subject to assessment under the provisions of MHD 55 (k). The Board finds that MHD 55 (n) is necessary in order to assure that food items are stored in a proper manner which would prevent any possible contamination or infestation by vermin. (J. p. 17). The Board also finds that MHD 55 (k) does not apply to the proper storage of food supplies and that it would not be appropriate to issue a correction under MHD 55 (k) when food is improperly stored. MHD 55 (k) requires that food supplies be obtained from approved sources and prohibits the use of certain food items if they are not processed in a commercial establishment. (J. p. 16). The Board finds that this section does not relate in any way to the handling or storage of food once these items are received by the facility. For these reasons, the Board finds that the $250 fine for a violation of MHD 55 (n) is justified.

30. MHD 55 (o) relates to the storage of non-perishable food items. Testimony was received that this section should be assessed at the $50 level, and that if food sources were unsafe for consumption due to improper storage,

it would be appropriate to assess under the provisions of MHD 55 (k). The Board finds that MHD 55 (o) is necessary in order to assure that items are stored in a manner which would protect these products from dust, flies, rodents and other sources of contamination. (J. p. 17). The Board also finds, for the reasons stated in Paragraph 29, that MHD 55 (k) is not an alternative to this section. For these reasons, the Board finds that the $250 fine is justified.

31. MHD 55 (q) prohibits the storage of detergents, cleaners and other non-food items in the food storage area. Testimony was received that this section should only be assessed at the $50 level, and that if food sources were unsafe for consumption it would only be appropriate to issue a $250 fine under MHD 55 (k). The Board finds that this section is necessary in order to prevent any possible contamination of food items (J. p. 17-18) and that for the reasons stated in Paragraph 29 that it would be inappropriate to assess a fine under MHD 55 (k) for a violation of this item. For these reasons, the Board finds that the $250 fine for this section is justified.

32. MHD 56 (b) relates to the establishment of a housekeeping program. Testimony was received that the non-compliance with this section would not, per se, present a hazard to patient health and safety or relate to patient care. The Board finds that the establishment of a housekeeping program is necessary in order to assure that the facility is properly maintained and kept in a sanitary condition. (J. p. 56). For this reason, the Board finds that the $250 fine is justified.

33. MHD 56 (d) requires that all containers used for the collection and storage of garbage shall be of water-tight construction and kept in a sanitary condition. Testimony was received that this regulation does not relate to patient care nor does it present a hazard to patient health or safety, and if for any reason garbage was being stored or disposed of in a hazardous manner, the $250 assessment would be more appropriate under MHD 56 (c). The Board finds that this MHD 56 (d) is necessary in order to assure

that sanitary conditions are maintained in a facility and that the requirements of this section would reduce the possible spread of disease and odors and eliminate any possible breeding places for roaches and vermin. (J. p. 19). The Board also finds that 56 (c) is not an alternative to MHD 56 (d). Section (c) relates to the collection, storage and disposal of garbage (J. p. 19), while section (d) requires that the containers themselves be maintained in a sanitary condition. For these reasons, the Board finds that the $250 fine for section (d) is justified.

34. MHD 67 (a)(1)(nn) requires that the surrounding grounds within the lot lines of the facility be maintained in an acceptable manner and free from accumulations of refuse and debris, which would serve as a harborage for rodents. Testimony was received that this item should not be assessed at the $250 level. The Board finds that the requirements of this section are necessary to assure that the physical plant aspects of the facility, including the maintenance of the surrounding grounds, are operated and maintained in an appropriate manner. (J. p. 22). For these reasons, the Board finds that the $250 fine is justified.

35. Testimony was received alleging that a number of the sections of the regulations found in Part II of the nursing home and boarding care home regulations (MHD 62-67) fall within the criteria used to select the sections requiring a $50 fine. No evidence, besides this general statement, was submitted into the record to support this contention. Thus, the Board finds the statements in the Justification relative to Part II to be uncontroverted. The Board, therefore, finds that all sections found in Part II, with the exception of MHD 64 (a)(22) and MHD 64 (b)(15) which relate to room numbering justify the imposition of the maximum fine. (J. p. 57, and p. 21-22).

36. Other provisions of the regulations not specifically referred to herein are found to be reasonable, necessary and supported by the record.

37. The attached memorandum is made a part of and incorporated into these Findings of Fact.

STATE OF MINNESOTA

BOARD OF HEALTH

Dated: November 13, 1975.

Robert Willmarth

ROBERT WILLMARTH
President

MEMORANDUM

During the 1973 session, the Minnesota Legislature enacted Minnesota Stat. Section 144.653, subdivision 6 (1974), which gave the State Board of Health the authority to issue fines to health care facilities which failed to comply with correction orders issued for violations of applicable regulations promulgated by the Board of Health. The original law authorized the Board to assess fines of up to $250. That law was amended during the 1975 session, by increasing the amount of the allowable fine to $1,000, Minnesota Laws 1975, Chapter 310, Section 7. The amendment also required that the Board 'promulgate by rule and regulation a schedule of fines applicable for each type of uncorrected deficiency." The proposed fine schedule, MHD 57, complies with that legislative mandate. The proposed rule was approved by the Health Facilities Advisory Council on September 10, 1975, and the public hearing was held on October 3, 1975. The proposed rule contains two sections. The first section specifically enumerates which of the sections in the nursing home and boarding care home regulations will be fined at the level of $50, while the second level states that the remaining sections in the regulations, not specifically enumerated in section (a) will be assessed at $250.

In order to justify the selection of the items that would be assessed at the $50 level, the Board adopted a set of five criteria and relied upon those criteria in the preparation of the justification for the rule. In order to assess a penalty of $50, a specific section of the regulations would have to meet each of the five criteria. These criteria were used solely as a guideline for the Board in order to arrive at a reasonable determination as to which sections in the regulations would be placed in the $50 level.

Written testimony was received alleging that the criteria themselves should have been promulgated as part of the regulation and that the criteria are rules within the meaning of the Administrative Procedures Act. The Board does not accept this contention.

As mentioned previously, the criteria were used solely as a means to determine the sections of the regulations to be assessed at the $50 level. The criteria represent the thought processes used by the Board in establishing the proposed fine schedule. The criteria were outlined in the justification submitted at the time of the hearing and were used to explain the Board's rationale in dividing the regulations into the two levels of fines.

The Minnesota Legislature recently amended the definition of "rule" as it appears in the Administrative Procedures Act. The new definition states that a rule "includes every agency statement of general applicability and future effect, including the amendment, suspension, or repeal thereof, made to implement or make specific the law enforced or administered by it or to govern its organization or procedure,..." Minnesota Law 1975, Chapter 380, Section 1, Subdivision 3.

The proposed rule, MHD 57, was promulgated in order to implement the provisions of the recent amendment to the Board's authority to issue fines for noncompliance with correction orders. The criteria used by the Board was the basis for the development of the rule and they neither make specific nor implement the Board's authority in this area.

For the above reasons, the Board finds that the criteria established by Board and used to justify the development of MHD 57, do not come within the definition of rule as found in the Administrative Procedures Act and thus need not be promulgated according to that procedure.

STATE OF MINNESOTA

BOARD OF HEALTH

Robert Willmarth

Dated: November 13, 1975

Robert Willmarth
President

ADMIN 1000A (2/66)

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

TO : Mike Miller

DATE:

FROM : Jack Brevis

SUBJECT: Enclosed Rules

Mike,

The first file contains the original, and the second file contains two copies, of the transcript, exhibits and supporting documents in regard to MHD 57. This rule will enable the Health Department to levy fines against nursing homes and boarding care homes. I do

not believe that there are any legal problems with these rules.

Please call me if you have any questions.

AS ADOPTED 11/13/1975

MHD 57 Schedule of Fines for Uncorrected Deficiencies
(Applies to both nursing homes and boarding care homes)

(a) A $50 penalty assessment will be issued under the provisions of Minn. Stat. §§ 144.653, subd. 6 (1974) for non-compliance with correction orders relating to the sections of these regulations listed below.

MHD 44 (o);(p);(q);(s);(t);(u)
MHD 45 (a)(3);(f);(h)(1);(h)(2)(aa);(h)(2)(ff);(h)(4)
MHD 46 (a);(b);(j);(k)
MHD 47 (c);(e)
MHD 48 (a)(4);(a)(5);(a)(6);(a)(7);(a)(9);(a)(11)
MHD 50 (a);(j)
MHD 52 (a)(2);(a)(3);(a)(4);(a)(9);(d);(e)
MHD 54 (a)(7);(b)(5)
MHD 55 (i)
MHD 56 (f);(h)
MHD 64 (a)(22);(b)(15)

(b) A $250 penalty assessment will be issued under the provisions of Minn. Stat. §§ 144.653, subd. 6 (1974) for non-compliance with correction orders relating to all other sections of these regulations not specifically enumerated in section (a) above.

APPROVED AS TO FORM AND LEGALITY
DEC 8 1975 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 8 - 1975 - 4:00 pm
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
DEC 8 1975
BY E. da Stendeman
AUTH. SIGNATURE
R.S 4.15

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders issued to Nursing Homes and Boarding Care Homes.

ORDER FOR HEARING

To effectively implement Minn. Laws 1975, Chapter 310, Section 7, the Minnesota State Board of Health deems it necessary to consider adoption of the proposed rule captioned above pursuant to the authority vested in it by the above-referenced statute.

NOW, THEREFORE, IT IS ORDERED this 14th day of August, 1975, that a public hearing on the proposed rules captioned above be held in the Board Room, Minnesota Health Department Building, 717 Delaware Street S.E., Minneapolis, Minnesota on October 3, 1975, commencing at 9:30 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

BOARD OF HEALTH

Warren R. Lawson

WARREN R. LAWSON, M.D.
Secretary and Executive Officer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. §§ 15.0412 subd. 4 (1974), as amended by Minn. Laws 1975, ch. 380 in the above-entitled matter, in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota, on October 3, 1975, commencing at 9:30 A.M., and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

Under Minn. Stat. §§ 10A.01 subd. 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as promulgation of the proposed rule, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

The Minnesota State Board of Health proposes to adopt Minn. Rule MHD 57, relating to a schedule of fines for uncorrected deficiencies, as follows:

MHD 57 Schedule of Fines for Uncorrected Deficiencies

(Applies to both nursing homes and boarding care homes)

(a) A $50 penalty assessment will be issued under the provisions of Minn. Stat. §§ 144.653, subd. 6 (1974) for non-compliance with correction orders relating to the sections of these regulations listed below.

MHD 44 (o);(p);(q);(s);(t);(u)
MHD 45 (a)(3);(f);(h)(1);(h)(2)(aa);(h)(2)(ff);(h)(4)
MHD 46 (a);(b);(j);(k)
MHD 47 (c);(e)
MHD 48 (a)(4);(a)(5);(a)(6);(a)(7);(a)(9);(a)(11)
MHD 50 (a);(j)
MHD 52 (a)(2);(a)(3);(a)(4);(a)(9);(d);(e)
MHD 54 (a)(7);(b)(5)
MHD 55 (i)
MHD 56 (f);(h)
MHD 64 (a)(22);(b)(15)

(b) A $250 penalty assessment will be issued under the provisions of Minn. Stat. §§ 144.653, subd. 6 (1974) for non-compliance with correction orders relating to all other sections of these regulations not specifically enumerated in section (a) above.

Copies of the proposed rules are also available and may be obtained by writing to the Minnesota Department of Health, Division of Health Facilities, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

A copy of the procedural rules for the hearing is attached and made a part hereof.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to the Secretary and Executive Officer of the Board at the Department of Health Building, address as above. If the person submitting a statement cannot be present to read his statement at the time of the hearing, the statement will be entered into the record. For those wishing to submit written

statements or exhibits, it is requested that at least three (3) copies of such statement, exhibit or summary be furnished at the hearing. The record will remain open for receipt of briefs or other written material relative to the proposed rules for twenty (20) days subsequent to the public hearing.

It is suggested that to save time and avoid duplication, those organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

Dated: August 14, 1975.

STATE OF MINNESOTA

BOARD OF HEALTH

WARREN R. LAWSON, M.D.
Secretary and Executive Officer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes

AFFIDAVIT OF MAILING

Janis Broz, being first duly sworn, deposes and says:

That on the 29 day of August, 1975, at the City of Minneapolis, County of Hennepin, State of Minnesota She served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the Certificate of the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations listed on Exhibit B, attached and made a part hereof, as well as to all members of the Minnesota Legislature as of the date of mailing.

Janis Broz

Subscribed and sworn to before me this 29th day of August, 1975.

Marie B. Tromiczak

MARIE B. TROMICZAK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 9, 1980

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412 subd. 4 (1974), as amended by Minn. Laws 1975, ch. 380 in the above-entitled matter, in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota, on October 3, 1975, commencing at 9:30 A.M., and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

Under Minn. Stat. §§ 10A.01 subd. 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as promulgation of the proposed rule, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

The Minnesota State Board of Health proposes to adopt Minn. Rule MHD 57, relating to a schedule of fines for uncorrected deficiencies, as follows:

MHD 57 Schedule of Fines for Uncorrected Deficiencies
(Applies to both nursing homes and boarding care homes)

(a) A $50 penalty assessment will be issued under the provisions of Minn. Stat. § 144.653, subd. 6 (1974) for non-compliance with correction orders relating to the sections of these regulations listed below.

MHD 44 (o);(p);(q);(s);(t);(u)
MHD 45 (a)(3);(f);(h)(1);(h)(2)(aa);(h)(2)(ff);(h)(4)
MHD 46 (a);(b);(j);(k)
MHD 47 (c);(e)
MHD 48 (a)(4);(a)(5);(a)(6);(a)(7);(a)(9);(a)(11)
MHD 50 (a);(j)
MHD 52 (a)(2);(a)(3);(a)(4);(a)(9);(d);(e)
MHD 54 (a)(7);(b)(5)
MHD 55 (i)
MHD 56 (f);(h)
MHD 64 (a)(22);(b)(15)

(b) A $250 penalty assessment will be issued under the provisions of Minn. Stat. § 144.653, subd. 6 (1974) for non-compliance with correction orders relating to all other sections of these regulations not specifically enumerated in section (a) above.

Copies of the proposed rules are also available and may be obtained by writing to the Minnesota Department of Health, Division of Health Facilities, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

A copy of the procedural rules for the hearing is attached and made a part hereof.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand and may be presented either orally or in writing at the public hearing or by mailing a statement to the Secretary and Executive Officer of the Board at the Department of Health Building, address as above. If the person submitting a statement cannot be present to read his statement at the time of the hearing, the statement will be entered into the record. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies of such statement, exhibit or summary be furnished at the hearing. The record will remain open for receipt of briefs or other written material relative to the proposed rules for twenty (20) days subsequent to the public hearing.

It is suggested that to save time and avoid duplication, those organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

Dated: August 14, 1975. STATE OF MINNESOTA

BOARD OF HEALTH

/s/ Warren R. Lawson, M.D.
WARREN R. LAWSON, M.D.
Secretary and Executive Officer

MINNESOTA STATE BOARD OF HEALTH

PROCEDURAL RULES FOR HEARING

The purpose of the hearing is to allow interested parties to express their views and present facts bearing upon the proposed regulations. So as to provide for an orderly presentation of evidence, the following rules will be in effect during the hearing specified in the attached Notice of Hearing:

1. Anyone wishing to be heard should indicate by signing the speaking sheet, listing his name, address, and the group which he represents. The speaking sheet will be available at the main entrance to the hearing room. It is requested that each group select one speaker only to present its views.

2. The first time the witness makes a statement he should spell his name and identify the group he is representing. Prior to making any subsequent statements he should state his name and the group which he represents. He may be sworn upon his request but it is not required. If he elects not to be sworn, that may be considered in determining the weight to be given to his testimony.

3. By giving testimony, a witness, including one who may also be a member of the panel, subjects himself to questioning by the panel. However, he is subject to cross-examination by non-members of the panel only if he affirmatively consents to being so examined. A refusal to be cross-examined may be considered in determining the weight to be given to his testimony.

4. All parties interested in introducing any written matter may do so by having it marked as an exhibit and then introduced for the record. Unsworn written matter may be received, but the fact that it is unsworn may be considered in determining the weight to be given it.

Exhibit A

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

CERTIFICATE

I hereby certify that the 437 general labels and 1 sheet list for the Minnesota State Health Department all of which are attached and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 11:30 O'clock A.M., this 25 day of August, 1975, have requested pursuant to Minn. Stat. §§ 15.0412 subd. 4 (1971), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
SECRETARY OF STATE

JOAN ANDERSON GROWE

By Ceil Drow

ALBERT,AA CALDER CORP
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ST PAUL MN
55101

ALLENDORF MARSHALL
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AM CAMPING ASSN MRS LEACOCK
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NEW BRIGHTON MN
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AM INST PROF GEOLOGISTS
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ANDERSON STANFORD P
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MINNETONKA MN
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55103

ARROWHEAD REGIONAL DEV COMM
900 ALWORTH BLDG
DULUTH MN
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ARVER JOHN A
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ST PAUL MN
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MPLS MN
55414

ASSOCIATED GEN CONTROF MN
46 E 8TH STREET
ST PAUL MN
55101

ASSOCIATED INDUST OF MPLS
NATIONAL BLDG
MPLS MN
55402

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

ASSN RESIDENCES FOR RETARDED
459 RICE SUITE 301
ST PAUL MN
55103

AUTOMOBILE MFRS ASSN INC
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ST PAUL MN
55103

BABCOCK LOCHER NELSON ET
118 E MAIN ST
ANOKA MN
55303

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BARKER KENT
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MPLS MN
55420

BARTHOLOW HAROLD E FIRE C
2600 109 AVE N W
COON RAPIDS MN
55433

BECKLIN ROBERT C
447 N W 4TH
CAMBRIDGE MN
55008

BEECHER EVERETT
10 10 1ST ST SO
HOPKINS MN

BEMIDJI STATE COLLEGE
PLACEMENT BUR.J.C.BRADY
BEMIDJI MN
56601

BENSONI PETER USW OF AM
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DULUTH MN

BERGERUD ALF
300 ROANOKE BLDG
MPLS MN
55402

BERGSETH THOMAS
1011 NICOLLET MALL
MPLS MN
55403

BEST FLANAGAN ET AL
1ST NATL BANK BLDG
MPLS MN
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BEUTEL ROBERT
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NEW BRIGHTON MN
55112

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NORTH BRANCH MN
55056

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BLOOMINGTON MN
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ST PAUL MN
55102

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BROOKS WILLIAM F JR
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MPLS MN
55401

BROWN D M GOODRIDGE PUB S
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56725

BRUBACHER RICHARD COMM ADM
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ST PAUL MN
55101

BRUNING C.R.DEPT.CLINIC.EXP.
BURTON HALL
MPLS. MN
55455

BUCHHOLTZ CHARLES
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INV GRV HTS MN
55075

BURGER ALBERT
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ST PAUL MN
55101

BUR.ENGR.INL.DIV. MR.KIBIGER
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MPLS. MN

BUR NATL AFFAIRS INC
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BUSCH NOEL
3131 FERNBROOK LANE N
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55441

CAIN RUTH
730 E 38TH ST
MPLS MN

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47TH FLR IDS CENTER
MPLS MN

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WILLMAR MN

CARRISON DALE K
MANKATO STATE COLLEGE
MANKATO MN
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55102

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ST PAUL MN
55105

CONSUMER SERVICES DEPT COMM
5TH FLR METRO SQ BLDG
ST PAUL MN
55101

CROW WING CO PLANNING & ADV
COURT HOUSE
BRAINERD MN
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DANFORTH & ALLEN
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BENSON MN
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ST LOUIS PARK MN
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MPLS MN
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RT 2
ISANTI MN
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MPLS MN
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RED WING MN
55066

DIEHL JOHN
26 KENWOOD PKWY
ST PAUL MN
55105

DOW CHEMICAL
47 BLDG
MIDLAND MI
48640

DZUGAN KEN ST PAUL PLANNING
421 WABASHA ST
ST PAUL MN
55102

ELDRED R W ARMOUR & CO
UNION STOCK YARDS
SO ST PAUL MN
55075

ENV SERV-GEN RESOURCE CORP
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MPLS MN
55404

COX AND KING
600 BUILDERS EXCH
MPLS MN
55402

DANIELSON RODNEY L
418 AUDITORIUM
ST PAUL MN
55102

DISPATCH PIONEER PRESS
PRESS RM STATE CAPITOL
ST PAUL MN
55101

DOYTON MAURICE, MET SEWER BD
350 METRO SQ BLDG
ST PAUL MN
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ELMER EDWIN W
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ERDMAN ROGER TENNANT CO
701 N LILAC DR
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CHAMBER OF COMMERCE
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ELY MN
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CHRISTIANSEN FREDRIK
RM 505 CAPITOL SQ BLDG
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55155

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55108

CONCORDIA COLLEGE
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EVANS CHAS.L. PRENTICE-HALL
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ST OLAF COLLEGE
NORTHFIELD MN
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HOLEY GEO AERONAUTICS
DOWNTOWN AIRPORT
ST PAUL MN
55107

HOULE MELVIN
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SHOREVIEW MN
55112

HULTMAN WARREN R
C/O BARBAROSSA R3
OSSEO MN
55369

HYLAND DEAN
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MPLS MN
55419

INS FED OF MINN
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IZAAK WALTON LEAGUE MN DI
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MPLS MN
55401

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BETHEL MN

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LANAHAN E F - SIBLEY CO
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55101

LANGVIN DAVID
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55016

LANSING & OAKES
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LAPP LAZAR LAURIE ET AL
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MINNEAPOLIS MN
55402

LARSON C L
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55406

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MPLS MN
55440

LEAGUE MN MUNIC
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CHASKA MN
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LOCKNER GARY
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BAUDETTE MN
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LOWE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

LYNCH DONALD SIBLEY CO
184 E 6TH ST
ST PAUL MN
55102

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCFADDEN G H DISPATCH-PRESS
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ST PAUL MN
55101

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANKATO STATE STUDENT AS
BOX 58 MANKATO COLLEGE
MANKATO MN
56001

MANTHEY T J PICKANDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MASTOR & MATTSON LTD
315 PEAVEY BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MAYO FOUNDATION G ORWOLL
200 FIRST AVE NW
ROCHESTER MN
55901

MCCCA
867 GRAND AVE
ST PAUL MN
55105

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MERRITT GRANT POLLUTION CONT
1935 W CO RD 32
ROSEVILLE MN
55113

MET TFR MEN ASSN A ROSENT
1821 UNIV AVE
ST PAUL MN
55104

METROPOLITAN COUNCIL LIBRARY
300 METRO SQUARE
ST PAUL MN
55155

MPLS CHAMBER COMM TRANSP DPT
15 S 5TH ST
MPLS MN
55402

MIDLAND GLASS-HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MINN AFL-CIO, L O LA SHOMB
414 AUDITORIUM ST
ST PAUL MN
55102

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN COMMUNITY DEVELOP SERV
512 ROSSMOR BLDG
ST PAUL MN
55101

MINN ELECTRICAL ASSN INC
525 SO 7TH
MPLS MN
55415

MINN HEREFORD-LJ SCHAFER

BUFFALO LAKE MN
55314

MINN LAND USE COMMITTEE
4344 IDS CENTER
MPLS MN
55402

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN RETAIL FEDERATION
7600 PARKLAWN STE 457
MPLS MN
55435

MINN SOC CERTIFIED PUB ACCTS
1102 WESLEY TEMPLE BLDG
MPLS MN
55403

MIDLAND GLASS- HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MPLS CITY ATTORNEY
325M CITY HALL
MPLS MN
55415

MILLER PAUL J PHARMACY SERV
ST MARYS HOSP
ROCHESTER MN
55901

MINN ASPHALT PAVEMENT ASSN
555 WABASHA RM 209
ST PAUL MN
55102

MINN ASSN WATERSHED DIST'S

ADA MN
56510

MINN COUNCIL STATE EMP NO 6
475 RICE ST
ST PAUL MN
55103

MINN ENV LAW INST INC
PO BOX 15076 COMM STA
MPLS MN
55415

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN POULTRY & HATCHERY ASSN
BOX 158
MADELIA MN
56062

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MILLER RICHARD A
1020 PLYMOUTH BLDG
MPLS MN
55402

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINN FARMERS UNION PRES OFF
1275 UNIV AVE
ST PAUL MN
55104

MINN HOUSING INST N T CARTER
7601 METRO PKWY
MPLS MN
55420

MINNE MINE CREDIT UNION
3000 HUDSON PK S 100
ST PAUL MN
55119

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MINN SCH BUS OPERATORS ASSN

FARIBAULT MN
55021

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MN. ASN.C&IND H.D.PETERSO
480 CEDAR ST.
ST.PAUL MN
55101

MINN ASSN ELEC COOPERATIV
4901 W 77TH ST
MPLS MN
55435

MINN COMM FOR HANDICAPPED
METRO SQ 492 7TH & ROBT
ST PAUL MN
55101

MINN DENTAL HYGIENISTS
5041 YVONNE TERRACE
MPLS MN
55436

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN HWYS MANAGEMENT SERV
407 HWY BLDG
ST PAUL MN
55101

MINN.MTR.TRANSP. .J.N.D
1821 UNIV.
ST.PAUL MN
55104

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN 55
104

MINN SOCIETY ARCHITECTS A
NW NATL BK BLDG
ST PAUL MN
55101

MINN STATE CAPITOL EMP UN
PO BOX 3215
ST PAUL MN
55165

MINN STATE MED ASSN
375 JACKSON ST
ST PAUL MN
55101

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN VETERANS MED ASSN
2175 W HWY 36
ROSEVILLE MN
55113

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MINN-WISC BOUNDARY AREA C
600 2ND ST
HUDSON WI
54016

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MOFFITT R.C. DIR.ENV.CONTROL
MPLS.CITY HALL RM 301M
MPLS MN
55415

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MOONEY, MICHAEL A.
BOX 903, ST.JOHN'S UNIV
COLLEGEVILLE MN
56321

MORTON BUILDINGS INC
R #1
FOLEY MN
56329

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

MUELLER SHIRLEY A
787 W COTTAGE AVE
ST PAUL MN
55117

NASS GEO V HENN CO GEN HOSP
5TH AND PORTLAND AVE
MPLS MN
55415

NATL CAR RENTAL ATT D MITZEL
5501 GREEN VALLEY DR
MPLS MN
55437

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NAT'L SOLID WASTES-R. GRASSO
1730 RHODE ISLAND AV.NW
WASHINGTON DC
20036

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NELSON DONALD E NSP CO
414 NICOLLET AVE
MPLS MN
55401

NEDELL HAROLD - MEINEKE
6300 W LOOP S SUITE 200
BELLAIRE TX
77401

NESBITT JOHN
7851 METRO PKWY S 118
MPLS MN
55420

NELMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BLDG
MPLS MN

NO SUB MONTESSORI-S SADOL
2487 HELEN COURT
NO ST PAUL MN
55109

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NW COUNTRY ELEVATOR ASSN
602 GRAIN EXCH BLDG
MPLS MN
55415

NURSING HOME ADMRS BD EXAMRS
RM 340 717 DELAWARE SE
MPLS MN
55414

NUTTER JULIA
743 W MONTANA
ST PAUL MN
55117

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NYGLIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OCONNOR GREEN THOMAS ET A
845 NW BANK BLDG
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OLD COLONY GAS & OIL COMPANY
17TH AVE N AT 2ND ST
MPLS MN
55411

OLOFSON ARTHUR MBD & MAINC
927 SOO LINE BLDG
MPLS MN
55402

OSTRUM DONALD E
PO BOX 33163
COON RAPIDS MN
55433

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PAYNE COL ALVIN

DEGRAFF MN
56233

PAYNE WM B
2400 FIRST NATL BK BLDG
MPLS MN

PETERSON JOHN W
510 NW BK BLDG
ST PAUL MN

PETERSON GARY
854 MIDLAND BK BLDG
MPLS MN

PFEIFER AND SHULTZ, INC
1433 UTICA AVE S
MPLS MN

PHAR MFGRS ASSN WM C PATTON
1155 15TH ST NW
WASHINGTON DC DC
20005

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

PINNETTI NICK M HALEY & ASS.
40 CENTRAL PARK S
NEW YORK NY
10019

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER LYLE D

TRACY MN
56175

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

POSS DONALD G
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

PROCTOR&GAMBLE L THECHAROUS
IVORYDALE TECH CENTER
CINCINNATI OH
45217

PULSCHER ROBT SPRINGSTED INC
813 OSBORN BLDG
ST PAUL MN
55102

QUIRIN E W
408 HWY BLDG
ST PAUL MN
55155

RADMAN RICHARD-LABOR TEMPLE
410 AUDITORIUM
ST PAUL MN
55102

RANALLO CLARENCE
800 CENTRAL AVE N E
MPLS MN
55413

RAUENHORST CORP-C ANDERSON
7900 XERXES S. S-2200
MPLS MN
55431

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REID DAVID H
5633 WASHBURN AVE S
MPLS MN
55410

RENNER R.H. ST PAUL AREA
300 OSBORN BLDG.
ST PAUL MN
55102

RAMSEY CO MEDICAL SOCIETY
1500 LOWRY MEDICAL BLDG
ST PAUL MN
55102

RICHARDSON THOS
7851 METRO PKWY S 103
MPLS MN
55420

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROE DAVID
175 AURORA
ST PAUL MN
55103

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

RUDY FLOYD
118 AVE C
CLOQUET MN
55720

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SATHRE, HARVEY
375 MARION STREET
ST PAUL MN
55103

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

ST PAUL ASSN PLBG HTG MECH
614 AM NATL BK
ST PAUL MN

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
55101

ST PAUL FOOD RETAILERS AS
1220 ARCADE
ST PAUL MN
55106

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHLICHT REV ROBT
611 W MAIN ST
BELLE PLAINE MN
56011

SCHMIDT D R MN ASSN REALTORS
6101 WAYZATA BLVD
MPLS MN
55416

SCHMIDT H W TCHRS RETIREM
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHMIDT LARRY WCCO-TV NEWS
90 S 9TH ST
MPLS MN
55402

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHWARTAU NEAL METH HOSP
201 W CENTER ST
ROCHESTER MN
55901

SCHWERMAN EARL JR
1535 8TH AVE SE
ROCHESTER MN
55901

SCHWINN ROBT.P.
1400 SCO LINE BLDG.
MPLS. MN
55402

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SENATE COUN OFF ROOM 24
STATE CAPITOL
ST PAUL MN
55101

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

SENATE GOV OP COMM
RM 303 STATE CAPITOL
ST PAUL MN
55155

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SHARP BOB
4125 HIGHWOOD RD
ST LOUIS PK MN
55416

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

SHELL OIL CO. W.A. ROQUET
ONE SHELL PLAZA BX 2463
HOUSTON TX
77001

SITE ENGINEERS INC
900 REDWELL LANE
APPLE VALLEY MN
55124

SKELLY OIL CO R R WELLINGTON
PO BOX 436
KANSAS CITY MO

SLOCUM CHARLES A
1203 IDS TOWER
MPLS MN
55402

SMERIKA WN.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SMITH MICHAEL
1423 NEWTON AVE N
MPLS MN
55411

SNELL LYN
BOX 314
EDEN VALLEY MN
55329

SNYDER ROBERT W
248 CO B C OF M
ST PAUL MN
55101

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

SODERMAN ANTHONY
152 S PLAZA BLDG
MPLS MN
55416

STANSFIELD ARLENE LAND OLKS
PO BOX 116
MPLS MN
55440

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN
55102

STATE BD VETERINARY EXAMINER
C/O DR A C SPANNAUS DVM
WACONIA MN

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

STENSLAND M.E. PRES. MVMA
203 NW 22ND ST.
AUSTIN MN
55912

STOLPESTAD BROWN & SMITH
1550 NW BK BLDG
ST PAUL MN
55101

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SULLIVAN J KIRK
PO BOX 200
BOISE ID
83701

SUMMIT NATL BANK D L MORRILL
205 AURORA AVE
ST PAUL MN
55103

SUSSEL CO.ATTN:TED SCHWENKER
1850 COMO AVE.
ST PAUL MN
55108

SWANSON BURT E
W-2162 1ST NATL BK BLDG
ST PAUL MN
55101

SWANSON DALE
P O BOX 339
FOREST LAKE MN
55025

SWANSON GERALD H
212 CITY HALL
ROCHESTER MN
55901

SWEITZER R L HONEYWELL INC
2701 4TH AVE S
MPLS MN
55408

TATE VERN 3M CO
3M CENTER 220/ow
ST PAUL MN
55101

THOMPSON CONRAD
1107 23RD ST NW
ROCHESTER MN
55901

THOMPSON HESSIAN ET AL
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

TIMESAVERS INC ATT R S VO
5270 HANSON COURT
MPLS MN
55422

TOUCHE ROSS & CO K H STOCKE
780 NORTHSTAR CNTR
MPLS MN
55402

TWIN CITY RETAIL DRUGGIST AS
2388 UNIV AVE
ST PAUL MN
55104

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VAN DRAKE STEPHEN R
BOX 353
PELICAN RAPID MN
56572

VAN EVERA MUNDT ET AL
700 TORREY BLDG
DULUTH MN
55802

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VILLAGE OF WOODBURY-F.STRONG
561 TOWER DRIVE
NEWPORT MN
55055

VOLDNESS PERRY
IDS 8TH & MARQUETTE
MPLS MN
55402

VOSS REV GORDON O
11120 NE 7TH ST
BLAINE MN
55434

VERRILL JOHN E
DEPT SECONDARY ED UOF M
DULUTH MN
55812

VOS LEROY
2137 BURNS AVE
ST PAUL MN
55119

WALTERS THOS H
4510 W 77TH ST STE 235
MPLS MN
55435

WHITING RALPH
555 WABASHA SUITE 204
ST PAUL MN
55102

WILEY ENTERPRISES
101 5TH AVE SE
OSSEO MN
55369

WOZNIAK D D
401 FIRST FED BLDG
ST PAUL MN
55101

VILLAGE OF WOODBURY-F.STRONG
561 TOWER DRIVE
NEWPORT MN
55055

WANQUIST ALLEN
RM 252 FEDERAL BLDG
ST PAUL MN
55101

WHITLOCK A G
ECON LAB OSBORN BLDG
ST PAUL MN
55102

WILSON R GARY PPG INDUSTR
1 GATEWAY CENTER
PITTSBURGH PA
15222

WYANT CLINTON W ATTY

ATKIN MN
56431

VOLGNESS PEARY
105 8TH & MARQUETTE
MPLS MN
55402

WALO JEAN
5746 SANDER DR
MPLS MN
55417

WELK G V NORTHERN STATES
414 NICOLLET MALL
MPLS MN
55401

WILCOX J PATRICK
1220 NORTHERN FED BLDG
ST PAUL MN
55102

WIS FEEDER PIG MARKET CO-OP

FRANCIS CREEK WI

[illegible]
[illegible]
BLAINE MN
55434

WALIGORA ROBERT
3228 SO 17TH AVE
MPLS MN
55407

WESTIN CHAS W
220 MEDICAL ARTS BLDG
DULUTH MN
55802

WM.MITCHEL COLLEGE LAW LI
2100 SUMMIT AVE.
ST.PAUL MN
55105

WOLKERSTORTER THEODORE
676 17TH AVE NW
NEW BRIGHTON MN
55112

NAME	ADDRESS	CITY	ST	ZIP CODE
MOFFITT R C	RM 301 M MPLS CITY HALL	MPLS	MN	55415
RENQUIST ARTHUR NSP CO	414 NICOLLET MALL	MPLS	MN	55401
BECK BAT	953 HYACINTH AVE	ST. PAUL	MN	55106
BROWN H D	4961 KINGSBERRY LANE	PLYMOUTH	MN	55391
NEREN MADONNA	3216 NEAL AVE S	AFTON	MN	55001
REAGAN MICHAEL	C/O MINN LEARNING CTR	BRAINERD	MN	56401
HOUSE RESEARCH	RM 57 STATE CAPITOL	St. PAUL	MN	55155

HEALTH

Abrahamson, Dr. Dean E., 243 Space Science Center, Minneapolis 55455

Booth Cold Storage Co., St.Peter & Kellogg, St. Paul
Branson, Lindley S., 300 Roanoke Bldg., Mpls. 55402
Bush, John T., Box 611, Mayo Bldg., U of M.,Mpls. 55455

Cassel, Dr. Carl V. E., Minn. State Dental Ass'n., 2236 Marshall Av.,St.Paul 55104

Deephaven Montessori School, Inc.,188 So. Circle A Dr., Wayzata, Mn. 55391

Environment Reporter, 1231 25th St., N.W., Washington D. C.

Hawley, Lyle, Graco, PO Box 1441, Mpls. 55440

Houghton, Charles, Vendo, 7246 Troost Ave., Kansas City, Miss. 64131

Higgins, J.C.,Brotherhood Rwy. Clerks, 2317 W. 7th St., Duluth

Janke, John R., Burger Chef Systems,Inc.,250 No. St., White Plains, NewYork10625

Kurtz, Mrs.Kirsten,Mn. Nurses Ass'n.,1821 Univ.Ave., St.Paul 55104

Markham,B.B., 2250 IDS Center, 80 So. 8th St.,Mpls.55402

Merck & Co., Inc. Rahway, N.J., Attn; Off of Gen. Counsel

Minneapolis & Hennepin County Mental Health Clinic, 619 S. 5th St., Mpls.55415

Minn. Nurses Assn., Attn: Geraldine Wedel, 1821 Univ. Ave. Rm. 152,St.Paul 55104

Minn. State Pharmaceutical Ass'n., 2388 University Av.,St. Paul 55104

Parke, Davis & Company, P.O.Box 118, Detroit [illegible], Michigan 48120

Patrick, Peter, 101 Central Av., S.E.,Mpls.55414

Perso, E. R., 4411 Branson St.Mpls.55424

Planning and Advisory Comm. of Crow Wing County, Court House,Brainerd 56401

Roesler, Immanuel F., 6700 Portland Av.So., Richfield 55423

Schneider, Dorothy, StPaul Bur.Health, 555 Cedar St,St.Paul 55101

Walgreen, J.E.Krahulec, 4300 Peterson, Ave.Chicago,Ill.60646

DIV. OF ENVIRONMENTAL SANITATION

U.S. Soil Conservation Serv.,517 Red.Courts Bldg.,St.Paul (Swimming pools)

HOTELS, RESORTS, RESTAURANTS

U.S.Soil Conservation Serv., 517 Red.Courts Bldg.,St. Paul (trailer Parks,etc)

MINN. PLUMBING CODE ONLY

Hendricks, Manley, % Tyler Pipe Industries, Box 2027, Tyler, Texas 50701

Higgins, Robert G. - Room 300B, 1409 Willow St.,Mpls. 55403

Sharp, Richard H., 964 W. Cecil St.,Neenah, Wisc. 54956

CEMETERIES

Fox, Howard - 244 Dayton Ave.,St. Paul 55102

EXHIBIT B

Members of the Minnesota State Board of Health

All Licensed Nursing Homes, Boarding Care Homes and Convalescent and Nursing Care Units

All Areawide Comprehensive Health Planning Agencies

Members of the Health Care Facility Advisory Board

District Offices of the Minnesota Department of Health

Minnesota State Board of Nursing.

Minnesota State Board of Pharmacy

Bureau of Dangerous Drugs and Narcotics, Dept. of Justice Minneapolis office

Federal Food and Drug Administration, Minneapolis office

Minnesota C.A.R.E. Home Association

Minneapolis Age and Opportunity Center

Minnesota Hospital Association's Conference on Geriatric Care

Minnesota Association of Health Care Facilities

Minnesota State Board of Medical Examiners

Minnesota State Medical Association

Minnesota State Pharmaceutical Association

State Planning Agency

Department of Public Welfare

Governor's Office

Minnesota Nurses Association

State Fire Marshall

County Welfare Offices

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Warren R. Lawson, M.D., do hereby certify that I am the Secretary and Executive Officer of the Minnesota State Board of Health, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the said Board of Health, duly and properly called and held on the 5th day of June, 1975, that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Warren R. Lawson, M.D., Secretary and Executive Officer of the Minnesota State Board of Health, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Health relating to a schedule of fines for non-compliance with correction orders issued to nursing homes and boarding care homes as well as perform any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing as well as acting as or appointing a presiding officer at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13th day of November, 1975.

STATE OF MINNESOTA

BOARD OF HEALTH



WARREN R. LAWSON, M.D.
Secretary and Executive Officer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

STATEMENT OF NEED

The above-captioned rule is not an amendment to the existing rules of the State Board of Health.

The adoption of this rule is necessary due to the recent legislative changes that were made in the Board's authority to assess fines for non-compliance with correction orders issued to nursing homes or boarding care homes.

Minn. Stat. § 144.653 subd. 5 (1974) authorized the Board to issue correction orders to the licensee of a nursing home or boarding care home if it is found, upon inspection, that the licensee has not complied with applicable regulations promulgated by the Board.

Subdivision 6 of that law allowed the Board to assess a penalty of up to $250 if, upon reinspection, it was found that the licensee had not yet complied with the correction order. The enactment of this law gave the Board an effective enforcement mechanism to assure the compliance with the regulations governing nursing homes and boarding care homes. Prior to the enactment of this law, the only mechanism to assure full compliance was through the licensure revocation proceeding, often a cumbersome and time-consuming procedure.

Section 144.653 was amended by Minn. Laws 1975, ch. 310 § 7. That section increased the amount of the penalty assessment from the previous limit of $250 to $1,000. However, this amendment also required that the Board promulgate, by rule and regulation, a schedule of fines applicable for each type of deficiency. This rule is therefore necessary to put that schedule into effect.

Thus, with the adoption of this rule, the Board will be able to impose the sanctions contained in Minn. Stat. § 144.653 and once again have an effective mechanism to assure that nursing homes and boarding care homes are operated in full compliance with the Board's regulations.

STATE OF MINNESOTA

BOARD OF HEALTH

WARREN R. LAWSON, M.D.
Secretary and Executive Officer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

APPOINTMENT

David J. Giese is hereby appointed to serve as hearing officer on behalf of the State Board of Health in the above-captioned matter, said hearing to be held on October 3, 1975, and to continue until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

This appointment is made pursuant to the following authority: resolution of the State Board of Health dated June 12, 1975.

STATE OF MINNESOTA

BOARD OF HEALTH

WARREN R. LAWSON, M.D.
Secretary and Executive Officer

Dated: October 1, 1975.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

ORDER ADOPTING RULE

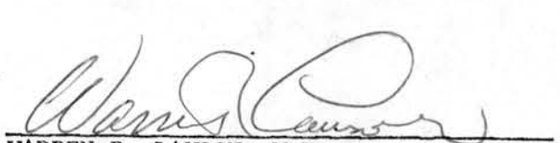
The above-entitled matter came on for hearing before the Minnesota State Board of Health on the 3rd day of October, 1975, at 9:30 A.M., in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1974) as amended by Minn. Laws 1975, ch. 380, was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, and having heard and considered all of the testimony and evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rule.

NOW, THEREFORE, IT IS ORDERED that this rule identified as MHD 57 is adopted this 13th day of November, 1975, pursuant to authority vested in me by Minn. Laws 1975, ch. 310 § 7, and by resolution of the Minnesota State Board of Health duly adopted at a meeting of the said Board on the 13th day of November, 1975.

STATE OF MINNESOTA

BOARD OF HEALTH



WARREN R. LAWSON, M.D.
Secretary and Executive Officer

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

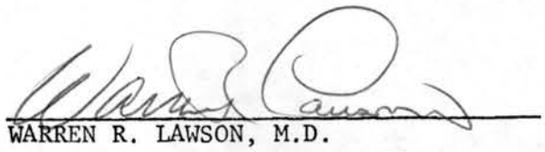
I, Warren R. Lawson, M.D., do hereby certify that I am the Secretary and Executive Officer of the Minnesota State Board of Health, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the said Board of Health duly and properly called and held on the 13th day of November, 1975; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rule relating to a schedule of fines for non-compliance with correction orders issued to nursing homes and boarding care homes identified as MHD 57 is found to be reasonable, necessary and supported by the evidence contained in the record, and is hereby approved and adopted, pursuant to authority vested in us by Minn. Laws 1975, ch. 310 § 7 and that Warren R. Lawson, M.D., Secretary and Executive Officer of the Minnesota State Board of Health, be and hereby is authorized to sign an order adopting this rule."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13th day of November, 1975.

STATE OF MINNESOTA

BOARD OF HEALTH



WARREN R. LAWSON, M.D.
Secretary and Executive Officer

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General John A. Breviu, do hereby declare that I have examined the proposed rule relating to a schedule of fines for non-compliance with correction orders issued to nursing homes and boarding care homes and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: November 13, 1975

John A. Breviu

JOHN A. BREVIU
Special Assistant
Attorney General

minnesota department of health
717 s.e. delaware st. minneapolis 55440

RETURNED TO SENDER

POST DELIVERABLE AS ADDRESSED
NO FORWARDING ORDER ON FILE

HF

Richard H. Sharp
964 West Cecil Street
Neenah, Wisconsin 54956

RECEIVED
SEP 3 1975
Legal Office
Minn. Dept. of Health

RECEIVED
SEP 12 1975
DIVISION OF
HEALTH FACILITIES

minnesota department of health
717 s.e. delaware st. minneapolis 55440

RECEIVED
SEP 5 1975
Legal Office
Minn. Dept. of Health

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NO FORWARDING ORDER ON FILE

HF

Booth Cold Storage Company
St. Peter & Kellogg
St. Paul, Minnesota 55102

minnesota department of health
717 s.e. delaware st. minneapolis 55440

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St. Paul, Minnesota 55102

MINNESOTA STATE BOARD OF HEALTH

JUSTIFICATION

For a proposed rule relating to a schedule of fines for non-compliance with correction orders issued to nursing homes and boarding care homes.

INTRODUCTION

Minnesota statutes, section 144.653, subdivision 5 (1974) states:

> Whenever a duly authorized representative of the State Board of Health finds upon inspection of a facility required to be licensed under the provisions of sections 144.50 to 144.58 that the licensee of such facility is not in compliance with an applicable regulation . . ., a correction order shall be issued to the licensee . . . .

Subdivision 6 of that statute allows the Board of Health to assess a penalty if, upon reinspection, it is found that the licensee has not yet complied with a correction order.

This law was amended by Minnesota Laws 1975, chapter 310, section 7. That section increased the amount of the penalty assessment, from the previous limit of $250, to $1000. However, this amendment also required that the Board promulgate, by rule and regulation, a schedule of fines applicable for each type of deficiency. This amendment, which became effective of June 5, 1975, had the affect of ending the Board's authority to issue penalty assessments until a schedule of fines was promulgated in accordance with the Administrative Procedure Act.

At its August, 1974 meeting, the Board adopted a policy establishing two levels of assessments, one at $50 and the other at $250. Three criteria were developed to select the sections of the regulations requiring the $50 penalty assessment. Two additional criteria were adopted by the Board at its June, 1975 meeting. The five criteria will be outlined later.

The proposed schedule of fines is based on the Board policy of August, 1974 as amended in June, 1975. While the Board now has the authority to establish fines of up to $1,000, the importance of re-implementing the penalty assessment system was a decisive factor in reaching the decision to use the Board policy as a temporary schedule of fines. The time factor involved in establishing a schedule using the $1,000 limit would have prevented use of the penalty assessment system for a greater length of time. The importance of adopting this regulation as soon as possible to

assure that the Department could effectively enforce its regulations was considered essential. The Board policy was felt to be a reasonable basis for establishing this regulation. In addition, a revision of the nursing homes regulations has begun and it was felt that once the existing regulations were reviewed and revised, it would be more appropriate to establish a new fee schedule based on the new regulations.

The various sections of the nursing home and boarding care home regulations have been classified into five categories. These are:

1. Regulations relating to the health and safety of patients and residents;
2. Regulations relating to the medical treatment of patients and residents;
3. Regulations relating to the comfort of patients and residents;
4. Regulations relating to the personal well-being of patients and residents; and
5. Regulations relating to the operation and maintenance of a nursing home or boarding care home.

The regulations which are classified under the heading of health and safety relate to those conditions in the home which are necessary in order to assure patient health and safety. Items such as sanitation, dietary facilities, etc. are listed in this category. The health and safety category differs from the regulations under the medical treatment category in that the latter group is concerned with individual needs rather than general needs of all patients and residents in a facility. The medical treatment category includes the provisions in the regulations relating to proper charting, proper administration of medications, etc.

The comfort and well-being categories are also similar in nature. The difference between the two groups is that the comfort category deals primarily with the physical aspects, such as clean linen and adequate furnishings. The items listed under the well-being category relate to the mental and emotional concerns of a patient or resident.

The fifth category contains regulations of a general nature dealing primarily with those items that must be met to assure the proper administration of a facility.

The criteria used to determine which sections of the nursing home and boarding care home regulations would be subject to the $50 penalty assessment are:

1. The requirements in these regulations do not directly relate to the provision of patient care;
2. Noncompliance with any one of these regulations would not present a hazard to patient health and safety;

3. The requirements, if not in full compliance, will not substantially affect the capability of the facility to provide an overall high quality of care to patients and/or residents;
4. Noncompliance with any one of these regulations would not jeopardize the patient's or resident's property, personal rights, or dignity; and
5. The requirements in these regulations do not relate to the financial stability of the operation or management of the facility.

It should be noted that the regulations which meet these criteria and are thus assessed at the lower level are not to be considered as non-essential or unimportant. The assessments were reduced on the basis that these regulations do not directly relate to the welfare of the patient or resident. Regulations not meeting these criteria will be assessed at a level of $250.

It is important to also realize that the contents of the regulations are not being justified at this time. The regulations listed below have been properly adopted and thus have the force and effect of law. The purpose of this document is to justify only the amount of the assessment.

I. REGULATIONS RELATING TO THE HEALTH AND SAFETY OF PATIENTS AND RESIDENTS

A. Regulations requiring a $50 penalty assessment for noncompliance with a correction order.

1. MHD 56 (f) Deodorizers

This section prohibits the use of deodorizers or aerosols as a substitute for acceptable ventilation, nor shall they be used to mask odors resulting from ineffective housekeeping or sanitation. This regulation is important to the health of patients and residents by assuring that the facility will not use artificial means to mask odors resulting from poor housekeeping or as a remedy for inadequate ventilation. However, since the provisions in this section do not relate directly to the provision of patient care, nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents, would not substantially affect the capability of the facility to provide an overall high quality of care to patients and/or residents, and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

2. MHD 56 (h) Shelving

This section requires that all shelving shall be provided with a surface finish which is smooth and easily cleaned. This section is necessary in order to assure that the shelving used in a facility can be properly cleaned and maintained in a sanitary manner. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents, would not substantially affect the capability of the facility to provide an overall high quality of care, and would not jeopardize the patients' or residents' property, personal rights and dignity; a penalty assessment of only $50 is justified.

B. Regulations requiring a $250 penalty assessment for noncompliance with a correction order.

1. MHD 45 (h)(5) Establishing relationships with health care facilities

This section requires that the administrator or person in charge of a nursing home or boarding care home establish and maintain effective working relationships with hospitals

and other types of health care facilities. Included under this responsibility is the development of specific patient or resident transfer procedures, promoting the sharing of services and facilities, conducting and participating in cooperative educational programs, and participating in areawide planning activities. The development of proper working relationships with hospitals and other health care facilities in the area is important to the health and safety of the patients and residents in order to assure that steps are taken to provide for any necessary consultation and/or sharing of services with hospitals and other facilities in the area, and also to assure that patients, residents and the staff in a facility are able to benefit from programs and services offered by other health care facilities. For these reasons the penalty assessment of $250 is justified.

2. MHD 45 (h)(6) Written disaster plan

This section requires the administrator or person in charge of a facility to develop a written disaster plan containing the procedures for the protection and evacuation of all persons in a facility in the case of fire, explosion, floods, tornadoes, or other emergencies. This disaster plan shall be developed specifically for each facility and its type of occupants in cooperation with the state fire marshal, local fire departments and civil defense agencies. The preparation of a written disaster plan is important to the health and safety of patients and residents in a facility since a written plan, outlining the procedures to be taken in an emergency and made available to the staff in the facility, will help to assure that prompt action on the part of the staff is taken and will also help to avoid confusion if an emergency does occur. For these reasons, the penalty assessment of $250 is justified.

3. MHD 46 (d) Smoking

This section provides that patients and residents shall not be permitted to smoke in bed. An exception is made for bedfast patients or residents allowing them to smoke only while under the direct supervision of a staff member. This regulation is important and necessary in order to prevent accidental fires and to avoid possible injuries by fire or smoke inhalation. For these reasons, the $250 penalty assessment is justified.

4. MHD 46 (g) Animals or birds

This section states that no animals, birds, turtles or reptiles shall be housed in a nursing home or in a boarding care home. This regulation is necessary in order to prevent any possible transmission of disease from these animals to

patients or residents in a facility, to protect patients or residents from any possible allergy reactions, and also to assure that proper sanitation is maintained in the facility. For these reasons a penalty assessment of $250 is justified.

5. MHD 46 (h) Personal hygiene of all employees and volunteers

This section requires that there shall be strict adherence to established policies and procedures relating to personal hygiene practices. This section is important to prevent contamination and the spread of disease in a nursing home or boarding care home. For this reason the penalty assessment of $250 is justified.

6. MHD 46 (l) Use of oxygen

This section states that oxygen shall be used in a nursing home only on an emergency basis, and that its use must be ordered by a physician. This regulation also establishes the procedures that must be followed while oxygen is being administered in a facility. This regulation is necessary in order to assure that proper procedures are taken by the staff of the nursing home during the administration of oxygen. For this reason, the penalty assessment of $250 is justified.

7. MHD 47 (a) Annual tests

This section requires that all employees, prior to their employment and annually thereafter, show freedom from tuberculosis. This regulation is important in order to prevent any possible contamination of the patients or residents by a staff member having tuberculosis. For this reason, the penalty assessment of $250 is justified.

8. MHD 47 (b) Capability

This section requires that every employee of a nursing home or boarding care home shall be mentally and physically capable of performing the work to which he or she is assigned. This section also requires that every employee shall be in good health and free from colds and other communicable diseases. This section is important to assure that the staff in a facility can handle their responsibilities and also to avoid any possible contamination of residents and patients in a facility. For this reason, a penalty assessment of $250 is justified.

9. MHD 48 (a) Patient or resident care record

This section requires that an individual chart shall be kept for each patient or resident admitted to a facility. The regulation requires that these records be accurate and complete, kept current and maintained in a chart holder at the nurses' or attendants' station. This regulation is important to the health and safety of patients and residents by requiring that all information concerning the patient's or resident's status is properly documented and available to the staff for quick consultation. These records are also important for the planning of individualized care and are also a means to document the type of care actually given to a patient. For these reasons, the penalty assessment of $250 is justified.

10. MHD 48 (a)(1) Admission record

This section requires that an admission record shall be initiated for each patient and resident within 72 hours after admission. These records shall contain identifying information, the date and hour of admission, the name and address of the nearest relative, the person to be notified in an emergency, information as to funeral arrangements, if available, church affiliation, and the name of the patient's or resident's attending physician. This information is important in order to provide the staff of a facility with the proper information as to the patient's identity and also to provide information relating to the person or persons to contact in the case of an emergency. For these reasons the penalty assessment of $250 is justified.

11. MHD 48 (a)(2) Medical record

This section requires that a medical record for each patient and resident shall be initiated within 72 hours in accordance with MHD 49 (c). This information is necessary in order to assess the patient's physical and mental capabilities; and the time limit of 72 hours is important in order to assure that prompt treatment can be started for the patient or resident. For these reasons, the penalty assessment of $250 is justified.

12. MHD 48 (a)(10) Unusual occurrences

This section requires that any occurence of food poisoning or reportable disease shall be reported immediately to the Department of Health. This requirement is necessary in order to assure that proper measures can be taken immediately to prevent the further spread of the poisoning or disease. For this reason the penalty assessment of $250 is justified.

13. MHD 48 (b) Nurses record

This section, which applies only to nursing homes, lists the items that must be entered into the nurses' record. Among the items required to be entered are the condition of the patient at time of admission; the recording of the patient's vital statistics at least every four hours during the first 24 hours after admission and as often as indicated by the condition of the patient; the patient's weight; general condition, actions and attitudes; and other significant observations. These records shall also contain the types of medication received by the patient, visits by physicians and other house professionals, types of restrictions imposed on the patient, and other items relating to the general physical condition of a patient. These records are important since they are a means to follow and assess the condition of the patient during his stay at a facility, to prevent improper or unauthorized administration of medication, and to assure that the patient is receiving accurate and prompt medical treatment. For these reasons the penalty assessment of $250 is justified.

14. MHD 48 (c) Resident care record

This section, which applies only to boarding care homes, requires that the care record for each resident shall contain the residents weight; time of admission; a summary of the resident's general condition, actions, and attitudes, change in sleeping or eating habits and any complaints. These records are important since they provide a means to assess the resident's physical condition and to assure that the resident is getting the proper treatment in the boarding care home. For this reason the penalty assessment of $250 is justified.

15. MHD 49 (b) Emergency care

This section requires that 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. This section is important in order to assure that prompt emergency care from a qualified physician shall be immediately available to the patients and residents in a facility. For this reason a penalty assessment of $250 is justified.

16. MHD 49 (f) Dental records

This section requires that all dental examinations and treatments shall be recorded in the patient's or resident's care record. This section is important since it is a means to determine the quality of care given to a patient and also to inform the staff of a facility of treatments given to

a patient and to determine whether the patient has been given medication by a dentist. For this reason the penalty assessment of $250 is justified.

17. MHD 49 (i) Admissions

This section requres that a patient shall be admitted to a nursing home only upon the recommendation of a physician. This section is necessary in order to prevent the admission of individuals to a nursing home who do not require the type of care provided in that type of facility. The requirement of obtaining a physician's recommendation prior to admission of an individual also assures that the facility is able to implement an immediate plan of care based on the physician's recommendations. For these reasons, the penalty assessment of $250 is justified.

18. MHD 49 (j) Telephone orders

This section requires that telephone orders received from a physician shall be immediately recorded in the patient's record by a person authorized by the nursing home and shall be countersigned by the physician within seven days. This section is important in order to assure that all changes in the treatment of a nursing home patient shall be properly and correctly recorded in that patient's record. For this reason the penalty assessment of $250 is justified.

19. MHD 50 (e)(1) Nursing staff

This section, which applies only to nursing homes, requires that each home have on duty at all times a sufficient number of qualified nursing personnel to meet the needs of all patients in the facility. This section also requires that each nursing home shall provide a minimum of two hours of nursing personnel per patient per 24 hours plus additional qualified nursing staff commensurate with the needs of the patients. In order to assure that proper and complete nursing care is provided for the patients in a nursing home, adequate nursing personnel must be provided by the facility to meet those needs. The two hour requirement was based upon the Department's determination that this amount of time was the minimum level of nursing care that each patient in a facility should receive. For these reasons, the penalty assessment of $250 is justified.

20. MHD 50 (e)(2) Nursing staff

This section requires that the nursing staff shall be employed and used for nursing duties only. This section also requires that there shall be sufficient additional staff for housekeeping, dietary, laundry and maintenance

duties and states that these persons shall not be used to provide nursing care. This regulation is necessary in order to assure that only qualified individuals provide nursing care and also to assure that the sole responsibility of the nursing staff in a facility is the provision of patient care. For these reasons, the $250 penalty assessment is justified.

21. MHD 50 (e)(3) Director of nursing

This section requires that each nursing home shall have as their director of nursing a registered nurse currently licensed in Minnesota. The director of nursing service plays an essential role in the provision of patient care. This rule is necessary to assure that the director of nursing service in a facility has sufficient training to adequately perform the numerous duties of this position as indicated in MHD 50 (f). For these reasons, the $250 penalty assessment is justified.

22. MHD 50 (e)(4) Director of nursing

This section requires that the director of nursing service shall be employed full time, a minimum of 40 hours per week, during the day shift. The director of nursing service is responsible for the provision of nursing care in the facility. Since the nursing staff is under her supervision and control, the director of nursing service is required to determine that the care and services provided by the staff meet the requirements imposed by these regulations. Since most nursing activities requiring a judgmental decision occur during the day shift, this regulation is necessary in order to assure that there is an individual in the facility who is capable of handling these responsibilities. For these reasons, the $250 penalty assessment is justified.

23. MHD 50 (e)(5) Assistant director of nursing service

This section requires that there shall be a licensed nurse serving as the assistant to the director of nursing service. This individual shall be designated as the assistant and shall be responsible for the duties of the director in her absence. This regulation is important in order to assure that the nursing home takes the proper measures to assure that there is a competent person in the facility who can assume the important responsibilities of the director. For this reason the $250 penalty assessment is justified.

24. MHD 50 (e)(6) Director of nursing service

This section requires that the director of nursing service shall be trained in rehabilitation nursing techniques and trained and/or experienced in areas such as nursing service administration, or psychiatric or geriatric nursing. This regulation is necessary in order to assure that the person in the position of director of nursing service is aware of the problems of a nursing home patient and is familiar with the type and quality of care that must be provided. For this reason the penalty assessment of $250 is justified.

25. MHD 51 (b) Safety program

This regulation requires that every home shall have an organized safety program in accordance with a written plan and such plan shall be included in the orientation and in-service training programs for all employees. This section is important to the safety of patients and residents in a facility since it is a means to assure that the staff in a facility is familiar with the need for assuring patient and resident safety and aware of the steps that must be taken to provide a safe environment. For this reason, the $250 penalty assessment is justified.

26. MHD 52 (a)(5) Individual items

This section requires that an individual drinking glass, bath towel, hand towel, wash cloth and soap dish be provided for each patient and resident. The requirements in this section promote sanitary standards by assuring that these individual items are used by only one patient or resident and not by a number of patients or residents in a facility. For this reason, the $250 penalty assessment is justified.

27. MHD 52 (a)(7) Signaling device

This section requires that a device for signaling nurses and attendants shall be provided for each patient and resident. This device shall be kept in working order at all times. This regulation is important since it provides patients and residents a means by which they can obtain assistance when required. For this reason a penalty assessment of $250 is justified.

28. MHD 52 (b) Facilities for emergency care

This section requires that first aid supplies shall be maintained in a place known to and readily available to all personnel responsible for the health and well-being of patients and residents. This section is necessary in order to assure that prompt assistance can be provided in an emergency situation. For this reason the penalty assessment of $250 is justified.

29. MHD 52 (c) Handwashing facilities

This section requires that handwashing facilities shall be readily available for physicians, nurses and other personnel attending patients or residents in a facility. This section also prohibits the use of a common towel and requires that single service towels be provided. This section is necessary in order to assure that proper sanitary precautions are taken by the staff of a facility while attending patients or residents. For this reason, a penalty assessment of $250 is justified.

30. MHD 52 (i)(1) Patient units

This section, which applies only to nursing homes, lists various items that must be provided for each patient. Included among these items are individual bedpans, urinals, washbasins and similar items. This section requires that these items be properly cleaned after each use, and sanitized at least weekly and prior to use by a new patient. This section also prohibits any equipment, which comes into direct contact with the body of a patient, from being interchanged from one person to another without proper sanitization. Requirements in this section are necessary in order to assure that these items are cleaned and sanitized, and handled in the proper manner to prevent any possible spread of disease or infection. For these reasons a penalty assessment of $250 is justified.

31. MHD 52 (i)(2) Siderails

This section requires that siderails for beds be provided for the protection of patients when needed. This section is necessary in order to assure that proper precautions are taken to prevent patients from falling out of bed. For this reason a penalty assessment of $250 is justified.

32. MHD 52 (j) Autoclave

This section requires that there shall be a properly functioning autoclave or instrument sterilizer in the facility. This section is needed in order to assure that nursing equipment and supplies receive proper sanitization and are properly sterilized prior to their next use. For this reason the penalty assessment of $250 is justified.

33. MHD 53 (a) Administration of medications

This regulation requires that a system shall be developed in each nursing home to assure that all medications are safely and properly administered. This section requires that there shall be proper supervision over the administration of medications; that proper training for certain

individuals will be provided; limits the type of medications that can be administered by certain individuals; and provides means to assure that the medications are properly received by the patients in a nursing home. This regulation is important in order to assure that medications are properly administered, to prevent the improper administration of medications, and to assure that patients receive medications when required. For this reason a penalty assessment of $250 is justified.

34. MHD 53 (a)(2) Legend drugs

This section requires that supplies of legend drugs may be kept at a nursing home only within a licensed pharmacy. This section is required in order to assure that legend drugs are properly controlled and that procedures are taken to avoid the misuse of this type of drug. For this reason the penalty assessment of $250 is justified.

35. MHD 53 (a)(3) Nonprescription drugs

This section states that medications which can be purchased without prescription may be retained in stock supply; however, these drugs must be dated upon receipt. This section is necessary to assure that the drugs, kept in stock supply, shall be used within their effective time period and, also, to prevent the use of outdated or deteriorated items. For this reason the penalty assessment of $250 is justified.

36. MHD 53 (a)(4) Emergency drug supply

This section provides that a licensed physician may maintain a minimum supply of medications in a nursing home to be used for emergency situations only. This section requires that the physician shall accept the responsibility for the contents, maintenance, safeguarding and usage of this emergency supply. This section also requires that the emergency supply of medications be kept in a separate, labelled container in a locked medicine cabinet or locked medicine room. This regulation is necessary in order to prevent the misuse of these types of medications, while at the same time allowing physicians to have a supply of the required medications on hand for use during an emergency situation. For this reason the penalty assessment of $250 is justified.

37. MHD 53 (a)(5) Use of prescription drugs

This section states that a prescription drug, supplied for one patient, shall not be used or saved for the use of other patients in a nursing home. These drugs are prescribed

on the basis of a physician's evaluation and are provided to help alleviate a certain physical problem or condition. This section prohibits the use of these drugs by patients whose physical condition has not been evaluated by a physician. The indiscriminate use of these drugs could lead to serious problems by causing adverse reactions in a patient. For these reasons, the $250 penalty assessment is justified.

38. MHD 53 (b) Medicine cabinet and preparation area

This section establishes the requirements that must be met by a nursing home for the proper storage of medicine. This section states the type of labelling to be used, the type of preparation area required, and establishes the requirements that must be met to safeguard these medications. These precautions are necessary in order to assure that medications will be properly handled and to prevent any possible contamination or misuse of the drugs. MHD 53 (b) also requires that all disposable equipment, unless incinerated, shall be rendered inoperable prior to disposal. This requirement is necessary in order to assure that these disposable items will not be used after their initial use. This section also requires that nondisposable instruments be properly sterilized and states the procedures to be followed in order to assure proper sterilization. These requirements are necessary in order to assure medical supplies are properly sanitized and sterilized prior to their next use. For these reasons, the penalty assessment of $250 is justified.

39. MHD 53 (b)(1) Poisons and medications

This section requires that poisons and medications intended for external use only shall be clearly marked and kept in a separate locked compartment. This regulation is necessary in order to assure that these medications or other items which would be harmful if taken internally are properly segregated to avoid possible misuse by the staff in the facility. For this reason a penalty assessment of $250 is justified for this section.

40. MHD 53 (b)(2) Medications - refrigeration

This section states that drug items which require refrigeration shall be kept in a refrigerator within the medication room or in a specially locked, securely attached, and labelled container in a general use refrigerator. This section is necessary in order to assure that these medications are properly refrigerated, and at the same time to assure that proper precautions are taken to avoid their misuse or loss. For these reasons a penalty assessment of $250 is justified.

41. MHD 53.(b)(3) Cleaning agents

This section states that all substances such as cleaning agents, bleaches, etc. shall be clearly labelled and stored separately from drugs and foods. This section is necessary in order to assure that these items will not mistakenly be substituted during the administration of medications and also to prevent any possible contamination of the medication supply. For these reasons a penalty assessment of $250 is justified.

42. MHD 53 (c) Medication containers

This section requires that all medications shall be kept in their original container bearing the original label with legible information stating the prescription number, name of drug, expiration date, etc. This section requires that any drug container having a detached or damaged label shall be returned to the pharmacy for relabelling; requires that the contents of any drug container having no label or an illegible label shall be destroyed immediately; and provides that medications having a specific expiration date shall not be used beyond that date. For each of these violations a penalty assessment of $250 is justified on the basis that proper precautions must be taken to assure the quality of medications is maintained. Failure to do so could jeopardize the health and safety of a resident in a home. For these reasons the $250 penalty assessment is valid.

43. MHD 53 (e) Automatic stop orders

This section requires that medications not specifically limited as to time of use shall be automatically stopped in accordance with a written policy approved by the physician responsible. This section also requires that the patient's physician shall be notified when a medication is stopped in accordance with this policy. This regulation is necessary in order to assure that the use of a specific medication is continually reviewed by a physician to prevent the misuse of medications. For these reasons the penalty assessment of $250 is justified.

44. MHD 53 (i) Distribution of medications

This section, which applies only to boarding care homes, requires that a system shall be developed in each facility to assure that all medications are distributed safely and properly. This regulation is necessary in order to assure that the medications distributed to a resident in a boarding care home are properly handled by the staff at the facility. For this reason, the penalty assessment of $250 is justified.

45. MHD 53 (j) Medicine cabinet

This section, which applies only to boarding care homes, requires that a well-illuminated medicine cabinet shall be provided at each attendants' station. This section requires that this cabinet shall be equipped with separate cubicles which are plainly labelled, or provided with other physical separation for the storage of each resident's prescriptions. This regulation is necessary in order to assure that the drugs prescribed for one specific resident will not be used by other residents in the facility. For this reason, the $250 penalty assessment is justified.

46. MHD 53 (j)(1) Poisons and medications

This section requires that poisons and medications intended for external use only shall be clearly marked and kept in a separate locked compartment. This regulation is necessary in order to assure that these medications or other items, which would be harmful if taken internally, are properly segregated to avoid possible misuse by the staff. For this reason, the $250 penalty assessment is justified.

47. MHD 53 (j)(2) Medications - refrigeration

This section states that drug items which require refrigeration shall be kept in a specially locked, securely attached, and labelled, impervious container in a general use refrigerator. This section is necessary in order to assure that these medications are properly refrigerated, and at the same time, to assure that proper precautions are taken to avoid their misuse or loss in the facility. For this reason, the $250 penalty assessment is justified.

48. MHD 53 (j)(3) Cleaning agents

This section states that all substances such as cleaning agents, bleaches, etc. shall be clearly labelled and stored separately from drugs and foods. This section is needed in order to assure that these items will not mistakenly be substituted during the administration of medications and also to prevent any possible contamination of the medication supply. For these reasons a penalty assessment of $250 is justified.

49. MHD 53 (k) Medication containers

This section, which applies to boarding care homes only, is very similar to MHD 53 (c), number 42 above. For the reasons stated therein, the penalty assessment of $250 is justified.

50. MHD 54 (a)(1) Complete separation of linen

This section requires that there shall be a complete separation of the handling, collection, storage, transport and processing of soiled and clean linen in a nursing home. This regulation is required in order to prevent cross contamination of soiled and clean linen. For this reason the penalty assessment of $250 is justified.

51. MHD 54 (a)(3) Soiled linen

This section, which applies only to nursing homes, requires that soiled linen shall be removed from the patients bed without undue agitation, and placed directly into a lined, cleanable hamper or similar container. This section requires that the soiled linen shall be frequently removed, in the same container, to the soiled linen collection room or to the laundry. This section also establishes the requirements for proper handling of soiled linen. This regulation is necessary in order to prevent possible contamination, to prevent odors and to assure the proper cleaning of soiled linen. For those reasons the penalty assessment of $250 is justified.

52. MHD 54 (a)(4) Contaminated linen

This section, which applies only to nursing homes, provides that contaminated linen, such as linen from patients with an infectious drainage, dressing or pads shall be stored and sent to the laundry in separate bags which are plainly marked to indicate that the contents are contaminated. This section is required in order to assure that there will be no possible contamination of the other linen in a facility. For this reason the penalty assessment of $250 is justified.

53. MHD 54 (a)(5) Laundering of linen

This section establishes the requirements for the proper laundering of linen in a nursing home. The requirements of this section are minimally necessary to assure that the laundry is rendered pathogen free. For this reason, the penalty assessment of $250 is justified.

54. MHD 54 (a)(8) Sanitizing of nursing utensils

This section requires that all bedpans, urinals, wash basins and other personal nursing items shall be thoroughly cleaned after each use, shall be washed and sanitized at least weekly and before use by another patient. This section prescribes the procedures for a proper washing or sanitizing of these utensils. This regulation is necessary in order to assure that the proper steps are taken to keep

these utensils properly cleaned and sanitized and to prevent any possible contamination. For these reasons the penalty assessment of $250 is justified.

55. MHD 54 (b)(1), (b)(2) and (b)(3) Linen

These sections, which apply only to boarding care homes, state the proper procedures that must be taken in order to assure that the linen, in these facilities, is properly cleaned and handled. These sections are necessary in order to avoid any possible contamination from soiled linen and to assure that these items are properly handled by the staff. For these reasons a penalty assessment of $250 for a violation of each of these sections is justified.

56. MHD 55 (c) Dietary staff

This section outlines the requirements that must be met by the dietary staff in a boarding care or nursing home. This section outlines the proper procedures that must be taken for the training and selection of dietary staff members and outlines the precautions that must be taken in order to assure the sanitary handling of food in a facility. These regulations are necessary in order to protect patients and residents from possible contamination of their food sources. For this reason, a penalty assessment of $250 is justified.

57. MHD 55 (d) Food handling

This section outlines the procedures that must be taken to assure the proper handling of food supplies in a facility. This section requires that utensils, equipment and other food contact surfaces be thoroughly washed before being used for other foods, and also requires that persons handling raw products shall wash his or her hands before touching other foods or utensils. This section is necessary in order to prevent any possible contamination of food sources. For this reason, the $250 penalty assessment is justified.

58. MHD 55 (e) Adequacy of meals

This section requires that the food and nutritional needs of patients and residents shall be met in accordance with physicians' orders and shall, to the extent medically possible, meet the requirements contained in the 1968 Recommended Dietary Allowances established by the National Academy of Sciences. This section lists the daily food groups and quantities for each patient or resident that would meet the recommended daily dietary allowances. This regulation is necessary in order to assure that patients or residents in a facility receive an adequate diet. For this reason a penalty assessment of $250 is justified.

59. MHD 55 (f) Frequency of meals

This section requires that at least three meals shall be served at regular times during each 24 hour period. This section also requires that the meals shall be served in the dining room, and that bedroom trays shall be kept to a minimum. This section is necessary in order to assure that patients or residents in a facility receive frequent meals and that these meals be served in an area where proper supervision can be rendered. For this reason a penalty assessment of $250 is justified.

60. MHD 55 (g) Quality and variety

This section requires that the diet shall be palatable, of adequate quantity and variety, and prepared by methods which conserve nutritional value. This section requires that hot foods shall be served hot and cold foods shall be served cold. This section is necessary in order to assure that the quality of foods served in a nursing home or boarding care home is at a high standard, and also to assure that patients in these facilities receive a variety of foods. For these reasons a penalty assessment of $250 is justified.

61. MHD 55 (j) Returned food

This section prohibits the reuse of returned portions of food and beverages from individual servings unless such food or beverage is served in a sealed wrapper or container which has not been unwrapped or opened. This regulation is necessary in order to prevent any possible contamination and to assure that the quality of food served in a facility is maintained. For this reason a penalty assessment of $250 is justified.

62. MHD 55 (k) Food supplies

This section requires that all food supplies used in a boarding care home or a nursing home shall be from sources approved and considered satisfactory by the Board of Health. This section also states that no hermetically sealed, non-acid or low acid food which has been processed in a place other than a commercial food processing establishment shall be used. This regulation is necessary in order to assure that the suppliers of food to a facility have treated the food in a proper manner, and also, to prevent the use of food which has not been processed by a commercial food processing establishment. These items are necessary in order to maintain a high quality of food in a facility, and to prevent the possibility of food poisoning. For these reasons a penalty assessment of $250 is justified.

63. MHD 55 (l) Milk

This section requires that all fluid milk shall be procured from suppliers licensed by the Commissioner of Agriculture. This section also states the requirements that must be met for the proper dispensing of milk in a facility. This section is necessary in order to assure that the milk furnished in a nursing home is properly pasteurized, free from any contamination, and handled in the proper manner. For these reasons the penalty assessment of $250 is justified.

64. MHD 55 (m) Ice

This section requires that ice shall be stored and handled in a sanitary manner. This regulation is necessary in order to assure that the ice ussd in a facility shall be free from contamination. For this reason a penalty assessment of $250 is justified.

65. MHD 55 (n) Food containers

This section requires that all food or food products shall be stored in approved seamless covered containers after the opening of the original container. This section is necessary in order to assure that these items are stored in a proper manner which would prevent any possible contamination or infestation by vermin. For this reason, a penalty assessment of $250 is justified.

66. MHD 55 (o) Storage of nonperishable foods

This section states that nonperishable food and single service articles shall be stored off the floor on washable shelving in a ventilated room. This section is necessary in order to assure that these items are properly stored in a manner which would protect these items from dust, flies, rodents, vermin, overhead leakage and other sources of contamination. For this reason, the $250 penalty assessment is justified.

67. MHD 55 (p) Storage of perishable foods

This section states the requirements that must be met to assure the proper storage of perishable foods. This requirement is necessary in order to assure that these types of foods are properly handled in a manner which will prevent any possible spoilage or contamination. For those reasons the penalty assessment of $250 is justified.

68. MHD 55 (q) Prohibited storage

This section prohibits the storage of detergents, cleaners, pesticides and other non-food items, including employees'

personal items, in food storage areas. This regulation is necessary in order to prevent any possible contamination of food items in a facility. For that reason the penalty assessment of $250 is justified.

69. MHD 55 (r) Vending machines

This section provides that the storage and dispensing of food and beverages in vending machines shall be in accordance with the rules of the State Board of Health. This regulation is necessary in order to assure that items dispensed from these machines are handled in a safe and sanitary manner. For this reason the penalty assessment of $250 is justified.

70. MHD 55 (s) Transport of food

This section requires that food shall be covered during transport through nondietary areas, but need not be covered when served in a contiguous dining area. Steps shall be taken in order to assure that food shall remain hot or cold until served. This section also prohibits the use of a dumbwaiter or conveyor, which cab or carrier is used for the transport of soiled linen or dishes, for the transport of food. This section is necessary in order to prevent any possible contamination of food during the period in which the food is transported from the kitchen to the dining area. For this reason, the $250 penalty assessment is justified.

71. MHD 55 (t) Dishes and utensils

This section requires that only dishes and utensils with the original smooth finishes shall be used; cracked, chipped, scratched or permanently stained dishes, cups or glasses or damaged, corroded or open seamed utensils or cookware shall not be used. This section also establishes the procedures that should be followed for the proper storage of dishes and utensils. This section is required in order to assure that these items are safe for use and kept in a clean and sanitary condition. For this reason, the $250 penalty assessment is justified.

72. MHD 55 (u) Dishwashing

This section requires that the dishwashing operation in a facility provide proper separation in the handling of soiled and clean dishes and utensils; and shall conform with the required procedures for washing, rinsing, sanitizing and drying. This section is required in order to assure that dishes and utensils used by the facility are properly cleaned and sanitized in order to prevent any possible contamination of the food sources in the facility. For this reason, the $250 penalty assessment is justified.

73. MHD 55 (v) Floor cleaning

This section prohibits any major sweeping or mopping in the kitchen area during the time of food preparation. This regulation is necessary in order to prevent any possible contamination of the food in the kitchen area through the spread of dust and dirt which would occur during the sweeping or mopping operation. For this reason a penalty assessment of $250 is justified.

74. MHD 55 (w) Nondietary trash

This section states that trash, which is unrelated to dietary activities, shall not be transported through the food preparation or storage areas for disposal or incineration. This regulation is justified on the grounds that this prohibition reduces the possibility of contamination of the food sources in a facility. For that reason the penalty assessment of $250 is justified.

75. MHD 56 (a) Housekeeping

This regulation requires that the entire facility shall be maintained in a clean, sanitary and orderly condition and shall be kept free from offensive odors, dust, rubbish and safety hazards. This regulation is necessary in order to assure that the facility is kept in a safe and sanitary condition and free of hazards to patients, residents and staff. For this reason, the penalty assessment of $250 is justified.

76. MHD 56 (c) Solid waste disposal

This section requires that solid waste materials be collected, stored and disposed of in a manner that will not create a nuisance or fire hazard, nor provide a breeding place for insects or rodents. Again, this regulation is required in order to assure that the facility is kept in a sanitary manner and to avoid the unnecessary accumulation of trash, garbage, et. For this reason, the penalty assesement of $250 is justified.

77. MHD 56 (d) Garbage containers

This regulation requires that all containers used for the collection and storage of garbage shall be of seamless watertight construction with tightly fitting covers and kept in a sanitary condition. This regulation is necessary to assure that sanitary conditions are maintained by the home. These containers would help to prevent leakage and spillage; would reduce the spread of disease and odors; and eliminate possible breeding places for rodents and vermin. For these reasons, the penalty assessment of $250 is justified.

78. MHD 56 (e) Janitor's closet

This regulation requires that janitor's closet and other areas used by the housekeeping staff shall be kept in a clean, sanitary and orderly condition. Included among these requirements is the provision that disinfectants, pesticides and other toxic substances be clearly identified and properly stored in a locked cabinet or enclosure. This measure is necessary to assure that all areas in a facility are kept in a sanitary condition to avoid the spread of odors, dust, and to prevent any possibility of contamination through the accidental use of toxic substances. For this reason, the penalty assessment of $250 is justified.

79. MHD 56 (g) Insect and rodent control

This section requires the elimination of any condition on the site or in the facility conducive to the harborage or breeding of insects, rodents or other vermin. The facility is also required to maintain a continuous pest control program. This regulation is necessary to assure that the facility is kept free from insects, rodents and other disease carrying vermin. For that reason, the $250 penalty assessment is justified.

80. MHD 56 (i) Screens

This section requires that all outside openings such as doors, operable windows or louvers shall be protected by screening. The section states the type of screening required and how they should be installed. This regulation is necessary to prevent the entrance of flies, mosquitoes, rodents, etc. For this reason, the penalty assessment of $250 is justified.

81. MHD 56 (j) Disposal of special waste

This section, which applies only to nursing homes, requires that materials or waste such as dressings or disposable pads which are infectious or suspected of presenting a potential health hazard shall be collected in a manner which will prevent transmission of disease, and shall be incinerated. The section also requires that needles and similar medical single use items shall be destroyed before disposal unless incinerated. This regulation is necessary in order to assure that these waste items are properly handled and properly disposed of. This regulation assures that a facility will take the necessary steps to dispose of these items in a safe and sanitary manner. For these reasons, the $250 penalty assessment is justified.

82. MHD 56 (k) Prohibited sink uses

This regulation, which applies only to nursing homes, states that a flushing rim service sink in a soiled utility room shall not be considered as a substitute for, nor shall it be used as a janitor's service sink. A janitor's service sink shall not be used for disposal of urine, fecal matters, or other human wastes. This regulation is justified on the grounds that it assures that a facility will have the facilities to dispose of waste matter in the proper manner. For this reason, the penalty assessment of $250 is justified.

83. MHD 63 (a) New construction site

This regulation lists various factors that are to be used in selecting the building site for a new facility. This regulation is justified on the grounds that a health care facility must be so located as to promote at all times the health, comfort, and safety of patients and residents. The site selection factors provide a means by which a determination can be made as to the suitability of a particular piece of property for use as a nursing home or boarding home. The factors include the accessibility of public utilities, water supply, sewer and waste disposal systems, access to community and medical services, distance from hazards such as swamps, drainage areas, underground storage tanks, gas installations, etc.; topography, grading, and other conditions necessary to assure that a suitable, safe site is selected. For these reasons, the penalty assessment of $250 is justified.

84. MHD 64 Patient or resident areas

MHD 64 contains the physical plant requirements for patient and resident areas in a nursing home or in a boarding care home. Due to the complexity and number of these requirements a specific section by section justification will not be undertaken. Except as noted elsewhere, all of the sections in MHD 64 will be assessed at the $250 level for failure to comply with a correction order. The requirements contained in this regulation are necessary in order to assure that the patient and resident areas are constructed and maintained in a manner that will assure patient comfort, health and safety. For this reason the imposition of the $250 penalty assessment for each section of this regulation is justified.

85. MHD 65 Supportive area services

MHD 65 establishes the physical plant requirements for the supportive service areas in a nursing home and boarding care home. These areas include, among others, the dining and activity areas and the dietary and laundry facilities.

Due to the complexity and number of sections contained in MHD 65, a specific justification for each section will not be done. Each of these sections will be subject to a penalty assessment of $250 for failure to comply with a correction order. The $250 penalty assessment is justified on the grounds that the requirements found in this regulation are important in order to assure that these areas are constructed and maintained in a manner that will assure the comfort, health and safety of the patients and residents.

86. MHD 66 Construction details, chutes and elevators

MHD 66 contains a number of requirements that must be complied with during the construction of new facilities and provided for in existing facilities. These requirements will not be specifically discussed, however, some of the items covered by this regulation relate to ceiling heights, overhead piping, walls, linen and trash chutes and elevators. Each item in these regulations will be subject to a penalty assessment of $250. These requirements, like those contained in MHD 64 and 65 discussed previously, are important and necessary to assure that the facility is constructed and maintained in a manner that will assure the comfort, health and safety of patients and residents. For that reason, the penalty assessment of $250 is justified.

87. MHD 67 Mechanical and electrical systems

MHD 67 establishes the requirements for the construction, operation and maintenance of mechanical and electrical systems in a nursing home or boarding care home. Due to the complexity and number of the sections a specific justification for each section will not be provided. Each of these sections is subject to a penalty assessment of $250 for failure to comply with a correction order. This assessment is justified on the grounds that these items are necessary in order to assure that the mechanical and electrical system in a facility are constructed, maintained and operated in a manner which will protect the comfort, health and safety of patients and residents.

II. REGULATIONS RELATING TO THE MEDICAL TREATMENT OF PATIENTS AND RESIDENTS

A. Regulations requiring a $250 penalty assessment for noncompliance with a correction order.

1. MHD 49 (c)(1) Physician's examinations and orders

This section requires that each patient or resident shall have an admission medical history and complete physical examination performed and recorded by a physician within five days prior to or within 72 hours after admission. This section lists the items that must be included in the

admission medical history. This regulation is necessary in order to assure that the physical condition of a patient or resident will be assessed as soon as possible. A prompt determination of the physical condition of the patient is important since this determination must be made before treatment, rehabilitation, or the administration of medications can be started. For this reason, the $250 penalty assessment is justified.

2. MHD 49 (c)(2) Physical examination

This section requires that a physical examination shall be given to a nursing home patient at least every six months and to residents in a boarding care home at least annually. A progress note shall be recorded in the patient's or resident's record at the time of each examination. The importance of this section is to assure that the physical condition of patients or residents is evaluated by a physician at periodic intervals to determine whether these individuals are receiving the treatment that their physical condition warrants. For this reason, the penalty assessment of $250 is justified.

3. MHD 49 (c)(3) Temporary orders

This section requires that if orders for the immediate care of a patient or resident are not available at the time of admission, the emergency physician shall write temporary orders which are effective for a maximum of 72 hours. This regulation is necessary in order to assure that a patient or resident can receive immediate care, if required, prior to the work-up of his or her medical history. The time limit of 72 hours prevents the treatment prescribed to be continued for an indefinite period without a thorough physical evaluation. For these reasons, the penalty assessment of $250 is justified.

4. MHD 49 (e) Emergency dental care

This section requires that a nursing home or boarding care home shall have a written agreement with a licensed dentist to provide emergency dental care when necessary. This section is necessary in order to assure that prompt dental care shall be available when needed. For this reason, the penalty assessment of $250 is justified.

5. MHD 50 (g) Rehabilitation nursing care

This section, which applies only to nursing homes, requires that there shall be an active program of rehabilitation nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence as recorded in the patient care plan. This

regulation requires that the home shall take the necessary steps to encourage ambulation, to prevent deformities through proper body positioning, to implement a bowel and bladder training program and to take all necessary steps to assure that the proper rehabilitation nursing care is given to patients in the homes. This section lists six measures which must be carried out by the nursing home. Among these measures is the proper positioning of patients, maintaining a bowel and bladder program and encouraging patients to achieve independence in the activities of daily living. This type of care is important to the patients since it is a means by which these individuals can achieve some level of independence and self-care. Proper rehabilitation is a means by which patients in a nursing home can retain their dignity and self-respect. For these reasons, the $250 penalty assessment is justified.

6. MHD 50 (h) Patient care plan

This regulation requires the development of a patient care plan for each patient in the nursing home. This is a personalized plan of daily care based on the nature of the illness, treatment prescribed, and the long and short term goals established for the patient. These plans are to be used by the staff involved in the care of the patient and are to be revised when necessary. The plans shall be kept current. This section has two subdivisions which contain the items which must be contained in these plans: the physician's orders for medications, treatment, etc. and the type of care and services required. These plans are important for the overall care of the patient since they contain the treatments and medications received and also contain the steps that must be taken to assure a high level of quality nursing care. These plans provide a guideline to the staff for the care and treatment of individual patients and is a means to assure that patients in a facility receive personalized treatment based on their individual needs. For these reasons, the penalty assessment of $250 is justified for a violation of any part of this regulation.

7. MHD 50 (i) Assistance with eating

This section requires the nursing personnel in a facility to determine whether or not patients are receiving their diets as prescribed. This section also requires that, if patients need help in eating, prompt assistance will be rendered upon receipt of the meal and such assistance shall be unhurried. The food and fluid intake shall also be observed and any deviation from the normal shall be reported. This section is necessary in order to assure that patients receive their prescribed diets; that patients are able to eat their meals while the food is still palatable; and to

also assure that patients are, in fact, eating their meals. For these reasons, the $250 penalty assessment is justified.

8. MHD 51 (c) Restraints

This regulation prohibits the admission or retaining of disturbed mental patients in a facility. If a person in a facility becomes suddenly disturbed, temporary measures are to be taken by the person in charge to protect that person and other persons in the facility from harm. If a restraint is necessary, this must be applied only upon a physician's written order. When a restraint is being used, a special attendant shall be on duty on the floor or section of the facility where the patient is located. A full record on the use of restraints must be kept by the facility. This section is required in order to prevent the unauthorized use of restraints. However, since restraints are occasionally necessary to control and protect patients, this section allows their use under certain conditions and limitations. These limitations are necessary to prevent a facility from using restraints as a means to confine or control a patient without sufficient reason. For this reason, the penalty assessment of $250 is justified.

9. MHD 51 (e)(2) Patient care - skin care

This section requires that there shall be an ongoing program for care of the skin. Measures shall be taken to assure proper bathing, to prevent pressure sores, to provide treatment, if necessary, to position patients properly, etc. The measures, which apply to nursing homes only, are necessary to assure that the patient in a facility receives proper skin care and to prevent the occurrence of pressure sores. For this reason the penalty assessment of $250 is justified.

10. MHD 51 (e)(4) Patient care - in-service training

This section requires that there shall be a continuous in-service training program in rehabilitation for all nursing personnel. Items to be covered during these training programs include ways to promote ambulation and self-help, maintenance and range of motion, proper positioning, etc. This section is justified on the grounds that the staff in a facility must be aware of the proper rehabilitation techniques and procedures in order to render and maintain a high quality of patient care. For these reasons, the penalty assessment of $250 is justified.

11. MHD 53 (a)(1) Administration of medications

This section requires that all medications shall be administered only on a written order signed by a licensed physician

or dentist. However, orders given by the telephone are allowed provided that these orders are authorized by a physician or dentist, recorded by the person so authorized and signed by the physician or dentist within seven days. All medications shall be reviewed at least every three months by the charge nurse and attending physician. This regulation is justified on the grounds that proper precautions must be taken by a facility to assure that all medications are properly administered and to also assure that the continued use of a medication over a long period of time is warranted. For these reasons, the penalty assessment of $250 is justified.

12. MHD 53 (d) Record of medications and narcotics

This regulation requires that all medications administered shall be recorded on the medication and treatment record or in the nurses' notes on the patient's chart. The information shall include the type of drug, the time administered and the initial of the person who administered the drug. The section specifies other precautions which must be taken in developing a record of medications handled by the facility. This section is required to assure that patients and residents receive the proper drugs, in the proper manner and at the proper times. The medication records are also important in assuring that patients do not receive medications which are incompatible with one another. For these reasons, the penalty assessment of $250 for each requirement in this section is justified.

13. MHD 53 (d)(1) Narcotic record book

This section requires that the facility maintain a bound notebook containing a record of the name of all narcotics received, to whom given and lists other information that is required to be provided. This regulation is necessary to assure the proper handling of narcotics, to establish a means to control the use of narcotics and to assure that patients receive the proper dosage of these drugs. For this reason, the penalty assessment of $250 is justified.

14. MHD 53 (d)(2) Proof of use system

This section permits the development of a proof of use system in a C&NC unit of a hospital when the hospital has a licensed pharmacy on the premises. This regulation is necessary in order to assure that proper controls are taken in the dispensing of controlled substances if they are retained in stock bottles at the nursing station. For this reason, the penalty assessment of $250 is justified.

15. MHD 53 (1) Record of medications

This section, applying only to boarding care homes, requires these facilities to record all medications distributed to each resident on the resident's personal care record. This regulation is necessary to assure that proper controls over the administration of medications are taken. For this reason, the penalty assessment of $250 is justified.

16. MHD 55 (a) Dietary service

This requirement applies to any facility receiving individuals in need of a medically prescribed therapeutic diet. The regulation requires that these facilities receive regularly scheduled dietary consultation by a qualified dietitian or nutritionist unless the facilities dietary supervisor qualifies. This regulation is necessary to assure that the therapeutic diets are properly prepared and served in accordance with the physician's orders. For this reason, the penalty assessment of $250 is justified.

III. REGULATION RELATING TO PATIENT AND RESIDENT COMFORT

A. Regulations requiring a $50 penalty assessment for noncompliance with a correction order.

1. MHD 52 (a)(2) Patient or resident units - furnishings

This section requires that at least one comfortable chair shall be provided for each patient or resident. This requirement is necessary to assure that a patient has comfortable living quarters. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since non-compliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

2. MHD 52 (a)(3) Patient or resident units - storage

This section requires that necessary facilities shall be provided for the storage of patient's clothes. This regulation helps to assure that a patient shall live in a comfortable environment and provides easy access to his clothing and personal belongings. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since

noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

3. MHD 52 (a)(4) Patient or resident units - bedside table

This section requires that a bedside table shall be provided for each patient or resident. Again, this section assures that a patient or resident will have personal items within easy reach and is especially important for those patients that are confined to bed. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

4. MHD 52 (a)(9) Patient or resident units - bed light

This section requires that a bed light providing a minimum of 30 foot-candle intensity be conveniently located for reading or for doing handiwork in bed or in an adjacent chair. As with the other sections discussed under MHD 52 this section is also important for the comfort of the patient. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

5. MHD 52 (d) Day rooms

This section requires that each day room in a facility shall be provided with reading lamps, tables and chairs of a satisfactory design for patients and residents. This section is also important for the comfort and convenience of the patients and residents since the day room provides a convenient location for every patient or resident to meet with relatives or other members of the facility. The

day room also provides a location outside of their own bedroom to socialize with other patients or to be used simply as a change of scenery. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

6. MHD 52 (e) Dining room

This section requires that the furnishings in the dining room shall be well constructed and designed for use by patients and residents in a facility. This section also requires that the tables in the dining area shall be of a type that can be used by persons confined to a wheelchair. Like the day rooms, discussed above, the dining room is also an area where patients can socialize with other patients and residents and provides a change of scenery from their own rooms. Thus, it is important that the furnishings in the dining room can be conveniently and comfortably used by the patients and residents in the facility. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

7. MHD 54 (a)(7) Laundering of personal clothing

This section requires that the personal clothing and other nonlinen items of patients shall be laundered in accordance with the proper washing procedures and shall be ironed, mended and labelled as necessary. This section states that outside cleaning services are acceptable. This section is also important to patient comfort due to the fact that the patients and residents in a facility are generally unable to obtain cleaning services for their personal items. In order to assure that patients are properly and neatly dressed it is important that the facility takes steps to provide this service. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance

with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

8. MHD 54 (b)(5) Laundering of personal clothing

This section is very similar to MHD 54 (a)(7), discussed above, which applies solely to nursing homes. (b)(5) applies to boarding care homes and allows the use of domestic type washers and dryers for handling patients personal belongings. The use of domestic washers and dryers are allowed in boarding care homes due to the fact that the types of patients in a boarding care home do not require the type of sanitary precautions that usually apply to patients in a nursing home. The reasons stated in MHD 54 (a)(7) for the necessity of this section apply equally well here. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

B. Regulations requiring a $250 penalty assessment for noncompliance with correction orders.

1. MHD 49 (d) Dental care

This section requires that patients and residents shall be provided with dental services appropriate to their needs. This section is important in order to assure that all patients and residents in a facility are able to receive proper dental care whenever necessary. For this reason a penalty assessment of $250 is justified.

2. MHD 49 (g) Dentist's recommendations

This section requires that the personnel in a home shall assist patients and residents in carrying out dentist's recommendations. Like MHD 49 (d) this section also helps to assure that the patients receive proper dental care, a vital factor in assuring their overall comfort. For this reason a penalty assessment of $250 is justified.

3. MHD 49 (h) Identification of dentures

This section requires that a procedure should be established for the accurate identification of dentures. This section is also important to the comfort of the patient by assuring that the patient's own dentures are identified to prevent their loss or distribution to another patient in the facility. For this reason a penalty assessment of $250 is justified.

4. MHD 51 (a) Criteria for determining adequate care

This section contains various criteria which will assure that each patient or resident receives nursing, personal or custodial care and supervision based on his or her individual needs. This section contains eight subdivisions, each of which require a penalty assessment of $250. The penalty assessment for each of these sections is justified on the grounds that these criteria are means to assure that patients are treated in a considerate manner and that their personal needs are met by the staff at the facility. These eight subdivisions will assure that patients are treated as individuals. Subdivision 1 requires that the facility shall provide evidence of adequate care and kind and considerate treatment of patients and residents at all times, and also requires that the privacy of the patients shall be respected and safeguarded; subdivision 2 requires that the skin be kept clean and that the patient or resident be kept free from offensive odors; subdivision 3 requires a minimum of monthly shampoos and assistance with daily hair grooming be provided; subdivision 4 requires assistance with or supervision of the shaving of male patients or residents; subdivision 5 requires assistance as needed with oral hygiene; subdivision 6 requires that there be proper care and attention to hands and feet; subdivision 7 requires that clean linen be provided at all times; and subdivision 8 requires that the patients be provided with clean clothing and helped to maintain a neat appearance; subdivision 8 also requires that patients and residents shall be dressed during the day whenever possible. These eight subdivisions are important in order that a patient or resident in a facility feels that he is being treated as an individual and in order to assure that his personal dignity is maintained.

5. MHD 51 (e)(1) Patient care - bathing

This section, which applies only to nursing homes, requires that a resident in a nursing home be given a complete bath at least every other day and more often as indicated for patients confined to bed. Incontinent patients shall be checked at least every two hours and shall have partial baths and clean linen each time the bed or clothing is

soiled. This section is important in order to assure that the comfort of patients in nursing homes is provided. For this reason a penalty assessment of $250 is justified.

6. MHD 51 (e)(3) Patient care - fresh water

This section, which applies only to nursing homes, requires that there shall be an availability of fresh, cold water and other fluids at the bedside for all patients, unless fluids are restricted. Again, this section is important in helping to assure the comfort and fluid balance of patients in a nursing home. For this reason a penalty assessment of $250 is justified.

7. MHD 52 (a)(1) Patient and resident units - bed

This section requires that a comfortable bed, at least 36 inches wide, with good springs and a clean, firm and comfortable mattress, shall be provided for each patient and resident. This section also requires that the bed shall be kept in good condition; clean linen supplied at least weekly, or as needed; and that each bed shall have a moisture proof mattress cover. These requirements are important in order to assure that the comfort, health and safety of patients and residents is protected. These requirements assure that the patients will be provided with a comfortable bed, which is important for their own personal comfort. The requirement of providing a bed with good springs and a firm and comfortable mattress helps to assure patient and resident comfort and also is important in reducing the occurrence of pressure sores. The provisions relating to clean linen are important in order to assure that the bed is kept in a clean and sanitary condition. For these reasons, the $250 penalty assessment is justified.

8. MHD 52 (a)(8) Patient or resident units - handwashing facilities

This section requires that a handwashing facility, with a mirror, be located in the patient's or resident's room or convenient to such room for the use of patients, residents and personnel. This requirement is important to the comfort of patients and residents by assuring that handwashing facilities will be easily accessible. In addition, the convenient location of these facilities will help to assure that the staff adhere to the facilities established policies and procedures relating to personal hygiene. For these reasons, the $250 penalty assessment is justified.

IV. REGULATIONS RELATING TO THE PERSONAL WELL-BEING OF PATIENTS AND RESIDENTS

A. Regulations requiring a $50 penalty assessment for noncompliance with a correction order.

1. MHD 46 (k) Procedure at death

This section requires that when a patient or resident dies in a facility the administrator, nurse or person in charge shall contact a relative, guardian or the placement agency regarding the funeral arrangements. This section also requires that the body shall be separated from other patients and residents until removed from the home. This section is necessary in order to assure that relatives of the deceased are contacted as soon as possible and also to assure that prompt action is taken to provide for the disposition of the body. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since non-compliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

2. MHD 55 (i) Food habits and customs

This section requires that there shall be reasonable adjustments to the food habits, customs, likes and appetites of individual patients and residents. This regulation helps to assure that patients and residents in a facility are provided, when reasonably possible, with foods that they are used to receiving. This section helps to develop and maintain a homelike environment for residents or patients in a nursing home or boarding care home. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

B. Regulations requiring a $250 penalty assessment for noncompliance with a correction order.

1. MHD 45 (g) Agreement as to rates and charges

This section requires that at the time of admission there shall be a written agreement between the home and the patient or resident or his relative or guardian regarding the base rate, extra charges made and the obligations

concerning the payment of such rates and charges. This section also requires that all bills from the facility shall be itemized as to the services rendered. This regulation is important in order to assure that the patient or his relatives have an exact determination of the cost of admitting a patient to a specific facility. The establishment of a written agreement as to rates and charges will assure that the patient is aware of the cost of being admitted to the facility, will prevent a facility from overcharging a patient and from providing services which are not required by the patient and also helps to assure that the patient will not be burdened by financial problems. A written agreement entered into at the time of admission clearly establishes whether a patient can, in fact, afford the type of facility he would be admitted to. For these reasons the imposition of a $250 penalty assessment is justified.

2. MHD 46 (e) Mail

This section provides that patients shall receive their mail unopened unless a legal guardian has requested in writing that the mail be reviewed. This section also provides that outgoing mail shall not be censored. This section protects the patient's right of privacy and also allows patients to freely communicate their opinions regarding the quality of service they are receiving. For these reasons a penalty assessment of $250 is justified.

3. MHD 46 (f) Funds and possessions

This section requires that no home shall handle the personal business affairs of a patient or resident without written legal authorization by his legal guardian. This section prohibits homes from interfering in the financial affairs of a patient without proper authorization and also assures that the funds of a patient will not be mishandled by a facility. For this reason a $250 penalty assessment is justified.

4. MHD 48 (a)(8) Record of patients' and residents' funds

This section requires that the home shall keep a record of any personal funds, regardless of the source, and of any valuables kept for a patient or resident. This section also requires that if the home makes purchases from these personal funds proper receipts shall be kept and notations made in a separate bookkeeping system. Like MHD 46 (f) this section helps to assure that the patient's funds will not be mismanaged by a facility. For this reason and for the reasons contained in MHD 46 (f) a penalty assessment of $250 is justified.

5. MHD 50 (b) Activities program

This section requires that there shall be an organized social and recreational activities program in all facilities which shall be designed to meet the normal needs of all patients and residents for occupation, diversion and maintenance. This section is important in order to create a normal living environment which is compatible with the needs and interests of the majority of patients and residents. These programs will help the patient and resident to function at his maximum physical, mental, social and emotional capacity. An organized activities program will help to create a homelike atmosphere for the patients. For these reasons a penalty assessment of $250 is justified.

6. MHD 50 (c) Spiritual needs

This section requires that a facility shall provide adequate facilities and make arrangements to meet the spiritual needs of the patients and residents. Since many patients in a nursing home or boarding care home are unable to make arrangements of their own to go any distance to the church service of their choice, it is important that arrangements are made by the facility to give these patients a chance to attend church services or a chance to talk to the clergy of their choice. The requirements of this section help to assure that the personal religious preferences of patients and residents are guaranteed. For this reason, the $250 penalty assessment is justified.

7. MHD 52 (a)(6) Cubicle curtains

This section requires that cubicle curtains be provided in all multibed rooms. This section is important in order to assure that the patients or residents in a multibed room are able to maintain their own personal privacy and dignity. For this reason, a $250 penalty assessment is justified.

V. REGULATIONS RELATING TO THE OPERATION AND MAINTENANCE OF A NURSING HOME AND BOARDING CARE HOME

A. Regulations requiring a $50 penalty assessment for noncompliance with a correction order.

1. MHD 44 (a) License to be posted

This regulation requires that the license issued to a facility be conspicuously posted. This regulation is necessary in order to provide a means by which the public can easily determine whether a facility is properly licensed by the state. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and

management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

2. MHD 44 (p) Homes not to be misrepresented

This regulation prohibits the use of certain words in the title of a facility such as hospital, sanitorium, etc., which would indicate that a type of care or service is provided which is not permitted under the licensing law. This section is justified on the grounds that such misrepresentation would constitute a fraud in the public and, in effect, would also constitute unfair advertising. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

3. MHD 44 (q) Separate licenses

This regulation provides that a separate license shall be required for institutions maintained on separate premises even though operated under the same management. The nursing home license is only issued to a facility which has demonstrated that the physical plant and the operation of the home comply with the regulations of the State Board of Health. Even though a number of homes can be operated by one management unit, the license is issued for the individual home only after a department inspection. In order to assure that each facility in the state complies with the regulation of the board, it is essential that separate licenses be maintained. However, it should be noted that separate buildings maintained by the same owner on the same premises need not receive an individual license. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide overall high quality of care; and would not jeopardize

the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

4. MHD 44 (s) Preliminary planning

This section requires that the department be contacted to discuss the pertinent aspects of planning a new care facility or purchasing or leasing an existing care facility. In order to be licensed, a nursing home or boarding care home must comply with the regulations of the State Board of Health. In order to assure that a new home is planned in accordance with these regulations contact must be made in the initial stages of development to assure that the prospective owners are aware of the department regulations. This section also serves as a protection to the prospective owner or leasee of a facility by making him aware of the requirements that must be met prior to licensure by the State Board of Health. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

5. MHD 44 (t) Procedure for licensing

This section outlines the requirements that must be met prior to the issuance of a license. Among some of the required items are the filing of an information questionnaire, filing of an application and the filing articles of incorporation or a certificate of authority to do business in Minnesota, where appropriate. This regulation also requires that no license can be issued until all inspections and clearances have been complied with. This section is necessary in order to assure that a determination is made that a home complies with the regulation and will be operated in accordance with the regulations. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

6. MHD 44 (q) No discrimination

This section prohibits discrimination against patients, employees or staff on the grounds of race, color or national origin. This regulation is necessary in order to protect the rights of persons admitted to, or employed by a facility. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since non-compliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

7. MHD 45 (a)(3) Licensee - notice of termination

This section requires that the Board shall be notified of the termination of service of the administrator or person in charge of a facility. The Board shall also be notified upon the appointment of a replacement. This section also provides that the governing body of a nursing home shall not employ a permanent administrator until that person qualifies for licensure as a nursing home administrator. This regulation is important in order to assure that only qualified individuals are hired as the administrator of a nursing home or as the person in charge of a boarding care home. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

8. MHD 45 (f) and MHD 48 (a)(5) Census register

These two regulations require that every facility maintain a permanent chronological census register for all persons admitted to the facility. This regulation is necessary in order to provide a means for determining the number of patients admitted to a facility and to also determine the length of stay for that person. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would

not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

9. MHD 45 (h)(1) Responsibilities of the administrator or person in charge

This section lists the responsibilities of the administrator or person in charge: included among these responsibilities is the maintenance, completion and submission of reports and records as required by the Board. One of the ways to determine whether quality nursing care is provided in a health facility is to document what services are actually provided to the residents in that facility. For this reason the Board has required operators of facilities to submit various documents establishing the type of services that they provide. These reports are important to the Board in that they are a means by which to monitor the type and quality of care provided. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

10. MHD 45 (h)(2)(aa) Formulation of written policies - personnel records

Under this section the administrator is responsible for the formulation of various types of policies and procedures. This section requires that the administrator shall maintain current personnel records for each employee. The requirements for a proper personnel record are contained in MHD 48 (8)(a)(11) which will be discussed later. Among the requirements that must be contained in these records are the type of training received by the individual, past work experience, physical condition, etc. These records are a means to determine whether the personnel in the facility are capable of rendering the type of care that the facility provides. MHD 48 (a)(11) also requires that evaluations of an employee be completed. These evaluations are another means of determining the type of staff that is in a facility. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management

of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

11. MHD 45 (h)(2)(ff) Responsibilities of the administrator or person in charge

This section requires the administrator or person in charge of a facility to develop written personnel policies which specify hours, conditions, benefits, etc. The Board is aware of the vital role the staff of a facility has in assuring a high level of patient care and service. This regulation is important since it provides a means to assure that the staff is aware, upon hiring, of the type of work required of them and the benefits they can expect to receive from the facility. This regulation helps to assure that the staff in a facility is properly treated. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

12. MHD 45 (h)(4) Channels of communication

This regulation, like MHD 45 (h)(2)(ff), also relates to the personnel policies of the facility by requiring the development of channels of communication with employees. This regulation assures that measures are taken to make the staff aware of the policies of the facility and provides a means by which concerns of the employees can be effectively communicated. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

13. MHD 46 (a) Visiting hours

This regulation requires that the visiting hours of a facility be posted. Exceptions are provided for clergy and for the relatives of a critically ill patient. The purpose of the regulation is to assure some order and stability in the operation of the home, and also to assure, in some degree, the privacy of patients in a facility. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

14. MHD 46 (b) Telephone

This regulation requires at least one noncoin operated telephone which is accessible for use in emergency situations, and also requires that patients have access to a public phone within the building. The importance of this requirement, especially in an emergency situation is obvious. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

15. MHD 46 (j) Outside services

This section requires that when laundry or food service is obtained from an outside agency or establishment, such service shall be provided pursuant to a written agreement which shall specify that the service meets the same standards as are required under these regulations. This section is necessary in order to assure that the items furnished by the outside agencies comply with the standards established in the regulation. However, failure to obtain the written agreement does not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability

of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

16. MHD 47 (c) Assignment to extra duties

This regulation prohibits the assignment of a person to two consecutive work shifts, except in a documented emergency. This regulation is necessary in order to assure that the staff in a facility remain efficient and competent. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeoparidze the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

17. MHD 47 (e) Personal belongings

This section prohibits the personnel in the facility from keeping wraps, clothing or other belongings in the food service or patient and resident areas. Provision for these items shall be made elsewhere. This section is necessary in order to assure that these items are stored in a proper manner away from patient and resident areas. This section eliminates the possible safety hazards that these items could create if placed in areas open to patient and residents. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

18. MHD 48 (a)(4) Storage and preservation of records

This regulation requires that a facility provide safe storage of patient and resident records at the nurses or attendants station, and also, requires that general storage for these records be provided. This regulation also requires that records be stored for a period of ten years following discharge or death. This regulation is required in order to assure that a resident's records are available to the staff in a convenient location, and also to assure that records

will be properly stored when not in immediate use. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

19. MHD 48 (a)(6) Reports to the Department

This section requires that reports regarding statistical data and services furnished by a facility shall be submitted on forms furnished by the Department. Copies of these reports shall be maintained by the facility. This regulation is necessary since these reports are a means to monitor the type of care and services provided by the facility. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

20. MHD 48 (a)(7) Correspondence with Department

This regulation requires that all correspondence with the Department shall be kept as a permanent accessible record. This regulation is necessary to assure that the facility is aware of all policies of the Department and also to assure that the facility has a means of documenting correspondence with the Department. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

21. MHD 48 (a)(9) Policy records

This regulation requires that all policies and procedures adopted by the home shall be placed on file and be made readily accessible to the staff of the facility. This regulation is important in order to assure that the staff is aware of these policies and to assure that these policies are available for easy reference. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

22. MHD 48 (a)(11) Employee's personnel records

This section contains the requirements that must be placed in the personnel records of all employees in the facility. Among some of the requirements that must be contained in these records are a resume of the individual's training, experience, previous employment; the dates and results of any preemployment physical examination and any subsequent physical examination; type of position held in the home; and a listing of all institutes or training courses attended. The purpose of these records is to provide a means by which the quality of an employee can be easily determined and to assure that the physical condition of the employee would not jeopardize the patients and residents in the facility. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

23. MHD 50 (a) General - adequate staffing

This regulation establishes some general policies relating to the staffing of a home. Included in this section is the requirement that staff of a facility wear name badges. This regulation is necessary in order to provide some means by which patients, visitors, and inspectors can identify the names and position of staff. However, since the provisions in this section do not relate directly to

the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

24. MHD 50 (j) Educational opportunities

This regulation requires that a facility shall provide opportunities for personnel to attend educational programs. This regulation is important to assure that the staff of a facility is given an opportunity to maintain and improve their professional competence. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

25. MHD 64 (a)(22) and MHD 64 (b)(15) Room numbering

This regulation requires the numbering of all bedrooms and service rooms in a facility. This regulation is necessary in order to assure that rooms can be accurately identified during inspections. However, since the provisions in this section do not relate directly to the provision of patient care nor to the financial stability of the operation and management of the facility; and since noncompliance with the requirements in this section would not present a hazard to the health and safety of patients and residents; would not substantially affect the capability of the facility to provide an overall high quality of care; and would not jeopardize the patients' or residents' property, personal rights or dignity; a penalty assessment of only $50 is justified.

B. REGULATIONS REQUIRING A $250 PENALTY ASSESSMENT FOR NONCOMPLIANCE WITH A CORRECTION ORDER

1. MHD 44 (l) and (m) Types of patients and residents not to be received; and children not to be received

This regulation establishes certain categories of individuals who are not to be received into a nursing home or boarding

care home. Included in this classification are maternity patients, distrubed mental patients, patients having or suspected of having communicable diseases and children. The purpose of this regulation is to protect the patients and residents in a facility from harm, to limit the spread of communicable disease, and to assure that homes do not admit patients who cannot receive proper and adequate care. Noncompliance with this regulation could pose a health and safety hazard to patients and residents in a nursing home or boarding care home. For this reason, the penalty assessment of $250 is justified.

2. MHD 44 (n) Capacity prescribed

This section requires that each license specify the maximum allowable number of patients or residents to be cared for at any one time. This section prohibits a facility from admitting a greater number of patients or residents than the number specified on the license. This section will prevent overcrowding and assures that a facility will only admit the number of patients or residents that can properly be cared for. For this reason, the $250 penalty assessment is justified.

3. MHD 44 (r) Evaluation

This section provides that facilities shall be subject to evaluation and approval of the physical plan and its operational aspects prior to a change in ownership, classification, capacity or services. The assessment of $250 is justified since any change in classification, capacity or service must be based on a consideration of whether the facility is capable of handling such a change. Without an evaluation by the Department it would be possible for a facility, once licensed, to change capacity or service level even if physical structure and operation of the facility would not be able to handle such a change. This regulation would also protect a new owner from purchasing a facility which is not in compliance with this regulation. In order to protect the owner and to assure patients that a facility is capable of handling an increased capacity or change in service level the $250 penalty assessment is justified.

4. MHD 45 (a)(1) Licensee - disclosure of interest

MHD 45 (a) establishes the responsibilities of the licensee and sets forth various items which must be met. MHD 45 (a)(1) requires the full disclosure of each person having an interest of 10% or more in the ownership of the home. This section also requires, where appropriate, the names of officers in a corporation, the members of a partnership, and the names of persons or entities having an interest in

a lessee organization. This regulation is important in order to enable the Board to determine who, in fact, is behind the operation of a home. This information would be helpful in determining who will be responsible for the operation and management of the home and will also provide a determination as to the resources held by the licensee. Due to the importance of reaching actual determination of ownership the imposition of the $250 penalty assessment is justified.

5. MHD 45 (a)(2) Appointment of administrator

This section states that one of the responsibilities of the licensee is the appointment of a licensed nursing home administrator or person in charge who will be responsible for the operation of the home. The State Board of Health regulations do not require that the licensee of a home be a nursing home administrator. The Board, in fact, does not license a nursing home owner but rather licenses the facility itself. The license states that the home and not the owner is in compliance with State laws. Thus it is important that the person who shall be responsible for the operation of the home meet the requirements of State law. The actual operation of a facility will depend heavily on the skills and abilities of the administrator or person in charge. For this reason, the $250 penalty assessment is justified.

6. MHD 45 (a)(4) Competent staff

Another responsibility of the licensee is to provide competent staff and to assure the maintenance of professional standards. The staff carries a primary burden of assuring that the residents or patients in a facility receive quality care and that the needs of the patients or residents are met. Failure to provide for a good staff and to assure that the professional standards of the staff are maintained will lead to innumerable problems. Regardless of the quality of the physical plant, the staff is a prime factor in assuring that the quality of care given in a facility is maintained. For these reasons, the penalty assessment of $250 is justified.

7. MHD 45 (a)(5) Employment of qualified personnel

This section requires that a licensee be responsible for providing competent staff in areas of food service, housekeeping, laundry and plant maintenance. For the reasons cited in MHD 45 (a)(4), the importance of providing adequate staff in these areas also justifies the $250 penalty assessment.

8. MHD 45 (a)(6) Provision of facilities

This section requires the licensee to provide the necessary facilities, equipment and supplies to assure proper care consistent with the needs of the patients and residents. This requirement is important in order to assure that the home has the necessary facilities to render the type of care that is to be provided, to assure that the residents will live in a comfortable environment and to assure that the home is equipped with the necessary supplies to provide a smooth and uninterrupted operation. For these reasons, the $250 penalty assessment is justified.

9. MHD 45 (a)(7) Adequate financing

This section requires that the licensee be responsible for furnishing evidence of adequate financing, proper administration of funds and the maintenance of required statistics. This section is necessary to assure that a facility has adequate financial resources to operate in full compliance with the regulations and also assures that funds received by a facility are properly accounted for. For these reasons, the $250 penalty assessment is justified.

10. MHD 45 (b) Availability of licensing regulations

This section requires that a copy of the licensing regulations be made readily available to all personnel in the facility, that all personnel be fully informed of the requirements contained in the regulations and that the employees be informed of the policies of the home in order to guide them in the performance of their respective duties. One of the major reasons for the establishment of these regulations was to assure that the quality of care provided in a nursing home or boarding care home be at the highest level. In order to be effective, the contents of these regulations must be explained and well-known to the people who staff the facilities. In addition, under other provisions in the regulations, the home is required to establish various policies and procedures for the performance of the duties of the staff. As with the regulations, the contents of these policies and procedures must be made known to the personnel in order to assure that a high quality of care is given and maintained. For these reasons, the failure to comply with this section justifies the $250 penalty assessment.

11. MHD 45 (c) Administrator or person in charge

This section requires that there shall be one individual who shall be in immediate charge of the operation and administration of the facility. This individual will be empowered to carry out the provisions of these regulations

and is charged with the responsibility of so doing. This section requires that this person shall be full-time, serving only one nursing home and shall not serve as the director of nurses. The role of the administrator or person in charge of the facility is of extreme importance to the operation of the facility. It is this individual who has the burden of assuring that the home is operated in a proper manner and to maintain a high and consistent quality of care. Due to the responsibilities of this person, failure to carry out the provisions of this section justifies the imposition of the $250 penalty assessment.

12. MHD 45 (d) Delegation of authority

This section provides that the administrator or person in charge of a facility shall not leave the premises without giving information as to where he can be reached and without delegating his authority to a person who is competent and capable of acting in an emergency. This regulation clearly specifies that at no time shall a home be left without competent supervision. As was mentioned in the paragraph under MHD 45 (c) the importance of the administrator in the operation of a facility cannot be underestimated. Failure to assure that the home is left in capable hands during the absence of the administrator justifies the imposition of the $250 penalty assessment.

13. MHD 45 (e) Type of admissions

This section provides that the administrator, in cooperation with the director of nursing services, shall be responsible for exercising discretion in the type of patients or residents that are admitted to a facility. The purpose of this section is to assure that patients or residents shall not be accepted in a facility where proper care cannot be provided in keeping with their known physical, mental or behavioral condition. In order to assure that the patients that are admitted into a facility do receive the type of care that they require, failure to carry out the provisions of this section justifies the establishment of a $250 penalty assessment.

14. MHD 45 (h)(2)(bb) Written job descriptions

This section requires the preparation of written job descriptions for all positions in the facility. These descriptions shall define the responsibilities, duties and qualifications for those positions. Written job descriptions are important due to the fact that they are a means by which an employee can easily determine the type of specific duties he must perform. Failure to clearly describe the duties of the employees in a facility could result in the overlooking of types of care and

services that should normally be provided to the residents in a facility. For these reasons, the penalty assessment of $250 is justified.

15. MHD 45 (h)(2)(cc) Work assignments

Another responsibility of the administrator is to establish work assignments consistent with the qualifications and the work load of the employees. As with the written job descriptions described in section (bb) above, the establishment of work assignments will greatly aide in the quality of care rendered by the staff of a facility. Without established work assignments it could be possible that areas of service are overlooked. Specific work assignments are a means to help assure that the care and services required in a facility are provided on a regular basis. For this reason, a $250 penalty assesement is justified.

16. MHD 45 (h)(2)(dd) Time schedules

Another responsibility of the administrator of a facility is to maintain weekly time schedules for his employees. These time schedules are important since they are a means to calculate the number of hours of patient care that are rendered to each patient in a facility. Under the requirements of MHD 50 (e)(1), nursing homes are required to render two hours of nursing care per patient per day. Without weekly time schedules it would be impossible to calculate whether this level of nursing care is reached. For this reason, a $250 penalty assessment is justified.

17. MHD 45 (h)(2)(ee) Orientation of new employees

Another responsibility of the administrator is to provide for the orientation of new employees and volunteers in the home and to also provide continuing in-service education for all employees and volunteers. In order to properly render the type and quality of care that is required in a nursing home, new employees must be informed as to the duties and type of work they will be required to perform. The orientation period provides the employee with this type of knowledge and is vitally important in assuring that proper care is rendered to the patients and residents in a facility. In a similar manner in-service educational programs are also important in that they keep the staff of the facility up to date on current medical practices. The orientation and in-service programs are a means to assure that the staff of the facility maintain a high professional standard, and for this reason the imposition of the $250 penalty assessment is justified.

18. MHD 45 (h)(3) Recognized accounting system

This section requires that the administrator or person in charge of the facility establish a recognized accounting system. This section also requires that there shall be financial resources at the time of the initial licensure to permit full service operation of the facility for six months without regard to income from patient or resident fees. This section is necessary in order to assure that a facility is financially stable and capable of providing the type of care required by these regulations; and also assures that the funds received by the facility are properly recorded and accounted for. For these reasons, the $250 penalty assessment is justified.

19. MHD 45 (h)(7) Patient care policy committee

This section, which applies only to nursing homes, requires that the administrator of the facility establish a patient care policy committee. This committee shall have members representative of all disciplines directly involved in patient care. The purpose of this committee is to develop and implement guidelines for patient care in the facility. The patient care policy committee is a means by which the type of care required by the individual patients can be established. By including representatives of the various disciplines on this committee it is possible to arrive at a determination of the various needs of the individual patient. For these reasons, failure to comply with this section justifies the $250 penalty assessment.

20. MHD 46 (c) Keys

This section requires that the person in charge of each work shift in the facility have keys to all doors and locks in the home with the exception of the keys to the business office. The regulations require that certain areas, especially those areas of the home where narcotics and drugs are maintained, be locked at all times. However, in emergency situations prompt access to these areas must be provided for. Thus this section requires that at least one person in the facility at all times is capable of getting into these locked areas. For this reason, the penalty assessment of $250 is justified.

21. MHD 47 (d) Illness or accident

This section requires that personnel who have missed work, either because of illness or accident, shall report to the registered nurse or person in charge of the facility prior to resuming his or her duty. This section also requires consultation with a physician if the person in charge is in doubt about whether the employee should return to work.

This regulation is a means to assure that the employee is capable of handling his or her duties and is free from any disease which might be communicated to the patients, residents or other staff members of the facility. For this reason, the $250 penalty assessment is justified.

22. MHD 46 (i) Inspection by the Department

This section requires that all areas of the facility and all records related to the care and protection of patients, including the patient, resident and employee records, shall be opened for inspection by the Department at all times. It is clear that without this broad access to a facility it would be impossible for the Department to determine the level of care that is provided and to determine whether the home is operating in compliance with the regulations. For this reason the penalty assessment of $250 is justified.

23. MHD 48 (a)(3) Filing and disposition of records

This section requires that the filing of patient or resident care records and requires that upon discharge of a patient these records shall be completed and filed in the home. These records are a means to determine the type of care, medications and treatment which a patient or resident received in a facility. They are an important way to determine the type, quality and standards of care that are provided in a facility. For this reason the imposition of the $250 penalty assessment is justified.

24. MHD 49 (a) Physician to be designated

This section requires that each patient or resident designate a licensed physician for the supervision of his or her care and treatment at the facility. The purpose of this regulation is to assure that prompt medical attention will be available to all patients and residents in a health care facility. For this reason the penalty assessment of $250 is justified.

25. MHD 50 (d) In-service education

This section requires that there shall be a continuing in-service education program for all personnel in a facility. These programs are important since they provide a means by which the staff in the facility can be kept up to date on current medical practices. These programs are a means to assure that the staff of the facility maintain a high professional standard. For this reason, the $250 penalty assessment is justified.

26. MHD 50 (f) Responsibilities of the director of nursing service

This section contains the 13 areas of responsibility that must be handled by the director of nursing service in a facility. Some of the duties of the director of nursing service include being responsible for the nursing care of the patients, the accuracy of nursing care records, establishing procedures for general nursing care, planning and conducting orientation programs, taking part in the recruitment and selection of nursing personnel and helping to coordinate nursing services for the patients in the home with other patient care services provided within and outside the institution. Like the administrator of a facility, the director of nursing service is extremely important in the development of a good quality nursing home. The failure of a director of nursing services to meet these responsibilities could result in a substantial decrease in the quality of nursing care provided in an institution. Due to the importance of the nursing director in the operation of a facility the imposition of the $250 penalty assessment for violations of this section is justified.

27. MHD 51 (d) Acute illness, serious accident or death

This section provides that in case of acute illness or serious accident, the home shall immediately notify the physician and family or legal guardian of the patient or resident. The purpose of this regulation is to assure that the relatives of a patient in an institution are immediately informed of any severe change in the condition of the person placed in the institution. Failure to immediately notify the patient's physician or relatives could result in an unnecessary and possibly dangerous delay in the provision of prompt medical attention. For this reason, the $250 penalty assessment is justified.

28. MHD 52 (a)(10) Patient or resident units - furnishings and equipment

Section 10 of MHD 52 (a) requires that all furnishings and equipment shall be maintained in a usable, safe and sanitary condition. This section also requires the numbering of all rooms and beds and also requires that all beds be identified with the name of the patient or resident. The purpose of this section is to assure that the patients or residents have a comfortable environment in which to live and also to avoid any possible misidentification of the patient by the staff of the facility. For these reasons the $250 penalty assessment for a violation of this section is justified.

29. MHD 52 (f) Furnishings and equipment - other areas

This section requires that all other areas in the facility, which are not otherwise enumerated in MHD 52, are maintained in a proper manner and appropriately furnished and equipped. These areas include office spaces, utility rooms, maintenance rooms, treatment rooms and nurses' and attendants' stations. The purpose of this regulation is to assure that these areas are maintained in a sanitary manner and have the necessary equipment for the furnishing of treatment and care to the patients. Failure to maintain these areas in the proper manner could seriously affect the operation of the nursing home. For this reason, the $250 penalty assessment is justified.

30. MHD 52 (g) Nurses' or attendants' stations

This section requires that there shall be a well-lighted nurses' or attendants' station located in the patient and resident area which contains sufficient space for the recording and storage of charts and space for the equipment necessary for keeping the records and orders current. This regulation is necessary in order to assure that patient records and charts are easily available to the staff of the facility and to also assure that the nurses and other staff of the facility have a suitable location where they can perform their duties. For this reason the $250 penalty assessment is justified.

31. MHD 52 (h) Storage

This section requires the providing of cabinets and other suitable space for the safe storage of equipment and supplies in a sanitary, convenient and orderly manner. This section also requires the identification of all supplies and provides means for the proper storage of sterile supplies. This regulation is necessary to assure that the supplies used in the treatment and care of patients and residents are kept in a clean and sanitary manner and to provide a means by which sterile equipment will remain uncontaminated. For these reasons the $250 penalty for a violation of this section is justified.

32. MHD 52 (k) Equipment

This section, which applies only to nursing homes, requires the provision of sufficient equipment needed for the care of patients in the facility. The required equipment includes wheelchairs, walkers, footstools, commodes, foot cradles and other items which are used in the care and treatment of patients in a facility. These items are necessary for the proper treatment and care of patients in a facility and failure to provide these items could seriously

affect the treatment given to the patient and also affect the patient's comfort. For this reason a $250 penalty assessment is justified.

33. MHD 53 (f) Disposition of medications

This section establishes the procedure to be used in order to properly dispose of medications belonging to a patient after the patient's discharge or death. It is important that medications which are no longer needed in a facility due to the discharge of a patient or due to a change in prescription be properly disposed of to prevent an unauthorized or accidental distribution of those medications to other patients. For that reason the $250 penalty assessment is justified.

34. MHD 53 (g) Pharmacies in a nursing home

This section requires that no pharmacy shall be maintained as a part of a nursing home unless it is licensed by the Minnesota State Board of Pharmacy. This regulation is necessary in order to prevent an unauthorized distribution or storage of medications unless the strict standards and controls required in pharmacies are maintained. For this reason the $250 penalty assessment is justified.

35. MHD 53 (h) Medication references

This section requires that a nursing home maintain current medication references and other printed sources of information. This section is important in order to assure that the facility is aware of the type of drugs administered, possible side reactions and aware of measures to be taken to prevent adverse reactions to a drug. For this reason, the $250 penalty assessment is justified.

36. MHD 53 (m) Disposition of medications

This section relates solely to boarding care homes. However, the reasons contained under MHD 52 (f) apply in a similar manner. For those reasons the penalty assessment of $250 is justified.

37. MHD 54 (a)(2) Clean linen

This section requires the proper cleaning and handling of linen used in a nursing home. Included in this section are requirements that linen must be washed and ironed before use, states how the linen should be properly distributed and requires facilities for the proper storage of clean linen and clean supply items. This regulation provides a means to assure that linen used in the facility is properly cleaned and handled in a sanitary and safe manner. For this reason the penalty assessment of $250 is justified.

38. MHD 54.(a)(6) Outside linen services

This section pertains to nursing homes which have their linen processed in a central or commercial laundry outside of the institution. This section requires that these outside services be subject to the laundering standards of these regulations. This regulation is necessary to assure that linen processed in an outside establishment is handled in a safe and sanitary manner in compliance with these regulations. For this reason the penalty assessment of $250 is justified.

39. MHD 54 (b)(4) Outside linen service

This section, relating to boarding care homes, contains the same provisions found in MHD 54 (a)(6). For the reasons stated under that regulation, the penalty assessment of $250 is justified.

40. MHD 55 (b) Dietary supervisor

This section provides that the administrator or person in charge of a facility shall designate a person trained or experienced in the planning and preparation of meals to be responsible for the dietary service in that facility. In order to assure that the quality of food served in a facility meets the high standards required by the regulations a trained and experienced dietary supervisor is necessary. For this reason, a $250 penalty assessment is justified.

41. MHD 55 (h) Menu planning

This section requires that all menus including special diets shall be planned, dated and posted for a minimum of one week in advance. This section also requires that notations shall be made of any substitutions in the meals actually served and that these substitutions shall be of equal nutritional value. The purpose of this regulation is to provide a means by which the quality and quantity of food served in a facility can be checked and regulated by the Department staff. For this reason the imposition of a $250 penalty assessment is justified.

42. MHD 56 (b) Establish program of housekeeping

This section requires that a program shall be established for routine housekeeping including the establishment of policies and procedures for any special cleaning that is required. A housecleaning program is necessary in order to assure that the facility is properly maintained and kept in a sanitary condition. Establishing policies and procedures for special cleaning is also necessary in order to assure that these projects are completed in accordance

with these regulations. For these reasons, a penalty assessment of $250 is justified.

43. MHD 62 Licensing requirements for the physical plant

This regulation establishes the licensing requirements for the physical plant and requires that the physical plant of all facilities shall be in compliance with these regulations. Section (c) and (d) contain the definitions of new construction and existing facility and since these two sections are definitional in nature assessments cannot be issued under these sections. Section (a) requires, as a condition of licensure, that a certificate of need shall be obtained for any facilities which come under provisions of that law; section (b) requires that on matters affecting licensure which are not regulated by the certificate of need act the Board shall be notified directly in writing for all new construction, remodeling, changes in existing services, addition of new services, sale or change of ownership; section (e) requires that all facilities comply with these regulations and establishes standards for those facilities which are to be newly reconstructed and for facilities already in existence; section (f) requires as a condition for reclassification of a boarding care home to a nursing home that the physical plant shall be in compliance with all new construction requirements for nursing homes; section (g) requires that fire protection shall be provided in accordance with the requirements of the State Fire Marshal; section (h) requires that the preparation of plans shall be prepared and signed by architects and engineers who are registered with the State of Minnesota; section (i) requires that all preliminary plans and final working drawings and specifications be submitted to the Board for review and approval; section (j) requires that the Department be notified in writing of the date of start of construction, not less than 7 days after commencement; section (k) requires that all construction shall be executed in accordance with approved final plans; section (l) requires that the Department shall be notified at least 30 days prior to the completion of construction; section (m) requires at least one set of complete plans be kept on file in the licensed facility. This section is important in order to assure that all new facilities in the state and existing facilities comply with the requirements of the regulations. The physical plant structure of a facility must be completed in a manner which will protect the health and safety of patients and residents and assure that the physical plant can be maintained in a safe and sanitary manner. In order to assure that a physical plant will be in conformance of these regulations it is necessary that the preliminary and final plans be submitted to the Department for the review by the engineering section in the Department. MHD 62 outlines

the requirements that must be met in any building or remodeling of the physical plant prior to licensure by the Department. The importance of a safe physical plant justifies the $250 penalty assessment for end section of this regulation.

MHD Ex 9
10/3/75 RKH.

RECEIVED
OCT 1 1975
Executive Officer
Minn. Dept. of Health

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

OFFICE OF THE
COMMISSIONER
612/296-2701

GENERAL
INFORMATION
612/296-6117

September 29, 1975

Warren Lawson, M.D.
Commissioner
Department of Health
717 Delaware Street SE
Minneapolis, Minnesota 55440

RE: IN THE MATTER OF PROPOSED RULE RELATING TO A SCHEDULE OF FINES FOR NON-COMPLIANCE WITH CORRECTIONS ORDERS ISSUED TO NURSING HOMES AND BOARDING CARE HOMES

Dear Dr. Lawson:

Although we have discussed the subject of fines for non-compliance with administrative regulations on several prior occasions, I thought it appropriate in light of the public hearing scheduled for October 3, 1975, that I reduce to writing the Department of Public Welfare's position on the subject.

As you are aware, we support your agency's interest and efforts in developing procedures and standards which will assist your staff in effecting compliance with regulations and standards established by the Minnesota Department of Health. Recognizing our past support of that general concept, we continue to believe that fines for non-compliance should not be applied to residential facilities administered by the Department of Public Welfare.

In stating the above, it is not our intent to disregard or refuse to make every effort to correct deficiencies identified during licensure and certification surveys conducted by your staff. You are undoubtedly aware from past experience that the staff within the welfare system charged with administering the various state owned residential facilities are aware of and sensitive to the areas within our operation which are not meeting, in total, the standards promulgated by your agency. As we have recognized and discussed on previous occasions, most, if not all, of the major deficiencies cited in surveys conducted by your agency can be corrected only with the addition of substantial numbers of personnel and/or substantial expenditures for capital improvements. In both of these areas, even though as a sister agency we may be in substantial agreement in wanting to correct the deficiencies cited, we are unable to do so without affirmative legislative action increasing our staff complement and/or appropriating funds for capital expenditures.

Accordingly, it would appear to us to be administrative folly for one unit of state government to levy fines against another unit of the executive branch when the only way to remedy existing inadequacies is to seek increased authorization from the legislature - the appropriating body which both agencies are answerable to. Further, as we understand your proposal, fines that your agency would collect would not be readily available to you for immediate use but, instead, would return to the state's general revenue fund. Hence what purpose would be accomplished by our agency paying a fine for non-compliance? The only result would be a reduction in the already limited funds currently available for operating the state's residential facilities. Obviously such a proposal actually aggravates the situation because the funds could be better spent in an effort to upgrade our facilities rather than being lost in the general revenue fund.

In summary, we recognize and support the intent of your proposals. However, we believe it to be in the best interests of, not only the Department of Public Welfare and the Department of Health, but the State of Minnesota if some other procedure or mechanism can be developed to rectify the deficiencies which have prompted, in part, the scheduling of the October 3rd public hearing.

Thank you for your consideration of this matter.

Sincerely,



Vera J. Likins
Commissioner

VJL:WGR:jp

cc: Governor's Office
ATTENTION: Cynthia Whiteford

Wesley G. Restad, Assistant Commissioner
Residential Services Bureau, DPW

CEO's/Superintendents
State-Operated Facilities

NAME	REPRESENTING	TESTIMONY	
		YES	NO without written test.
James Logan	MINN. CARE HOME ASSN		
Harry Lemieux	Minn. Ass. of Health Care facilities	✓	
Stan Wessin	MAHCF.		✓
[redacted]			
Gordon A. Rehler	Good Shepherd Lutheran Home Sauk Rapids		✓
Marian Cheney			✓
Mary Samuelson			✓
Rachel Kranz	KSJN radio		—
Cathy Rebuffoni	Mem Hosp. Assoc		✓
Marlyce Helms	" " "		✓
Marlyce Klug	Minn Hosp Ass.		
Arved Sobin	Geri-Care of Minn		✓
DOROTHY AADLAND	UNION HOME FOR THE AGED		✓
R.W. Schlicht	LUTHERAN Home		✓
D Degerlk a	"		—
Roy Hammerb	Central Nursing Home		✓
Hamberla Dall	Union Home for the Aged		✓

Minnesota C.A.R.E. Home Association, Inc.

Dedicated To
Comfort and Recreational Environment

8224 PENN AVE. SO., MINNEAPOLIS, MINN. 55431 (612) 881-3354

Oct. 3, 1975

RECEIVED
OCT 6 1975
Executive Officer
Minn. Dept. of Health

Mr. Geise, Hearing Officer
Minnesota Board of Health
717 SE Delaware St.
Minneapolis, Minn. 55440

Dear Sir:

This Association concurs with the detailed exception, taken by Mr. Harry Lemieux, Minnesota Health Care Assn., to the schedule of fines proposed under Minn. Rule MHD 57.

Our chief concern is that the rule not be applied to the detriment of legitimate, law-abiding and conscientous operators. We believe that beofre substantial finds are assessed the Health Department should exercise foolproof machinery to verify that assessable violations have indeed taken place. Should machinery should involve more than merely questioning the inspector who recorded the alleged violations.

We have an active case now where the operator of a small 10-bed boarding care home was assessed fines of almost $6,000 for alleged violations, but the operators swear that an inspection did not take place. Yet these fines amount to 17% of the gross annual income this home produces. These good people, who swear they abided by the regulations, are threatened with the loss of their business, they do not have the funds to apy for expensive legal counsel and most important, 10 people who are happy living in a well run home might be forced to seek another, probably less desirable place to live.

The tagging law is a potent law that can be easily abused. It must be applied with restraint and the reserve wisdom of more than one responsible party.

Sincerely,

James Logan
Executive Director

MINNESOTA ASSOCIATION OF HEALTH CARE FACILITIES

THE BETTER LIFE THROUGH TOTAL CARE

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October 23, 1975

Dr. Warren R. Lawson
Executive Officer
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, Minnesota 55440

Re: In the Matter of a Proposed Rule Relating to a Schedule of Fines for Non-Compliance with Correction Orders Issued to Nursing Homes and Boarding Care Homes.

Dear Dr. Lawson:

The purpose of this letter is to submit our written comments for inclusion in the hearing record in the above entitled matter as a follow-up to the public hearing on October 3, 1975. Oral testimony was presented at that hearing by the undersigned on behalf of the Minnesota Association of Health Care Facilities (hereinafter referred to as "MAHCF"), an association representing both non-proprietary and proprietary health care facilities in the State of Minnesota. This letter is intended to follow-up on and supplement the oral comments made at the time of the public hearing.

As you know, MAHCF was instrumental when the tagging law and assessment statute was passed originally in having the flat $100 fine amended to provide for fines of "up to $250", with the clear understanding that legislative intent was that a schedule of fines should be promulgated and that not all fines should be set at the maximum level. This legislative intent was reaffirmed by the 1975 session of the Minnesota Legislature when, in amending Minnesota Statutes section 144.653, subd. 6, to provide for fines of "up to $1,000", the Legislature specifically required that the "board of health shall promulgate by rule and regulation a schedule of fines applicable to each type of uncorrected deficiency." During the first year plus that the correction order

and assessment law was effective, the State Board of Health simply refused to recognize the legislative mandate of promulgating a schedule of fines, apparently determining instead that a facility should be assessed on the basis of failure to comply with the correction order rather than the seriousness of a deficiency. We applaud the present efforts of the Board to adopt criteria to be used in determining if an assessment should be reduced to $50 and to clarify which violations are subject to the lesser fine. We would hope, however, that as time progresses a more realistic and more graduated fine schedule can be worked out consistent with what we understand to be legislative intent in this area. Possibly this will be more feasible when the regulations pertaining to health care facilities themselves are revised.

We believe that the five criteria developed by the Board of Health to determine which regulations should give rise to $50 fines is overly restrictive, somewhat internally inconsistent and not particularly definitive. We also feel that these criteria themselves should have been promulgated as rules as part of the hearing process in the present hearing. It is as important to get public input on the criteria evolved by the Board as it is to get such input on the amount of fines themselves. We believe that this hearing should be reopened or that another hearing should be called to get public input on the criteria which are being utilized in establishing the present schedule of fines. Such criteria are clearly rules within the meaning of the Administrative Procedures Act.

Even under the presently adopted Board criteria for reduction of fines under appropriate circumstances, we believe that several other regulations should give rise to $50 fines rather than $250 or $1,000 fines. There are numerous regulations falling under the Board's criteria which should not be subject to the highest possible fine (although some of these regulations are not being presently enforced as tagable items by the Department of Health). Some of those regulations which we understand are being enforced and which should be subject to a lesser fine even under the Board's present criteria are as follows:

1. Nothing in MHD 44 would appear to fall within the criteria established by the Board of Health justifying a maximum fine. Although portions of MHD 44 are being proposed for a $50 fine by the Notice of Hearing by the Board of Health at the present time, the entire rule pertains to definitions, general provisions and issuance of licenses. While we agree with the proposal in the Notice of Hearing, we feel that all portions of this rule should

be subject to a lesser assessment if correction orders are issued under this regulation.

2. MHD 45(h)(2)(bb), requiring written job descriptions, is another regulation which should qualify for a lesser fine. There are many other regulations which relate to the quality and responsibilities of nursing home staff, as well as providing the means for measuring the adequacy of patient care rendered by such staff. Since the presence of written job descriptions in and of themselves do not determine either the quality of the staff or the quality of the patient care rendered by the staff, and since there are other regulations which more adequately and thoroughly cover these areas, violations under MHD 45(h)(2)(bb) should give rise only to a $50 fine within the criteria established by the Board of Health.

3. MHD 45(h)(2)(cc), requiring work assignments, does not relate to quality of care provided by the staff or to the manner in which such care is provided. Again, the quality of the actual patient care rendered rather than the facility's written schedule for performing such care should be the criteria reviewed in determining if adequate patient care is being provided. It is the actual providing of such care rather than the existence of policies which should be subject to the maximum fine.

4. MHD 45(h)(2)(dd), requiring the maintenance of a weekly time schedule, is also appropriate for a lesser fine. A weekly time schedule is for the employees' use and convenience, and does not relate to the criteria established by the Board of Health in regard to providing adequate patient care.

5. MHD 45(h)(5)(bb) through (dd), relates to promoting the sharing of facilities and services, cooperative education programs and areawide planning activities. None of these activities directly relate to the provision of patient care, or any other criteria developed by the Board which would mandate a maximum fine.

6. MHD 46(g), relates to the housing of animals and birds in a nursing home. Non-compliance with this regulation would not appear to present any significant hazard to patient health and safety, at least in regard to certain species or kinds of animals and birds. In fact, it could be argued that violation of this regulation by a nursing home might be therapeutic and promote patient well being. Clearly this regulation should not be subject to a maximum fine.

7. MHD 46(i), relating to the availability of records for the Department of Health, appears to relate to matters of convenience for the Department of Health rather than to matters directly affecting patient health, care or safety. Again, a maximum fine would appear to be inappropriate here.

8. Although MHD 48(a)(1), at first blush, may appear to qualify for a maximum fine it should be noted that if this regulation was not fully complied with by a health care facility, such non-compliance would not substantially affect the capability of a facility to provide an overall high quality of care to patients nor would it directly relate to the providing of patient care. Any information contained in this record which is pertinent to patient care (such as the name of the attending physician) could be found elsewhere in the patient medical record.

9. MHD 49(h) would appear to be appropriate for a lesser fine. This regulation relates to the identification of dentures which does not per se relate to patient care. However, if a patient is using the wrong dentures, this would relate to patient care and perhaps a higher fine would be more appropriate.

10. That portion of MHD 49(j) which relates to the counter-signature of telephone orders by a physician within seven days is not within the control of a facility. A nursing home should only be subject to a fine if it fails to send such telephone orders to a physician for his counter-signature. As long as the facility has received the orders, there is no jeopardy to patient safety or health.

11. MHD 52(f) is not appropriate for a maximum fine insofar as the furnishings and equipment of office spaces, utility rooms, etc. do not relate to patient care.

12. MHD 53(a)(3) involves the date of stock supply medications. Since most stock supply medications are not subject to deterioration, and since those that are would normally be dated by the pharmacy with an end use date, this regulation should not be subject to a maximum fine. Further, MHD 53(c)(3), requiring that medications having a specific expiration date shall not be used after such expiration date, properly protects patients against the use of any outdated or deteriorated drugs.

13. The maintenance of an emergency medication kit itself under MHD 53(a)(4) does not relate to patient care or safety. The only relationship that the emergency medication kit could possibly have to patient care would be if medications were misadministered or were administered without doctor's orders, in which case other regulations would come into play. There is not a requirement that a health care facility must keep an emergency medication kit. Hence the maintenance of the emergency medication kit itself should not be subject to a maximum fine.

14. MHD 53(a)(5), relating to the use of a prescription drug by one patient where such drug is prescribed for another patient, does not qualify for a maximum fine under the Board criteria so long as the prescriptions are identical.

15. MHD 54(a)(1) through (3), relating to linen service, do not directly relate to patient care. Noncompliance would not present a hazard to patient health or safety. The regulations relating to contaminated linen and the actual laundering of linen (MHD 54(a)(4) and (5)) sufficiently protects patient health and safety.

16. MHD 54(a)(6) relates to outside linen services. Since MHD 46(j), which also relates to "outside services" is proposed for a $50 fine in the Notice of Hearing, MHD 54(a)(6) should also be subject to a $50 fine since it is effectively the same regulation as MHD 46(j).

17. Similar changes should be made in MHD 54(b)(1)(2) and (4), relating to linen in a boarding care home. The same rationale applicable to linen in a nursing home is applicable to a boarding care home.

18. MHD 55(b), relating to the designation of a dietary supervisor, in itself does not directly relate to the provision of adequate patient care or relate to patient health and safety. If dietary services are otherwise adequate, there is no prejudice to the patients at a facility and the maximum assessment is not justified. If there are problems in the dietary area specific assessments can be directed to meet those problems.

19. Similarly, with MHD 55(c), relating to dietary staff, some of the requirements of the regulation do not relate to patient care. Although arguably certain portions of MHD 55(c) may be subject to a maximum fine under present Board criteria, not all elements of this regulation fall into this category.

20. MHD 55(n) relates to food containers. Non-compliance with this regulation per se does not present a hazard to patient health or safety. If food products for any reason are rendered unsafe for human consumption, a facility is still subject to assessment under MHD 55(k). Therefore, the maximum fine ought not to be available under MHD 55(n). The same comment is applicable to MHD 55(o) relating to the storage of non-perishable foods and to MHD 55(q) relating to prohibited storage.

21. Given the existence of MHD 56(a), requiring that an adequate housekeeping program be maintained for the entire facility, a maximum assessment is not justified for violations of MHD 56(b), concerning policies and procedures for implementing a housekeeping program. Failure to keep adequate housekeeping could present a hazard to patient health and safety and otherwise be related to patient care, but the failure to have specified policies and procedure does not per se relate to this item. A lesser fine is justified under MHD 56(b).

22. MHD 56(d), relating to garbage containers, also does not per se relate to the five Board criteria justifying a maximum assessment. If for any reason garbage

was being stored or disposed of in a hazardous manner, a maximum assessment would be more appropriate under MHD 56(c).

23. MHD 67(a)(1)(nn), relating to surrounding grounds, also does not qualify for the maximum fine under present Board criteria. We are aware of facilities that have been assessed a maximum fine for accumulation of tree branches in a non-used portion of the facility's grounds. This in no way impairs any rights or safety of a patient.

Please note that all of the above referenced regulations are in addition to those which are contained in the Notice of Hearing. Please note, also, except for the last regulation cited all of the rules and regulations fall under Part I of the regulations and do not relate to Part II which generally concerns the physical plant of a facility. There are numerous other regulations under Part II which would meet the Board criteria and qualify for a lesser fine which we have not discussed simply because the Department apparently at the present time is not issuing correction orders and assessments for most of the Part II regulations. Should the Department begin to issue correction orders and assessments under Part II of the regulations, however, it would be mandatory that a reduced schedule of fines be put in for many of these regulations which would meet the existing Board criteria. Of course, there are also some regulations in Part I which have not been enforced to date by the Department through the correction order and assessment system which also might qualify for lower fines pursuant to the Board criteria if fining actually begins under these regulations.

Another criticism that could be made of the present Board approach, also, is the failure by the Board and the Department of Health to recognize that under some circumstances a violation that may be serious in one case may not be serious in another case. For example, if a facility is found to be in technical violation of MHD 50(e)(1), which requires 2.0 hours of nursing care per patient per day, yet the facility has no "patient care" deficiencies, such a violation would, if the Board's criteria was strictly applied to the specific circumstances of a violation, not be subject to a $250 fine. Perhaps some accommodation should be made in recognition of this situation for some of the regulations.

There are also certain regulations, for example those regulations dealing with histories and physicals, reviewing and renewing medications and treatments, signing orders, dental recommendations, labeling of medications by a pharmacy, etc., which are

not within the absolute control of a facility. If a facility has procedures for attempting to insure that these regulations are complied with, and follows these procedures, a facility should not be assessed any fine even if a violation occurs.

Also, no provision is presently made to cover the concepts of a facility which seeks, in good faith, to comply with regulations or which achieves substantial compliance with regulations, yet is fined a maximum amount. The reasons that complete compliance may not be reached are not always within the control of the facility and may be technical in nature, yet there is no damage to a patient under the criteria established by the Board of Health. Consideration should be given to incorporating some recognition of facilities which are seeking in good faith to comply with regulations and to facilities which achieve substantial compliance with regulations through the issuance of a less than maximum fine.

Please give your careful consideration to these comments. Thank you.

Very truly yours,

MINNESOTA ASSOCIATION OF HEALTH CARE FACILITIES

Harry Lemieux, Its President

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