


# Minnesota Attorney General: Administrative Rules Proceedings

## Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

COPY

BEFORE THE OFFICE OF HEARING EXAMINERS

OF THE STATE OF MINNESOTA

---

IN THE MATTER OF THE PROPOSED )
ADOPTION OF RULES OF THE STATE OF )
MINNESOTA BOARD OF MEDICAL )
EXAMINERS RELATING TO CONTINUING )
MEDICAL EDUCATION. )

---

H. E. DOCKET NO. SBME-78-001-GB

DATE: October 4, 1977

PLACE: Minneapolis, Minnesota

PAGES: 1 - 28

EXAMINER: George A. Beck

REPORTER: Nancy J. Duehn

BEFORE THE OFFICE OF HEARING EXAMINERS

OF THE STATE OF MINNESOTA

---

| | |
|---|---|
| IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE OF MINNESOTA BOARD OF MEDICAL EXAMINERS RELATING TO CONTINUING MEDICAL EDUCATION. | H. E. DOCKET NO. SBME-78-001-GB |

---

Board Room,
Minnesota Department of Health Building
717 Delaware Street Southeast
Minneapolis, Minnesota
Tuesday, October 4, 1977

Met, pursuant to Notice, at 9:00 in the forenoon.

BEFORE:

George A. Beck, Hearings Examiner

AGENCY PANEL:

Mr. William Jacott, M.D., Member of the State of Minnesota Board of Medical Examiners

Mr. Alfred Daly, M.D., Member of the State of Minnesota Board of Medical Examiners

Mr. John A. Breviu, Special Assistant Attorney General assigned to the State of Minnesota Board of Medical Examiners

# I N D E X

BOARD'S EXHIBITS:

| | Marked | Received |
|---|---|---|
| 1 - 10 | 3 | 8 |
| 11 | 7 | 8 |

PUBLIC EXHIBITS:

| | |
|---|---|
| A | 3 |
| B | 3 |
| C | 3 |
| D | 3 |
| E | 13 |
| F | 13 |

QUESTIONS, COMMENTS OR STATEMENTS PRESENTED BY:


Dr. John Welch, representing the Minnesota State Medical Association..... 11

Dr. Chester Anderson, President, Minnesota State Medical Association..... 13

Dr. David Gaviser..... 15

Dr. Robert Hammerstrom, Director of Medical Education, Metropolitan Medical Center..... 18

Dr. R. J. Stein, Pierz, Minnesota..... 21

P R O C E E D I N G S

(Board's Exhibits 1 through 10 and Public Exhibits A through D marked for identification.)

EXAM. BECK: This is a hearing this morning in the matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education. The hearing is being held this morning pursuant to an Order for Hearing which is signed by Dr. Loren E. Nelson, who is Secretary-Treasurer of the Board, and is dated August 11, 1977, and sets the hearing for this morning at 9:00 a.m.

My name is George Beck. I am with the State Office of Hearing Examiners and my function today is to preside over the hearing and submit a report concerning these proposed rules to the Board subsequent to the hearing.

The purpose of the hearing this morning is to consider whether the proposed rules should be adopted by the Board and given the force of law. The Agency must this morning document its statutory authority to take the proposed action, show that it has fulfilled all relevant, substantive and procedural requirements of law or rule, and demonstrate the need for and the

reasonableness of these rules with an affirmative presentation of facts. The Board must wait at least five days after receiving the report of the Hearing Examiner at which time it will decide whether to adopt, modify or withdraw the rules and during this time the Hearing Examiner's Report will be available to any person interested in it. There is a column on the Register sheet that you can mark if you desire to be notified when this Report is available.

Briefly, the procedure we will follow this morning is as follows. If anyone has not signed in on the Register sheet, would you please do so, printing your name and address legibly. Anyone who wishes to express his or her views this morning will have an opportunity to do so. When you are given an opportunity to speak, I'd suggest you step towards the front of the room, you can be seated if you wish, and spell your name, identify any group that you may represent, and speak clearly. Since the record this morning is being preserved by a court reporter, of course only one person may speak at a time, and any technical terms or proper names should be spelled out.

The procedure that we will follow is I will next introduce the Agency panel. Then the jurisdictional documents and other documents that are going to be

submitted in writing will be introduced. The Agency will then make its presentation on behalf of the proposed rules, and lastly we will take questions and statements from anyone who wishes to speak to the rules. Anyone who does speak or testify this morning may be questioned by a representative of the Agency. Non-Agency persons may consent to questioning by other Non-Agency persons if they wish to do so. Anyone who desires to submit written comments may do so, either at the hearing today or subsequent to the hearing, or within five working days of the close of this hearing. Such materials should be submitted to the Office of Hearing Examiners. The address is Room 300, 1745 University Avenue, St. Paul, Minnesota 55104. Please note that any written materials must be received within five working days to be considered.

Lobbyists attending the hearing must register with the Ethical Practices Board. There is a sheet on the sign-in table which explains who is a lobbyist and who is required to register.

The Agency panel is as follows. To my far right is Dr. Alfred Daly who is a member of the Board, and to his left is Dr. William Jacott who is also a member of the Board, and to my immediate right is John Breviu, who is the Special Assistant Attorney General assigned to the Board of Medical Examiners. We will proceed

next to the introduction of the jurisdictional documents. Mr. Breviu?

MR. BREVIU: Mr. Hearing Examiner, I'd like to offer at this time the following documents into evidence to indicate compliance with the Administrative Procedures Act by the Board of Medical Examiners.

What has been marked for identification as Board's Exhibit Number 1 is the Order for Hearing signed by Loren E. Nelson, dated August 11th, 1977.

Board's Exhibit Number 2 is a Notice of Hearing signed by Loren Nelson on August 11th, 1977.

Board's Exhibit Number 3 is an Affidavit of Receipt of the Secretary of State's List signed by Arthur Poore on August 24th, 1977.

Board's Exhibit Number 4 is an Affidavit of Mailing signed by Jean Woods on August 25th. Attached thereto as Exhibit A is the Certificate of the Secretary of State indicating that all persons who have registered with the Secretary of State -- or that a list has been provided to the Board of Medical Examiners containing names of all persons who have registered with the Secretary of State. Exhibit B attached to that document is a list of other interested persons to whom the Board of Medical Examiners has sent the Notice of Hearing. This document thus consists of an Affidavit indicating that

the Notice of Hearing has been mailed to all persons required by Statute plus all other interested persons in the knowledge of the Board.

Board's Exhibit Number 6 is the Certificate of Board's Authorizing Resolution.

Board's Exhibit Number 7 is a Notice of Intent -- is a copy of a Notice of Intent to Solicit Outside Opinion which was published in the State Register on November 23rd, 1976.

Board's Exhibit Number 8 is a Statement of Need and attached thereto is a document entitled Statement of Justification consisting of the Board's affirmative presentation of the need for and reasonableness of the proposed rules.

Board's Exhibit Number 9 is a Statement of Evidence submitted in accordance with HE Rule 103.

Board's Exhibit Number 10 is a Statement of Number of Persons Expected to Attend and Length of Hearing submitted in accordance with Hearing Examiner Rule 102.

I believe, Mr. Hearing Examiner, that those are all the jurisdictional exhibits that we have to offer at this time. Although it is not marked, I don't know whether the Hearing Examiner wishes to introduce formally into the record a copy of the proposed rules.

(Board's Exhibit 11 marked for identification.)

EXAM. BECK: All right, we have also marked as Board's Exhibit Number 11 a copy of the rules that have been proposed for adoption by the Board. These exhibits will be received into the record and they will be available up here for anyone who desires to inspect them this morning or after the hearing.

(Board's Exhibits 1 through 11 received in evidence.)

EXAM. BECK: We have also marked several Public Exhibits which I will briefly identify and which are also available for inspection. They include Public Exhibit A which is a letter dated September 26th, 1977, from Dr. Wood at the Mayo Clinic. We have marked as Public Exhibit B photocopies of several letters which were received prior to the hearing concerning the proposed rules. We have marked as Public Exhibit C a letter dated September 23rd, 1977, from Dr. Erickson from Chisago City and we have marked as Public Exhibit D a statement which will be made by the Minnesota State Medical Association this morning. Those exhibits will also be available for anyone who wishes to look at them.

We will proceed next to the presentation by the Board in support of the rules. Mr. Breviu.

MR. BREVIU: At this point I will turn the matter over to Dr. Jacott for a brief presentation of the

proposed rules.

DR. JACOTT: It has been more than one year that the Board of Examiners through its Committee on Medical Education has been studying and revising and considering these rules which in fact tie continuing medical education to licensure. The Board has now approved the rules as they have been officially submitted to the Hearing Examiner. I am not going to read through the rules in their entirety but I will merely summarize them. I think many of you here have already had a chance to read these rules.

The basic element of the Continuing Medical Education Rules is that it allows a practicing physician to obtain 150 credit hours over a three-year period in order to maintain licensure in the State of Minnesota. Those credit hours can be obtained from one of five categories as specified in the rules. The categories also indicate specific percentages of credits or numbers of credit hours allowable as a minimum in each -- in each of the five categories.

Some of the other areas of the rules also delineate how the Board will solicit this information from the practicing physicians over a three-year period by dividing the licensees into three groups.

Another section deals with the Board's ability

to approve accrediting courses and to accept credits and establishes criteria for approving such courses.

And then there is some other areas in there dealing with the details of the Board in looking at re-certification and other areas of physicians' activity.

And finally there is the usual category for exemptions which delineates areas where physicians who are in certain situations or certain states of health who cannot fulfill these requirements.

Then the last category is the disciplinary action that the Board may take if the rule -- if these rules are not fulfilled, and that essentially is a summary of the rules as our Board has approved it.

MR. BREVIU: Mr. Examiner, we believe that most of the people, if not all of the people, at the hearing today, are very familiar with the rules. I am not certain that there is a need to go into any further detail on that, unless there are specific questions.

EXAM. BECK: All right, and I understand there are copies of the rules at the door. If anyone has failed to take a copy they may do so. We'll then next move to any questions or statements from any interested parties concerning the rules. You may either make a statement or address a specific question to the Agency panel concerning the rules. Now, is there anyone present who wishes to

either question or make a statement at this time? Yes, sir?

MR. WELCH: I would like to make a statement, sir. My name is John Welch, W-e-l-c-h. I have prepared materials that will be helpful for the support of the statement. Although I am a practicing physician, I speak on this occasion for the Minnesota State Medical Association. As an alternate to your Exhibit D, I would hope that the material herein is the representation of the statement of the Minnesota State Medical Association.

I would simply like to preface my remarks, Mr. Beck and representatives of the Agency, by indicating the Committee on Medical Education of the State Medical Association has worked in a very friendly way during the creation of these rules and regulations and hence the statement not only represents the educational arm of the Minnesota State Medical Association but I am pleased to indicate the Association has asked us to make this statement in their behalf.

The statement is supported by three additional documents. Yours has a more complete Physician's Recognition Award booklet with it which offers the numbers of accredited institutions already available for physicians of Minnesota to pursue their continuing medical education. There is an additional -- there is in addition some

supporting material which perhaps will help those not familiar with the accreditation process understand the line of authority that a variety of accrediting bodies within the profession follow.

The statement from the Minnesota State Medical Association is that the Association supports the proposed rules of the State of Minnesota Board of Medical Examiners relating to continuing medical education even though we recognize there is no clear evidence that continuing medical education itself assures competence of physicians. We have had some experience in our own program of continuing medical education as a partial requirement for Association membership and the Association and particularly the Committee on Medical Education would offer its advice and/or assistance to the Board in any manner that they might see fit to implement the proposed rules.

With this offer and the support that I give herewith, it is the hope of the Minnesota State Medical Association that all the CME Rules will continue to reflect this continuing interest in both the public and the private sectors and the responsibility for education and excellence with economy to serve the patients of Minnesota. I would be happy to respond to any questions that the panel or others might choose to address to me.

EXAM. BECK: Are there any questions of Dr.

Welch? If not, thank you very much.

DR. WELCH: Thank you for the opportunity, sir.

(Public Exhibits E and F were marked for identification.)

EXAM. BECK: We have marked as Public Exhibit E a two-page exhibit which has been submitted by Dr. Welch, the first page of which is entitled "Line of Authority Educational Accrediting Bodies" and the second page of which is entitled "Liaison Committee Continuing Medical Education", and we have marked as Exhibit F the booklet which Dr. Welch submitted which is entitled "Instruction/Information Booklet, The Physician's Recognition Award, American Medical Association, 1977". Do we have a further speaker or questioner at this time? Yes, sir?

DR. ANDERSON: Mr. Hearing Examiner, I am Dr. Chester Anderson, President of the Minnesota State Medical Association and I am here first of all to reaffirm the statement as presented by Dr. Welch. I would like to compliment the Board on the thoughtful manner in which they have sought to implement their directive as set out by the 1976 Legislature under Minn. Stat. 214.12. We support the 150 hour and three-year concept. We support the three class idea which should lead to less confusion, and we support the five category concept of

acceptable credit hours.

I have only one question to ask the Board and that comes under Section .012 F and .012 G. It is a rather personal one as much as it refers to Board certification and recertification, and using that in lieu of other credit hours. In the sentence under Section .012 F, it states that any physician receiving such certificate or recertification during a particular cycle is relieved of the responsibility of complying and so forth. If one received Board recertification in 1977, although the test was taken in 1976, would this then meet your retroactive requirement?

DR. JACOTT: After deliberation, Dr. Anderson, we -- the Board has a rule in here which specifically addresses courses being accepted on a retroactive basis. As you are aware it does not have anything in here that addresses certification being acceptable retroactively, but it would be my belief that the Committee on Continuing Medical Education of the Board would have to look at that issue and render an opinion within the scope of the rules.

DR. ANDERSON: It is rather ambiguous in this particular presentation. That is why I asked the question. Outside of that, I have no personal questions or arguments about the rules and regulations you have presented. I wish to reiterate that we in the State Medical Association stand

ready to serve you in any way that you ask, and because of our experience in our three-year program of continuing medical education, we recognize the mammoth task that the Board of Examiners has had thrust upon them in the way of establishing accredited programs and recording individual physician efforts to comply. I am just fearful that you have been asked to do a monumental task with insufficient funds. I am sure you can depend on the State Medical Association support legislatively should you go to the Legislature and ask for more funds for this program. Thank you.

EXAM. BECK: Are there any questions of Dr. Anderson? If not, thank you very much. Do we have a further speaker? Yes, sir?

DR. GAVISER: I am Dr. David Gaviser, G-a-v-i-s-e-r. I want to ask a question. If this rule goes into effect, will the existing approval as it stands today continue or will there be a re-survey of all existing approvals?

MR. BREVIU: Just for purposes of clarification, I am not sure what approval you are addressing.

DR. GAVISER: Well, for CME, if you have an institution that is approved for CME under the Minnesota State Medical Association, will that continue for the three-year period now that they are approved or will that

be re-surveyed by the State Board?

DR. DALY: These will be taken under consideration by the Board at one of our meetings and approval will be made on an individual basis at a future time.

MR. BREVIU: You see the fact that the Medical Association approved a course for credit does not -- in the past, does not of itself mean that the Board of Medical Examiners will approve it once these rules become adopted. There is a section here relating to approval of courses for credit and you will note that -- it is D.6., it indicates that any course planned, sponsored or co-sponsored by a medical or osteopathic medical school, state or national medical or osteopathic association, or a national medical specialty board will be presumed to meet the standards the Board has set for approval for credit, so there would be a favorable presumption for any such course, that it would be approved by the Board for credit, but as Dr. Daly has pointed out, these courses are going to have to be taken up by the Board on an individual basis and approval is going to have to be granted individually.

DR. GAVISER: You anticipate that though. We just recently got -- were surveyed and we are in the process of receiving approval. This is why I -- this concerns me, if we are going to be placed in a position

of actually going through this procedure again or is this -- or what are your thoughts on it, the State Board of Medical Examiners.

DR. JACOTT: I think you are speaking of the survey by the State Medical Association for a hospital to grant Category I credit.

DR. GAVISER: Right.

DR. JACOTT: And that I think is addressed by the rule, as Mr. Breviu just outlined, in that that would then be sponsored or co-sponsored by a medical -- state or national medical or osteopathic association, and so I think that would be covered by that category presuming the Board approved -- approved the accreditation.

Now I think -- in answer to your question I do not think it would require re-survey.

MR. BREVIU: If I can explain this rule briefly, essentially before the Board will grant Category 1 credit, a course for which such approval is sought, must meet various standards set out by the rule -- by the Board, in D. However any course which is sponsored or co-sponsored by those organizations listed in D.6. are presumed to meet those standards and therefore will be granted approval unless the presumption is withdrawn by -- of course by the Board's discovery of such a course which simply fails to meet the above standards, so there

is a favorable presumption for such courses. It is likely that credit will be granted, however credit will have to be granted on a case by case basis.

EXAM. BECK: Are there any further statements or questions? Yes, sir?

DR. HAMMERSTROM: Dr. Robert Hammerstrom, H-a-m-m-e-r-s-t-r-o-m, Director of Medical Education at Metropolitan Medical Center. Is there any reason we could not reproduce these proposed rules for distribution to our medical staff or will that be done by the Board to the practicing physicians.

MR. BREVIU: Once they are finally adopted, my understanding at least is that the Board will be distributing the rules to all practicing physicians. Recognizing that the rules you have in hand today are those proposed at this hearing and not the final adopted rules. It is possible --

DR. HAMMERSTROM: Would the Board have any objection to our dispensing these for informational purposes?

DR. JACOTT: No, absolutely not.

MR. BREVIU: No, those are public documents. They may certainly be distributed.

EXAM. BECK: Is there another statement or any further questions?

MR. BREVIU: Mr. Examiner, if there are no further statements from members of the public, I believe that -- that there is one statement that I would like to elicit from a member of the panel if I may.

EXAM. BECK: All right.

MR. BREVIU: Dr. Jacott, I would appreciate it if you would comment on what you see as the relationship between these rules and professional competency of a physician, of physicians practicing in Minnesota.

DR. JACOTT: Well, I think that is an interesting question. I think it has been alluded to already by Dr. Welch in his written statement that we don't have clear evidence at the present time that continuing medical education assures physicians' competence, and I do think that is a true statement, that we don't have clear evidence. Right now I feel it is an assumption on our part and I think there is a lot of, perhaps anecdotal, but there is a lot of information to support that assumption. I think these rules will provide an opportunity and a stimulus to the physicians of the State to maintain currency in their medical practice and therefore hopefully maintain competence.

I think there is some other things however that I should point out about requiring continuing medical education in the State of Minnesota. Forty percent of the

other states in the United States now have similar legislation and rules in effect. I think another fact that is important to keep in mind is that it is reported that the half life of medical information is now down to three years, which incidentally coincides with the three-year cycle of our continuing medical education accreditation and that means that all of the medical knowledge turns over every three years and so practicing physicians must keep current or they are going to be behind as far as medical knowledge is concerned.

I think another important observation that I have is that now many of the specialty boards are requiring recertification by their physicians, and recertification means that once you have become a board certified specialist in any given specialty, it does not mean that you will be that forever. You must be recertified. The Internal Medicine Academy and the Academy of Family Practice are leading the way in this and I think the important fact which relates to again continuing medical education is that most of these recertification exams emphasize knowledge that has been acquired since the last time the examinee took an exam and that means that that individual physician is obligated to stay current in order to stay board certified, and I think we all know how important that is in medicine.

So I think those are some important ideas, if you will, that I'd like to state dealing with the issue of continuing medical education as an index for competency in a physician's practice.

MR. BREVIU: Thank you, Doctor. Incidentally, Mr. Hearing Examiner, while no concerns have been raised in this hearing about the question of whether there is a provable relationship between continuing education and professional competence, I believe that the legislation which authorized the Board to adopt these rules, Minnesota Statutes, Section 212 -- 214.12, creates a legislative assumption that such rules will improve the professional competence of physicians practicing in Minnesota. I believe that that is a determination that essentially -- or an assumption I should say that essentially has been made by the Legislature.

EXAM. BECK: All right, are there any further statements or questions by anyone present at the hearing concerning the proposed rules?

DR. STEIN: Are you ready for any questions?

EXAM. BECK: Yes, sir, would you state your name please before you --

DR. STEIN: I am short of breath from coming in here. I am Dr. R. J. Stein from Pierz, Minnesota, town of about 600, 700, east of Little Falls, about 12

miles, and to begin with I am alone, have been alone for a number of years, practiced there since '33 and now I have -- am a great deal retired. I make no more hospital calls, send my -- refer my patients there. Have no medical problems other than -- if there are problems, refer them to the consultants at St. Cloud, Brainerd, Minneapolis, St. Paul, any one of those places, so my practice is limited to office practice and deciding where to ship them to. And the other part is that I also am -- have charge of the nursing home in Pierz. I can't think of the name, what do they call it -- medical director, and -- and that is the extent of my practice, office practice. I make no calls to the hospital, refer all of them or those I think I send there for other doctors in Little Falls to take care of or St. Cloud or Minneapolis, St. Paul, so forth, so on, so that is the background and the other is that I used to attend meetings quite frequently, but now it is getting to be such that the meetings that are being held are of little or no value to me.

For one thing I don't have $80, $180, to spend for tuition for that or hotel room and so forth, and so on, and I can run down -- ones like this here, fluid retention of pregnancy. That is a complication I don't treat. Genetic counseling, amniocentesis and so forth.

I do know something about, but I don't know how to take a pap smear. I don't read them. Then hypertension in pregnancy, so forth and so on. Well, that is part of the literature that we get, and this here, you are all familiar with it, all the stuff that we do get, and then also what you're all familiar with too, but perhaps not if you don't go -- if you go to the meetings, you get all these magazines, and I get a great deal out of them. In fact I can get more out of them than listening to a discourse and not having it down in shorthand, whether it is a Minnesota State Medical or any of the other societies, usually.

You're all familiar with the Medical World News, Family Physician from Kansas City, M.D. Magazine, Post Graduate Medicine Magazine, Family Physician again, Modern Medicine, Private Practice, so on and so on, so I can sit down in my chair -- I quit practice at 4:00 usually, maybe even 3:30 and stop -- start about 2:00 in the afternoon just on Mondays and Tuesdays, Thursdays and Friday afternoons, Saturday forenoon, so I have got plenty of time to read and keep reading up on what is the latest material in the medical magazines, better than I can if I go to -- spend $80, which we don't have. In the days that we started practicing we didn't have the fees that you boys have these days or those that are

out practicing medicine.

So I make a plea, if this is the right group, that I not be required to drive all over the country and at these places to attend these meetings. Not that I want to be a nincompoop. I have available plenty there. We have a library at the hospital, and I am sure I can write to Minnesota State Medical Association, which I am a member of, and also the AMA, and I can get any information from them that I may need, so I feel that I should not be compelled. I don't understand it yet. Our secretary from Brainerd on the Upper Mississippi is not clear on it either, just exactly who makes the rules, and if there are exceptions or so, and if there is an exception, I beg that you consider me.

EXAM. BECK: Doctor, could you spell your last name for the court reporter.

DR. STEIN; S-t-e-i-n.

EXAM. BECK: Thank you. All right, are there any questions for Dr. Stein or any comments on his statement?

DR. JACOTT: May I make a comment?

EXAM. BECK: Yes.

DR. JACOTT: Dr. Stein, I would like to make a couple of comments. I appreciate your comments and bringing them here to the Board and to the Hearing

Examiner. The Board specifically addressed some of the issues that you have -- that you have brought up. One of those is the issue of the retired or the semi-retired physician and the Board felt that that individual in fact does need the continuing medical examination credits if they are going to maintain any type of patient contact and the Board did go into that in some detail.

I think secondly, however, keeping that in mind, if you review carefully the requirements for continuing medical education as we have presented here today, and I believe there are copies of that in the back, you will find that out of the 150 credits for a three-year period, 90 of those can be obtained within your own area, without having to leave and travel a significant distance to obtain those credits, and many of those 90 can be obtained in the methods that you outlined of home study and so on, self assessment. The other 60 I think as you indicated can be obtained within the State of Minnesota through some of the existing organizations that provide Category 1 credits and I think there are a number of courses that would be applicable to your given situation and not necessarily courses in obstetrics and so on, but courses that apply with geriatrics and the type of situation that you are dealing with.

DR. STEIN: You mentioned geriatrics. We see

a great deal of that, but if they are having any complications, we are flooded with specialists up there, and I know enough to send someone to a specialist when they -- when they need something more than an antibiotic or just to be observed and so forth. I can tell meningitis from an ingrown toenail pretty well. I know how you folks are kind of caught with the laws and that. For instance, sexual medicine. I don't need to know any more about that. I've got 12 children. Or laryngology. Now what do I need -- I don't need to read much of that, you know, or go to listen to a long discourse about some specialist that wants to get his name out, and I got -- Office of Continuing Medical Education, University of Minnesota, Allergies Clinic. I have got a very good consultant in Minneapolis, there are many of them, that are wonderful consultants, been using him for 20 years or more. Why should I go down and listen to that. Psychiatry. We have a psychiatrist in St. Cloud for reference, and if you look through that there you just see why it is -- for a man that is practicing -- really I am just doing what you are trying to get nurses to do, and put them out in the country. That is about what I am really doing, and the next thing they're going to have a nurse I suppose in our town.

EXAM. BECK: All right, are there any further

comments or questions?

DR. STEIN: Yes, I'd like to know if that's not allowed, you take my license away?

EXAM. BECK: Well, is there any further comment by the Board on Dr. Stein's testimony?

(Panel nodded no.)

EXAM. BECK: If not, are there any further comments or questions concerning the proposed rules? I want to remind those present that written comments can also be submitted within five days -- five working days of today, and those comments must be submitted to Room 300, 1745 University Avenue, St. Paul, 55104. Are there any further comments at this time? If not, the hearing will be adjourned.

(Whereupon the hearing adjourned.)

## REPORTER'S CERTIFICATE

I, Nancy J. Duehn, do hereby certify that I recorded in stenotypy the proceedings had in the foregoing matter on the 4th day of October, 1977, at Minneapolis, Minnesota, before George A. Beck, Hearings Examiner;

I further certify that I thereafter transcribed into typewriting the foregoing transcript;

I further certify that said transcript of said proceedings constitutes a full, true and correct transcript of the proceedings to the best of my ability.

Dated this 5th day
of October, 1977.

Nancy J. Duehn

Nancy J. Duehn
Court Reporter
3729 - 39th Avenue South
Minneapolis, Minnesota 55406
Phone: 729-9528

Rule As Adopted 376

374

RULES RELATING TO

CONTINUING MEDICAL EDUCATION

7 MCAR § 4.012 Continuing Medical Education

A. During three year cycles, each physician licensed to practice by this Board shall obtain 150 hours of continuing medical education credit as required by this rule.

1. For the purpose of administering this rule, the Board will establish three classes of licensees as follows:

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

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

Class III. Licensees in this class shall be required to complete 150 hours of continuing education by December 31, 1980. These hours shall be obtained in such a way as to fully comply with the requirements of 7 MCAR § 4.012B. Thereafter, the

licensees in this class shall continue to report to the Board at three year intervals.

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

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

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

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

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

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

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

1. Papers, publications and books. Ten hours of credit shall be granted for a scientific paper or book chapter published in a scholarly medical journal or book.

2. Lectures. An hour of credit shall be granted for each hour spent lecturing at a course which would qualify for approval under these rules.

3. Exhibits and non-published papers. Ten hours of credit shall be granted for a paper or exhibit presented before a professional medical or allied health audience. Credit may be claimed only once for each scientific material presented.

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

Approval of courses for credit.

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

1. The name and address of the organization sponsoring the course.

2. A detailed description of the course content including a time schedule for the course.

3. The name of each instructor or person making a presentation and his or her credentials.

4. The location - including the name and address of the facility at which the course will be conducted.

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

1. The educational activities shall have significant intellectual or practical content dealing primarily with matter directly related to the practice of medicine or to the professional responsibility or ethical obligations of the participants.

2. Each person making a presentation shall be qualified by practical or academic experience to teach the subject he or she covers.

3. Participants shall attend educational activities in a classroom, laboratory, or setting suitable for the activity. Video, motion picture or sound tape presentations may be used.

4. Ordinarily, credit will not be given for speeches given at lunches or banquets.

5. One hour of credit shall be given for each 60 minutes actually spent on educational activities.

6. Any course planned, sponsored or co-sponsored by a medical or osteopathic medical school, state or national medical or osteopathic association, or a national medical specialty board shall be

presumed to meet the above standards. This presumption may be withdrawn by the Board if it determines that a school, association or specialty board has sought credit for a course not meeting these standards.

E. The Board shall state in writing its reasons for denying any application for approval of a course for credit.

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

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

H. Licensees shall, at the relicensure period coinciding with the end of their cycle, provide a signed statement to the Board on a form provided by the Board indicating compliance with this rule. The Board may, in its discretion, require such additional evidence as is necessary to verify compliance with the rule.

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

I. Exemptions. The Board may grant an exemption from these continuing education requirements to a licensee for full time participation in residency or fellowship training at a professionally accredited institution.

J. The Board may refuse to renew, suspend, condition, limit or qualify the license of any person whom the Board determines has failed to comply with the requirements of this rule.

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

APPROVED AS TO FORM AND LEGALITY

FEB 22 1978 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 23 1978

Secretary of State

10:00 AM

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of Proposed Adoption of Rules Relating to Continuing Medical Education

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the State Board of Medical Examiners.

The need to adopt these rules arises because of Minn. Stat. § 214.12 (1976). This statute permits the Board of Medical Examiners to promulgate, by rule, a continuing education requirement for the renewal of a license. The express purpose of this statutory authorization is to promote the continuing professional competence of licensees.

It should be noted that the above referenced statutory authority is permissive, not mandatory. As is set forth in greater detail in the Board's Statement of Justification, the Board believes it is important to exercise this statutory authority to fulfill its duty to protect the health and welfare of the citizens of Minnesota by insuring that physicians practicing in this state not only are qualified for licensure but that they continue to maintain their competency by continuing their education. Toward this end the Board believes these rules to be necessary.

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS



ARTHUR W. POORE
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, Loren E. Nelson, M.D., do hereby certify that I am the Secretary-Treasurer of the State of Minnesota Board of Medical Examiners, a board duly authorized under the laws of the State of Minnesota, and that the following is a true and correct copy of a motion made at a meeting of the State of Minnesota Board of Medical Examiners duly and properly called and held on the 19th day of November, 1976; that a quorum of the Board was present at said meeting, that a majority of those present voted for the motion, that it is set forth in the minutes of the meeting and has not been rescinded or modified.

> RESOLVED, that Loren E. Nelson, M.D., Secretary-Treasurer of the Minnesota Board of Medical Examiners, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Medical Examiners relating to requirements for continuing medical education 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 complying with the requirements of the State Office of Hearing Examiners.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11 day of August, 1977.

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

Loren E. Nelson

LOREN E. NELSON, M.D.
Secretary-Treasurer

EXHIBIT A

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the Minnesota Board of Medical Examiners Relating to Continuing Medical Education

CERTIFICATE

I hereby certify that the 497 general labels and 1 page list for the Minnesota State Board of Medical Examiners, all of which are attached and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 1:15 o'clock P.m., this 24 day of August, 1977, have requested pursuant to Minn. Stat. § 15.0412 subd. 4 (1976), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules and amendments thereto on the subject captioned above.

SECRETARY OF STATE

JOAN ANDERSON GROWE

Joan Anderson Growe

By Cheri L. Mattson

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of the Proposed Adoption of Rules Relating to Continuing Medical Education

AFFIDAVIT OF MAILING

M. Jean Woods, being first duly sworn, deposes and says:

That on the 25th day of August, 1977, 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 at the addresses 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.

M. Jean Woods

Subscribed and sworn to before me this 25 day of August, 1977.

Arthur W. Poore

ARTHUR W. POORE
Notary Public, Ramsey County, Minn.
My Commission Expires Dec. 10, 1981

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of Proposed Adoption of Rules of the Minnesota Board of Medical Examiners Relating to Continuing Medical Education

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Arthur W. Poore, being duly sworn upon oath, deposes and says:

1. That he is an employee of the Minnesota State Board of Medical Examiners.

2. That on the 24th day of August, 1977, the Secretary of State provided him with a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules or amendments thereto pursuant to Minn. Stat. § 15.0412 subd. 4 (1976), a photocopy of which is attached hereto and incorporated by reference.

Further affiant saith not.

Arthur W. Poore

Subscribed and sworn to before me this 24 day of August, 1977.

M. Jean Woods

M. JEAN WOODS
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Apr. 22, 1983

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412 subd. 4 (1976), in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Tuesday, October 4, 1977, commencing at 9:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed rules as captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to George Beck, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8108, either before the hearing or within five (5) days after the close of the hearing. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

A copy of the proposed rules is attached hereto and made a part hereof. More copies of the proposed rules are now available and at least one free copy may also be obtained by writing to the State of Minnesota Board of Medical

Examiners, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Extra copies will also be available at the door on the date of the hearing.

A Statement of Need explaining the Board of Medical Examiners' position relative to the necessity for the proposed rules and a Statement of Evidence outlining the testimony and evidence which will be introduced by the Board in support of the proposed rules will be filed with the Hearing Examiner's Office at least twenty-five (25) days prior to the hearing and will be available there for public inspection. The statutory authority of the Board of Medical Examiners to promulgate and adopt these rules is contained in Minn. Stat. § 214.12 (1976).

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 a year or five (5) hours per month for lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: August 11, 1977

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

Loren E. Nelson

LOREN E. NELSON, M.D.
Secretary-Treasurer

CONTINUING MEDICAL EDUCATION RULES

STATEMENT OF JUSTIFICATION

## Introduction

Minn. Stat. § 214.12 (1976) permits the Board of Medical Examiners to set, by rule, continuing medical education (CME) requirements for all physicians licensed by the State of Minnesota. These rules are proposed for the purpose of implementing this statute. In considering the requirements to be imposed by these rules, the Board of Medical Examiners was particularly concerned with the following points:

1. To protect the health and welfare of the citizens of Minnesota by insuring that physicians practicing in this state not only are qualified for licensure but that they continue to maintain their competency by continuing their education.

2. To insure that continuing medical education courses are of satisfactory quality to provide significant learning opportunities.

3. To avoid drafting rules which may be counterproductive by making the requirements so restrictive that many physicians, particularly those practicing in more isolated rural areas, are unable to meet them.

## RULES

Section .012A. This rule requires that physicians obtain the requisite continuing education over the course of three year periods. It is felt that three year time periods will provide sufficient flexibility so that physicians need not be constantly concerned about an immediate "deadline" in which to meet the requirements. Such cycles will also aid the Board considerably in their administration of this program.

The most significant aspect of this rule is the imposition of the requirement that physicians obtain 150 hours of continuing medical education during the three cycle. Recognizing the lack of emphirical data upon which to base a determination that "x" number of hours is ideal for meeting the dual purposes of

enhancing physician competence while protecting against unduly restrictive requirements, the Board opted for requiring an average of 50 hours per year for varying reasons. First, the Board is of the opinion that meaningful educational experiences can and should be gained in a variety of ways. If such experiences, however, are to be meaningful in view of the technical nature of the knowledge a physician must have, it is necessary that the overall requirement be sufficiently high so that an individual area of educational endeavor does not prove to be a meaningless experience serving only to fulfill a technical requirement. Recognizing that the above standard speaks in favor of a signficant number of educational hours per cycle, an outside barrier has been established by the legislature at an average of 50 hours per year. A consideration which argues in favor of lowering the number of hours and which was noted in the introduction is the Board's concern with the possibility that requirements may prove unduly restrictive and harsh when applied to the rural physician who may have considerable difficulty leaving his practice to attend courses. The Board believes that its requirements are not unduly harsh when one examines the ways in which the requirements may be fulfilled. A physician may fulfill a significant number of hours without ever leaving his practice. Further, to the extent that there is any experience in Minnesota with continuing medical education, that experience has indicated that a requirement of 50 hours per year is reasonable. The State Medical Association has, since 1974, had a program of continuing medical education for its members which imposed a 150 hour requirement for each triennium. That association's experience has indicated such standards are attainable by Minnesota physicians.

Likewise, CME requirements of 150 hours per triennium have been imposed by various associations and specialty groups. The American Academy of Family Physicians, the pioneer in the area of CME, has had a 150 hour requirement for continued membership since 1947. The American Osteopathic Association has had such a requirement since 1973. The American Medical Association has, since 1970, offered a Physician's Recognition Award to members attaining 150 hours of

CME every three years. Similarly, the American Board of Family Practice requires 300 hours of CME during six year cycles. The Board is of the opinion that the experience of the above organizations, and others with similar standards, indicates that a requirement of 150 hours per three years is reasonable.

In view of the above, the Board believes that a three year requirement of 150 hours of continuing medical education is reasonable, will serve to enhance physician knowledge and, therefore, aid their treatment of patients, and is attainable by Minnesota physicians.

For the purpose of administering this rule the Board has established three classes of physicians. In doing so, the Board is attempting to ease the administration of this rule by assuring that approximately one-third of the physicians in this state will fulfill their three year cycle in any given year. As a lead-in measure, though, the Board will require Class I physicians to fulfill one-third of their triennial requirements (50 hours) within the first year. Class II physicians will fulfill two-thirds of their triennial requirements (100 hours) within two years. Class III physicians will be the first group to report only at the end of their full three year cycle. Thereafter, all physicians will report at the end of their three year cycles.

The Board shall attempt to divide licensees evenly among the three classes. The Board believes that doing so is both reasonable and necessary for the proper administration of these rules.

A further administrative requirement which is imposed is simply the placing of a physician initially licensed after the effective date of this rule in the class which commences its first three year cycle on January 1 following the date of that physician's initial licensure.

Section .012B. This section establishes the categories in which physicians must obtain continuing education credits. This section further sets forth the standards for the total number of credits which may be attained in each category. It should be noted initially that the categories used are consistent with those of various specialty boards and associations throughout the country and therefore

should make it easier for physicians who seek to meet both the requirements of this Board as well as those of an association or specialty group.

Category 1 is meant to serve as the primary educational source for physicians. It includes the activities sponsored by professional organizations and academic institutions whose backgrounds, quality and integrity are the most familiar to the Board. By requiring 60 hours per triennium in this category, the Board assures that every physician will attend a sufficient number of high quality programs to maintain and improve his or her capabilities.

Categories 2 through 5 are essentially secondary sources of education. While they are important and necessary for a physician's professional development, the Board seeks to prevent them from taking the place of Category 1 credits by permitting no more than a certain number of hours of credit to be recognized in these categories per triennium.

Category 2 permits a physician to meet 30% of his triennial requirements by attending activities sponsored by organizations which are not as noted for their academic endeavors as are the sponsors of Category 1 activities. The Board recognizes that hospitals, clinics, local medical or osteopathic societies may contribute to a physician's continuing competence through programs which are of particular value to a local physician both because of content and availability. Although these organizations may offer activities which qualify for Category 1 credit, most likely their activities will fall into this category.

Category 3 permits a physician to obtain no more than 45 hours of credit during a given cycle through teaching activities. The Board recognizes that time and research spent in preparation of lectures and programs can contribute signficantly to the preparing physician's own education.

Category 4 is based upon essentially the same principle as category 3. It recognizes that the preparation of a paper or other publication, lecture, exhibit or non-published paper does result in the enhancement of the writer's education.

Category 5 recognizes that certain types of activities, although engaged in by most physicians, do play a significant role in the professional development of

a physician. As such, they do help to assure continuing competence and are therefore encouraged. These activities are professional reading, peer patient care review activities, self assessment examinations and preparation for certiciation or recertification examinations administered by national specialty boards. Professional reading is essential to any physician given the rapid advances made in the science. Peer patient care review activities promote dialogue, examination and criticism of one another's practices and techniques in the care of an individual patient. As such, they constitute a form of education of considerable practical value and which should therefore be recognized by the Board. Self assessment examinations can, if of sufficient quality, be significant learning activities. Unfortunately, some low quality examinations constitute little more than advertisements for a product offered by the sponsoring organization. Thus, in an attempt to assure that credit is given only for those examinations likely to contribute to the education of an individual physician, the Board believes it may properly give credit for only those examinations sponsored by organizations capable of demonstrating to the Board that they maintain a significant level of quality control relative to their examinations. Last, the Board believes it highly appropriate to grant credit to a physician studying for certification or recertification through an examination administered by a national speciality board. The Board recognizes the level of difficulty in such examinations and believes that preparation for them clearly merits CME credit.

It should be noted that Category 2 and 5 are especially beneficial to the isolated, rural physician. These categories permit such physicians to obtain 90 hours of credit (i.e., to fulfill all but category 1 requirements) without leaving the local area. Thus, the Board believes that the requirements, although stringent, are not oppressive or unduly restrictive when applied to such physicians.

Section .012C. This section sets out the information minimally necessary to enable the Board to evaluate a course for which approval is sought. It includes the name and address of the sponsoring organization, a detailed description of the course content, the name of each instructor as well as his or her credentials, and the location of the facility at which the course will be conducted. The Board finds

it necessary to require that applicants submit any additional information reasonably required by the Board to evaluate a course since it is quite conceivable that follow-up inquiry will have to be made by the Board in specific cases to determine if educational credit is merited and, if so, in what category. It is impossible for the Board to foresee all such circumstances in which further inquiry will be necessary. The Board also limits this inquiry to that information which is reasonably necessary to evaluate the course for which approval is sought.

Section .012D. This section sets forth the standards required to be met by a course seeking approval for Category 1 credit. It is exceedingly difficult to specify in detail the standards necessary for making such a determination. Accordingly, only general guidelines are stated in this rule. The Board recognizes, however, that most Category 1 courses will be sponsored by medical or osteopathic medical schools, state or national medical or osteopathic associations, or national medical speciality boards. The Board is well familiar with and confident of the educational quality of courses taught by these organizations. Accordingly, courses offered by such organizations shall be presumed to fulfill the requirements for Category 1 credit. The Board does not, however, intend this to act as a bar to all other persons or organizations interested in sponsoring a Category 1 course. Thus, such persons or organizations are expressly permitted to apply for Board approval of their activities. Likewise, this presumption is not intended to act as a "rubber stamp" for the schools, associations, or boards listed in .012D(6). Thus, if the Board discovers that any such school, assopciation or speciality board has sought credit for a course not meeting these standards, the Board shall take away the favorable presumption for all courses taught by such organization and will require that organization to prove thereafter why each course it teaches should receive Category 1 credit.

Section .012E. This section requires the Board to state in writing its reasons for denial of approval of a course. Thus, arbitrary action is avoided and the Board is on record on a case by case basis with respect to the individual problems which justify denying approval.

Section .012F. The Board has considerable knowledge of and confidence in the educational benefit of preparing for and taking certification or recertification examinations from national speciality boards. Thus, any physician receiving such certification or recertification during a particular cycle is relieved of the responsibility of complying with any other continuing education requirement. That fact that the physician has passed the certification or recerticiation examination is sufficient evidence in itself that the physician has undertaken a demanding means of assuring his continuing competence.

Likewise, in this section, the Board seeks to recognize other continuing education programs which are the equivalent of or greater than those of this Board. Any physician may fulfill the requirements of such programs in lieu of compliance with the Board's requirements.

Section .012G. In an attempt to ease the difficulty that is always caused when requirements, such as those contained in these rules, are initially imposed, the Board will issue retroactive approval of any educational activity offered after January 1, 1977 which meets the standards for approval contained in these rules. This section is meant to particularly benefit physicians during the initial years of his program. It is anticipated that as continuing education becomes the norm, both in Minnesota and elsewhere, the number of courses available to physicians will increase considerably. Until such time, the Board finds it appropriate to recognize any credit obtained by a physician during the year prior to the date these rules become effective.

Section .012H. To insure that a physician has met the requirements of these rules, a reporting mechanism is necessary. By requiring that licensees report at the relicensure period coinciding with the end of their cycle, the Board attempts to simplify the reporting mechanism, both for physicians and for itself. Since continuing education will be a mandatory requirement, it is of course necessary to require physicians to submit the reporting information. Failure to do so must result in the possible imposition of sanctions. These sanctions are referenced further in .012J.

Section .012 I. It is assumed that there will be occasional unavoidable circumstances which prevent a physician from meeting these continuing education requirements. Likewise, it is assumed that it is impossible to foresee all possible circumstances which might arise. Accordingly, the Board is attempting to deal with the most obvious circumstance, that is, full time participation in residency or fellowship training at a professionally accredited institution. The Board is well familiar with the enormous time demands made upon residents or fellows. These demands are sufficiently great as to make compliance with continuing education requirements exceedingly difficult. Additionally, since residents and fellows are in the process of furthering their medical education, it is appropriate that these requirements be waived as to them. Other circumstances which may obviate or minimize the need for continuing education may include poor health which both restricts a physician's ability to attain continuing education credit as well as his ability to engage in the active practice of medicine. All such cases will have to be presented and judged on a case-by-case basis by the Board.

Section .012J. Since a mandatory continuing education requirement is being imposed upon physicians, the Board must have the authority to discipline those physicians who fail or refuse to comply with the requirements. This subdivision enumerates the types of discipline which may be imposed. If the discipline imposed is a refusal to renew a physician's license, this subdivision provides a mechanism whereby that physician can avail himself of an opportunity to be heard regarding the Board action. Naturally, if the Board seeks to suspend, condition, limit, or qualify the license of any physician, that person also has a right to a hearing pursuant to the Minnesota Administrative Procedure Act.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Board Room, Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on October 4, 1977, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: August 11, 1977

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

Loren E. Nelson

LOREN E. NELSON, M.D.
Secretary-Treasurer

St. Luke's Hospital

915 EAST FIRST STREET • DULUTH, MINNESOTA 55805 • TELEPHONE: 218/727-6636

DEPARTMENT OF
MEDICAL EDUCATION

November 9, 1976

Minnesota State Board of Medical Examiners
Room 352 - Health Department Building
717 Delaware Street, SE
Minneapolis, Minnesota 55414

Gentlemen:

It is my understanding that legislation was passed in this state which will enable the Board to require Continuing Medical Education activities as a condition for re-registration. I understand that a sub-committee on CME is preparing these regulations for Board review at its next meeting on November 19-20.

I would appreciate, if possible, receiving a copy of this legislation and any information relative to the Board's proposed action on CME. Possibly, this might be available following your meeting next week and thus a response might be more appropriate after that time.

In any event, I would certainly appreciate any informative materials you could provide.

Sincerely yours,

George W. Knabe, Jr., MD
Director
Medical Education Department

GWK/lf

# STATE OF MINNESOTA

## HOUSE OF REPRESENTATIVES
## RESEARCH DEPARTMENT


Legislative Analysts
Eileen M. Baumgartner
Gary R. Currie
Barbara M. Diamond
Gail Hansen
John Helland
Peter D. Holmes
Alan R. Hopeman
Stephen M. Jackson
Kevin P. Kenney
Joel T. Michael
James Nobles
Sara L. Peterson
Samuel W. Rankin
Leroy H. Schramm
Thomas M. Todd
Fred Vescio
John Williams
Administrative Assistant
Barbara Heikes


November 24, 1976


17 STATE CAPITOL
ST. PAUL 55155
(612) 296-6753

Peter B. Levine
Director


Arthur Poore
Board of Medical Examiners
Minnesota Department of Health
717 Delaware St. S.E.
Minneapolis, MN 55440

Dear Mr. Poore:

I would appreciate being kept abreast of developments in rules governing the requirements for continuing medical education. If you plan on having any meetings to review drafts of these rules, I would also appreciate receiving notices of these meetings.

Thank you very much.

Sincerely,

Stephen M. Jackson
Legislative Analyst
Health

SMJ/dr

Mayo Clinic
Rochester, Minnesota 55901
Telephone 507 282-2511

Edward D. Henderson, M.D.
*Orthopedic Surgery*

November 29, 1976

Mr. Arthur Poore
Board of Medical Examiners
352 Minnesota Department of Health Building
717 Delaware Street Southeast
Minneapolis, Minnesota 55440

Dear Mr. Poore:

I am writing to you concerning the proposed adoption of rules governing requirements for continuing medical education. I am writing to you as an individual practitioner of medicine in the State of Minnesota and also one who has been involved in the discussion of mandatory medical education on the national scene, first in my role as a member of the American Board of Orthopaedic Surgery and second by attendance at two national conferences regarding physician competence as an officer in a national medical organization. I am not speaking for these organizations, but only as an individual. I would like to inform the Board of my opinion on this matter and the reasons for it.

First, let me say that, as far as I am able to determine, the initial concept of mandatory continuing medical education for physicians began in the State of California as part of a strategy to attempt to persuade the legislature that the physician community could guarantee competence of physicians by various means. The genesis of this was an attempt to persuade the legislature to pass some laws to ease the burden of physicians in regard to high premiums for malpractice insurance and also to try to get the legislature to guarantee that such insurance would be available in the State of California. It was felt that if a certain amount of identifiable continuing medical education was participated in by each physician, this would guarantee to the public that the physician was keeping up-to-date and that, somehow, his performance would be improved, thereby lessening the amount of medical malpractice suits filed in the state and presumably reducing the premiums for such insurance. The exact story about how 50 hours of continuing medical education per year was arrived at seems to be somewhat obscure. Apparently this was an arbitrary figure decided by someone who was arranging the strategy of the California physicians. I am not aware of any studies that indicate that 50 hours of any specific type of continuing medical education is or is not beneficial to the practicing physician.

Before imposing additional burdens on the practicing physicians of the State of Minnesota and establishing a precedent of additional regulations on an already rather strictly regulated group of people, I hope that the State Board of Medical Examiners will consider that the negative aspects of this action may far outweigh any positive benefits and that the momentum which has been built up around the United States in this regard should not necessarily affect the medical profession of the State of Minnesota.

I am certainly not personally against continuing medical education. I am chairman of a department, a large part of whose activity is in continuing medical education of various sorts. The problem that I have with this whole concept is that no one has been able to indicate any relationship between mandating continuing medical education and the competence or the performance of a physician. Furthermore, the original premise is wrong; the physicians who are sued are not those who are ill-prepared or who have no knowledge of new advances in medicine. In contrast, the ones who are sued most frequently are those whose education and training are of the best and who, by the very nature of their activities, must keep up with the newest advances in their own subspecialty. I think it is known to all that the physician's first responsibility following the care of each of his individual patients is to maintain his knowledge of his specialty. Furthermore, the professional has many ways of obtaining this knowledge. One of the primary things that he must learn in the pursuit of his profession is where this knowledge is and how to get it. I think you would have a hard time finding an educator or educational psychologist who would agree that there is some one formula which would guarantee that a physician will increase his knowledge at a satisfactory rate and keep up with the activities of the profession. There are many ways for a physician to keep his information up-to-date, of which attendance at meetings and attendance at continuing education courses are but two. Perhaps much more important is regular reading of the journals, contact and conversation with colleagues, both in his own and other fields, and individual conversations with people that can give him specific information that he needs and desires. The motivation for the individual physician to keep up-to-date and to learn more for the benefit of his own patients at the time he is treating them is so great that it seems unreasonable, irrational and illogical to think that some formal mechanism that can be set up by a regulatory body will motivate him in a better way or will be able to guarantee to the public at large that he has done so.

Finally, it has been proved on many occasions that competence and performance are not necessarily related in any logical fashion. The performance of the physician has a great deal to do with his own personality, his habits, his relationships with other human beings, his own self-assurance and many other factors which are extremely difficult to measure. Apparently the only way to measure a physician's performance is by an audit of some sort, which becomes so complicated and expensive as to be almost useless. I think that we are going to have to depend on local peer review mechanisms to discipline the medical society and make sure that the few physicians who are doing inadequate, careless or actually harmful work are eliminated from the scene.

I would only ask you to consider carefully what possible benefit the imposition of another regulation, which has no logical reason for thinking

that it will contribute anything positive to the medical scene, can have for the medical profession.

This letter in no way represents the policy or opinion of Mayo Clinic. The ideas are my own personal ideas. I would be happy to discuss this with the Board in person if this is desirable.

Sincerely,

E D Henderson

E. D. Henderson, M. D.

EDH:mh

Y. K. J. GRONQUIST, M. D., F.A.C.S.
108 CARTER BUILDING
CLOQUET, MINNESOTA 55720

December 16, 1976

President (if any)
Minnesota State Medical Assn.
101 E. Fifth Street
St. Paul, MN 55101

Dear Sir:

This letter is regarding the CME hour-counting requirement for membership in the MSMA. This requirement is an Asinine exercise in futility because there is not one iota of evidence indicating that the hours spent dozing at various medical meetings have anything at all to do with the competence of physicians. Probably the only way to judge that is an impartial peer review.

I find it truly incredible that an organization that I do not need and that does nothing for me tries to impose this type of grade school Mickey Mouse on me. It seems that I have no other choice but to resign.

In order to protect myself from all possible future allegations, I will inform the Minnesota State Board of Medical Examiners and my malpractice carrier of my resignation.

Very truly yours,

Y.K.J. M.D.

Y.K.J. Gronquist, M.D.

P.S. And I have enough hours too!

YKJG/eh

Y. K. J. GRONQUIST, M. D., F.A.C.S.
108 CARTER BUILDING
CLOQUET, MINNESOTA 55720

January 4, 1977

Bror F. Pearson, M.D.
Minnesota State Board of Medical Examiners
Suite 203, Minnesota State Bank Building
200 South Robert Street
St. Paul, Minnesota 55107

Dear Dr. Pearson:

The Minnesota State Medical Association (MSMA) is involved in an "effort" to improve the competence of its members. This is purely sham activity as outlined in the copy of my letter to the President of MSMA.

The purpose of this letter is to give you a personal view as to where a problem may lie.

The physicians who are below the age of 50 are not a problem. It would be a waste of time and effort to put them through any kind of testing, etc.

The age group from 50 to 70 are suspect as outlined in the enclosed article by Dr. Spiro. We try hard to keep up with the advancing medical knowledge, but it is difficult. You possibly should check up on us in some way.

The physicians who are over the age of 70 and are practicing are highly suspect. I know colleagues in this age group who are doing a superb job. However, whenever I have seen or heard of substandard medical practice, it has nearly always involved physicians over 70. It would be possible to prove or disprove my disrespectful assumption by auditing a few thousand hospital records and see if any particular age group of physicians has any unusual clustering of unsatisfactory records.

It is unrealistic to expect the MSMA to do anything about this. MSMA is a hierarchical body where the importance of position is directly related to length of service and that is obviously related to age.

Very truly yours,

Y.K.J. Gronquist, M.D.

YKJG/eh

Y. K. J. GRONQUIST, M. D., F.A.C.S.
108 CARTER BUILDING
CLOQUET, MINNESOTA 55720

January 17, 1977

Loren M. Nelson, M.D.
Minnesota State Board of Medical Examiners
Suite 203, Minnesota State Bank Building
200 South Robert Street
St. Paul, MN 55107

Dear Sir:

This is a follow-up letter to my previous communication of January 4, 1977. My colleagues in Cloquet have severely criticized me for only being critical of the MSMA and not offering any constructive proposals.

This is my constructive proposal:

If all physicians were required to take the National Boards again at the age of 65 and every five years thereafter, then 80-90% of the substandard medical practice in this state would be eliminated. If I will be too slow and too old to practice medicine at 65, I surely won't pass the National Boards!

Very truly yours,

Y.K.J. Gronquist, M.D.

YKJG/eh

NORTHWESTERN UNIVERSITY
CHICAGO, ILLINOIS 60611

THE MEDICAL SCHOOL
VETERANS ADMINISTRATION LAKESIDE HOSPITAL
333 E. HURON ST.

January 17, 1977

Minnesota State Board of
Medical Examiners
Room 352
717 Delaware Street South
Minneapolis, Minnesota 55414

Dear Sirs:

I have just seen an article stating that Minnesota will implement a Continuing Medical Educational requirement for re-licensure beginning January 1, 1977.

Please furnish me with details of this provision and the type of documentation you will require.

Thank you.

Sincerely,

Craig W Borden

CRAIG W. BORDEN, M.D.
Certificate No. 0009195

CWB:kf

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

February 17, 1977

Mr. Arthur Poore
Board of Medical Examiners
352 Minnesota Department of Health Bldg.
717 Delaware Street, S.E.
Minneapolis, Minnesota 55440

Dear Mr. Poore:

This letter is in response to the State Board of Medical Examiners Notice of Intent to Solicit Outside Opinion relative to preparation of rules governing requirements for continuing medical education which was published in the State Register, Tuesday, November 23, 1976.

The intent of the Board of Medical Examiners to require continuing education as a condition of medical licensure for physicians is commendable; we are pleased to support your efforts.

In this regard we suggest that as your plans are developed, you should be cognizant that many licensed physicians are employed in a variety of non-clinical settings within the state including research and/or administrative positions. Within the latter group we particularly direct your attention to the physicians employed in public health programs.

We believe that continuing medical education requirements should be applicable to public health physicians. However, the education obtained in keeping with the requirements must be appropriate to the professional responsibility of the public health physician. This responsibility often differs from clinical responsibilities and, accordingly, the continuing education must also differ from the majority of continuing educational activities provided by recognized medical organizations and institutions.

Because some additional educational programs for public health physicians must be developed if these physicians are to document satisfactory compliance with continuing medical education appropriate to their professional responsibilities and because the Department of Health has appropriate expertise in this specialized area, we propose that the Board of Medical Examiners delegate to the Department the responsibility for assuring the provision of educational opportunities for public health physicians which will be appropriate to their responsibilities and in keeping with the Continuing Education requirements of the Board of Medical Examiners.

We look forward to your favorable response to our suggestion. In the interim we will begin considering the methods by which our proposal could be implemented, and will also be available to discuss our concerns further with you.

Sincerely yours,

Warren R. Lawson, M.D.
Commissioner of Health

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Minnesota Board of Medical Examiners on the 4th day of October, 1977, at 9:00 a.m. in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1977) 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 rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as 7 MCAR § 4.012, relating to continuing medical education, are adopted this 8 day of December, 1977, pursuant to authority vested in me by Minn. Stat. § 214.12 (1976), and by resolution of the Minnesota Board of Medical Examiners duly adopted at a meeting of the said Board on the 18th day of November, 1977.

STATE OF MINNESOTA
BOARD OF MEDICAL EXAMINERS

Loren E. Nelson

LOREN E. NELSON, M.D.
Secretary-Treasurer

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 rules of the Minnesota Board of Medical Examiners relating to continuing medical education and all related documents and that, based on such examinations and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: December 20, 1977

JOHN A. BREVIU
Special Assistant
Attorney General

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed )
Adoption of Rules of the State )
of Minnesota Board of Medical )
Examiners Relating to Continu- )
ing Medical Education. )

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on October 4, 1977, before George A. Beck, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Findings of Fact, Conclusions and Recommendation made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the State Board of Medical Examiners on October 12, 1977; and

WHEREAS, the State Board of Medical Examiners has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the State Board of Medical Examiners has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the State Board of Medical Examiners has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the State Board of Medical Examiners has the responsibility of submitting the complete hearing record and the rules as adopted by the Agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 13th day
of December, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Loren E. Nelson, M.D., do hereby certify that I am the Secretary-Treasurer of the Minnesota Board of Medical Examiners, 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 Medical Examiners duly and properly called and held on the 18th day of November, 1977; 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 rules relating to Continuing Medical Education identified as 7 MCAR § 4.012 which were considered at a public hearing held on the 4th day of October, 1977, are found to be reasonable, necessary and supported by the evidence contained in the record, and are hereby approved and adopted, pursuant to authority vested in the State Board of Medical Examiners by Minn. Stat. § 214.12 and that Loren E. Nelson, M.D., Secretary-Treasurer of the Board, be and hereby is authorized to sign an order adopting those rules.

BE IT FURTHER RESOLVED that the Report of Hearing Examiner be and hereby is adopted by the Board of Medical Examiners as its own with the following changes:

1. Finding of Fact No. 7 is deleted.
2. The third and fourth sentences of Finding of Fact No. 13 are deleted.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8 day of December, 1977.

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

Loren E. Nelson

LOREN E. NELSON, M.D.
Secretary-Treasurer

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE STATE BOARD OF MEDICAL EXAMINERS

| | |
|---|---|
| In the Matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education. | FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION |

The above-entitled matter came on for hearing before George A. Beck, duly appointed as Hearing Examiner in this matter on October 4, 1977, in the Board Room of the Minnesota Department of Health Building, 717 Delaware Street, Southeast, in the City of Minneapolis, County of Hennepin, State of Minnesota.

This proceeding is a rules hearing held pursuant to Minnesota Statutes, Chapter 15, to determine whether proposed rules should be adopted. Copies of this Report are available for review from the State Board of Medical Examiners and from the Office of Hearing Examiners.

Members of the agency panel including: Dr. William Jacott and Dr. Alfred Daly, members of the Board of Medical Examiners; and John A. Breviu, Special Assistant Attorney General, assigned to the Board of Medical Examiners.

Witnesses at the hearing included: Dr. John Welch and Dr. Chester Anderson, Minnesota State Medical Association; Dr. David Gaviser; Dr. Robert Hammerstrom, Director of Medical Education, Metropolitan Medical Center; and Dr. R. J. Stein.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

## FINDINGS OF FACT

1. On August 23, 1977, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On August 29, 1977, a Notice of Hearing and a copy of the proposed rule were published at 2 State Register 309.

3. On August 25, 1977, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On September 8, 1977, the Board filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Board personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through October 12, 1977, for the receipt of written comments and statements.

6. The Board has cited as authority for this proposed rule Minn. Stat. § 214.12, which authorizes the Board to "promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees." The Board stated as its purpose in promulgating this rule the protection of the health and welfare of the citizens of Minnesota by insuring that physicians practicing in this state not only are qualified for licensure, but that they continue to maintain their competency by continuing their education. The Board commented that currently medical knowledge turns over approximately every three years, therefore requiring that practicing physicians keep current through continued education. Approximately 40% of other states now have similar continuing medical education in effect. The Board believes that continuing medical education will contribute to assuring physician competence.

7. The Board has cited the proposed rule as 7 MCAR § .012;

however, it appears that the appropriate citation would be 7 MCAR § 4.012. It might also be appropriate to provide an alternative cite (Minn. Rule ME 12) since the MCAR cite is not as meaningful to someone who has an existing set of the Board's rules.

8. Section A of the proposed rule sets out the requirement that each physician must complete 150 hours of continuing medical education over a three year period, and divides all physicians in the state into three arbitrary classes for administrative purposes. The only comment concerning this section was that of the President of the Minnesota State Medical Association (MSMA), who spoke in support of the section. A more complete statement of support for this section can be found in the Board's statement of justification (Ex. 8).

9. Section B of the proposed rule sets out five categories in which credit can be obtained and specifies the number of hours of credit which can be earned for each category. The rule provides that not less than 60 hours of credit per three year period shall be obtained by attendance at educational activities approved by the Board, including activities sponsored by professional organizations and academic institutions. This category is meant to be the primary educational source. Category Two allows up to 45 hours of credit for educational activities sponsored by a hospital, clinic, or medical or osteopathic society which do not meet Category One standards. Category Three permits up to 45 hours of credit through medical teaching, and Category Four allows up to 40 hours of credit for papers, publications, books, lectures, and exhibits. Category Five permits up to 45 hours of credit for professional reading, peer patient care review activities, self assessment examinations and preparation for certification. The Board believes that Categories Two and Five are especially beneficial to rural physicians, since they permit rural physicians to obtain up to 90 hours of credit without leaving their local area.

The burden upon rural or solo practitioners was mentioned

both by Dr. Lloyd T. Wood of Rochester and Dr. R. J. Stein of Pierz, Minnesota. Dr. Wood also criticized the arbitrary values given various activities in this section. Dr. Stein commented that a large number of the medical courses offered were not relevant to his rural practice now that he is semi-retired. The Board commented that continuing medical education is important to a physician who maintains any type of patient contact. The Board has attempted to minimize travel and tuition expenses for rural practitioners and the assignment of credit hours to various activities appears to be logically related to the educational value offered by the different categories. The rule is needed and reasonable as proposed.

10. Section C sets out the method of applying for approval of courses for continuing medical education. The rule is necessary to gather the minimal information needed to make a judgment as to whether credit should be granted to the course. Dr. C. R. Erickson of Chisago City commented that rather than establishing its accreditation program, the Board should accept those accreditation programs already established and well determined which is those exhibited by the American Academy of Family Practice. It appears that Dr. Erickson's objection is met by the presumption in favor of national medical association sponsored courses contained in Section D(6). Subsection C is needed and reasonable.

11. Section D sets out the standards which must be met in order to obtain Category One continuing education credit. As indicated, the Section creates a presumption in favor of any course planned or sponsored by a medical school or association or speciality board. The rule requires that educational activities "shall have significant intellectual or practical content dealing primarily with matter directly related to the practice of medicine or to the professional responsibility or ethical obligations of the participants." Dr. Erickson commented that this language was objectionable since it made it inappropriate for physicians to attend theoretical and basic educational courses allowing the physician to understand the elementary principles of the discipline

in which he or she labors. It does not appear, however, that the language of the rule would preclude courses which would include elementary medical concepts. The rule is needed and reasonable.

12. Section E of the proposed rule requires the Board to put any denial of an application in writing. This is necessary to prevent arbitrary decisions.

13. Subsection F of the proposed rule provides that the Board may accept certification by an American specialty board in lieu of compliance with the continuing education requirements during the three year period in which the certification is granted since such certification is sufficient evidence that the physician has undertaken a demanding means of assuring his continuing competence. Dr. Erickson suggested that the Board be required, instead of permitted, to accept such certification; however, the rule as written is not unreasonable. A question was raised at the hearing as to whether a physician who was tested in 1976, and subsequently certified in the calendar year 1977, would be in compliance with this section. The Board may wish to consider adding language which would clarify this situation.

14. Section G is necessary to give approval to any educational activity offered after January 1, 1977, which would be approved under the standards contained in this rule.

15. Section H of the proposed rule sets up a reporting mechanism by requiring licensees to indicate at the time of relicensure, how they have complied with the continuing education requirement. The section is needed to enforce the rule.

16. Section I provides two exemptions to the rule, namely, full-time residency or fellowship training and also a general exemption which may include poor health or other factors which would have to be judged on a case-by-case basis. The section is necessary to fair operation of the rule as a whole.

17. Section J authorizes the Board to refuse to renew, suspend, condition, limit, or qualify the physician's license for failure to comply with the rule and allows a hearing upon request

in the case of a refusal to renew a license and is necessary in order to discipline those licensees who do not comply with the rule.

18. The entire rule was generally supported by the Minnesota State Medical Association. Dr. John T. Harbaugh of St. Cloud commented generally that a written examination is the only effective way to detect incompetent physicians and attendance at continuing medical education sessions bears no relation to the understanding, retention, and use of medical knowledge (Ex. G).

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Board of Medical Examiners gave proper notice of the promulgation of the proposed rule.

2. That the Board of Medical Examiners has statutory authority to take the action proposed, to wit, the promulgation of the proposed rule.

3. That the Board of Medical Examiners has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the Board of Medical Examiners has demonstrated the need for and the reasonableness of the proposed rule by an afirmative presentation of facts in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rule be adopted by the Board of Medical Examiners with consideration given to the Findings of Fact herein.

Dated: October 12, 1977.

GEORGE A. BECK
Hearing Examiner

## N O T I C E

Pursuant to Minn. Stat. § 15.0412, subd. 4 (as amended by Minn. Laws 1977, Chapter 443), this Report will be available to all persons upon request for at least five working days before the agency takes any final action on the rule.

The Board of Medical Examiners shall, if it proposes to adopt the rule amendments as proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five working days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rule amendments as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board within ten calendar days. Thereafter, the Board shall be responsible for filing the rule amendments with the Attorney General. The Board must give notice to all persons who request to be informed that the hearing record has been submitted to the Attorney General.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education

STATEMENT OF NUMBER OF PERSONS EXPECTED TO ATTEND AND LENGTH OF HEARING

The number of persons expected to attend the hearing in the above-captioned matter is 35 and it is estimated that the length of the hearing will be 4 hours.

Dated: August 11, 1977

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

Loren E. Nelson

LOREN E. NELSON, M.D.
Secretary-Treasurer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Board of Medical Examiners Relating to Continuing Medical Education

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Board Room, Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on October 4, 1977, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Dated: August 11, 1977

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

Loren E. Nelson

LOREN E. NELSON, M.D.
Secretary-Treasurer

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF MEDICAL EXAMINERS

In the Matter of the Proposed Adoption of Rules Relating to Continuing Medical Education

STATEMENT OF EVIDENCE

The Minnesota Board of Medical Examiners (hereinafter "Board") will introduce the following evidence at the hearing in the above-entitled matter scheduled for Tuesday, October 4, 1977, commencing at 9:00 a.m. in the Board Room, Minnesota Department of Health Building, 717 Delaware Street S.E., Minneapolis, Minnesota.

1. Documents attached hereto and made a part hereof evidencing the Board's compliance with procedural requirements for rule making:

(a) Order for Hearing;

(b) Notice of Hearing as mailed;

(c) Affidavit of Receipt of the Secretary of State's List;

(d) Certificate of the Secretary of State;

(e) Affidavit of Mailing of the Notice of Hearing; and

(f) Certificate of Board's Authorizing Resolution.

(g) "Notice of Intent to Obtain Information on Proposed Rules from Non-Agency Sources," as published in the State Register on November 23, 1976, (1 S.R. 817). Also attached are materials received in response to this notice.

2. Documents attached hereto and made a part hereof constituting the Board's affirmative presentation of facts establishing the need for and

reasonableness of the proposed rule and evidencing the Board's compliance with substantive requirements for rule making:

(a) Statement of Need; and

(b) Statement of Justification.

3. The following witnesses will represent the Board at the hearing:

Alfred Daly, M.D.
Suzanne Flinsch, Esq.
William Jacott, M.D.
John A. Breviu, Special Assistant Attorney General

Said witnesses will be available to answer questions as they might relate to the Board's affirmative presentation of facts as set forth through the previously listed and attached documents.

4. The Statement of Need attached hereto contains the citations to the Board's statutory authority to promulgate the proposed amendments to the Board's rules.

STATE OF MINNESOTA

BOARD OF MEDICAL EXAMINERS

Dated: Sept. 6, 1977.

Arthur W. Poore

ARTHUR W. POORE
Executive Secretary