

Minnesota Attorney General: Administrative Rules Proceedings

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Proposed Rules of the
~~Minnesota State Board~~ Commissioner of Health

CHAPTER 30

Human Services Occupations
Part I

PROPOSED RULES OF PROCEDURES ~~AND CRITERIA~~
FOR DETERMINING ~~CREDENTIALING~~ REGULATION OF
HUMAN SERVICES OCCUPATIONS

MHD 536 GENERAL

A. Declaration of Purpose and Scope

Minnesota Rules MHD 536-540 establish the process to be used by the ~~State Board~~ Commissioner of Health and ~~its~~ the Human Services Occupations Advisory Council in carrying out the charges of ~~Minn. Laws 1976, Chapter 222, Sections 1, 8 and 9~~ Minn. Stat. Sec. 214.001, 214.13 and 214.14 (1976). ~~It specifies~~ They specify the procedures by which human services occupations are identified and decisions are made regarding the State's need to regulate persons in specific occupations. This rule applies to all human services occupations that are not now credentialed by the State. Determination of a mode of regulation, if any, for an occupational group shall be based on the factors contained in Minn. Stat. Sec. 214.001, subd. 2, at all levels of the recommendation-decision process, to wit: subcommittee, Council and Commissioner.

B. Definitions

For the purposes of Minnesota Rules MHD 536 to 540, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

1. "Administrative authority" means the state agency responsible for administering the law and rules establishing a credential for a human services occupation.

2. "Applicant group" means an occupational group that has submitted a letter of intent to begin the credentialing process.

~~3. "Board" means the Minnesota State Board of Health.~~

~~4.~~3. "Career progression" means opportunity to move up a career ladder or enter a related profession without loss of credit for previous education and experience.

4. "Commissioner" means the Commissioner of Health.

5. "Competence" means possession of requisite abilities to fulfill work obligations.

6. "Conflict of interest" means

~~a. A direct financial or self-serving interest in the matter under consideration.~~

~~b.~~a. ~~An~~ A direct or indirect financial or self-serving interest in the matter under consideration so that the member is not so free from personal bias, prejudice or preconceived notion as to make it possible for the member to ~~objectively consider~~ consider objectively the evidence presented and base a decision solely on such evidence.

~~c.~~b. Circumstances such that a member finds it difficult, if not impossible to devote himself or herself to a consideration of the matter with complete energy, loyalty, and singleness of purpose to the general public interest.

7. "Continuing education" means education or training beyond the individual's pre-credentialing preparation for an occupation.

8. "Council" means the Human Services Occupations Advisory Council.

9. "Credentialing" means licensure or registration and the processes by which they are obtained and administered.

~~10. "Criteria--approval" means evaluation, by the administrative agency, of the qualifications of an individual already licensed or registered by a state other than Minnesota to determine whether the individual's past~~

~~practice and/or preparation meet Minnesota requirements for licensing or registration.~~

~~11.~~10 "Department" means Minnesota Department of Health.

~~12.~~11."Function" means a special task, duty or performance required in the course of work or activity.

~~13.~~12 "Functional differentiation" means those functions carried out by a particular occupational group that distinguish that group from others.

~~14.~~13 "Letter of intent" means an applicant group's written expression of aim to pursue credentialing.

~~15.~~14."Licensure" means a system whereby a practitioner must receive recognition by the state that he or she has met predetermined qualifications, and persons not so licensed are prohibited from practicing.

~~16.~~15."Not now credentialed" means those occupations whose members are not currently licensed or registered by the state and those occupations whose members are currently licensed or registered by the state but who seek to expand or specialize their functions within that licensed or registered occupation such that the group members seek further state recognition by new, expanded or specialty licensure or registration.

~~17.~~16."Occupational group" means a group of human service workers that have common occupational functions, practices, and roles in the delivery of human ~~health~~ services.

~~18.~~17."Public forum" means public meeting(s) called to obtain comments on an applicant group's questionnaire. The meeting is open to the public, but it is not a hearing and does not require the hearings notification procedures called for by Minnesota Statutes.

~~19.~~18."Questionnaire" means document designed to provide information about an occupational group for ~~credentialing~~ purposes of aiding in making a regulatory determination.

~~20.~~19."Registration" means a system whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications.

C. Prohibition

A Council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest.

MHD 537 IDENTIFICATION OF OCCUPATIONAL GROUPS, QUESTIONNAIRE CONTENTS, AND PROCESSING PRIORITIES

A. Applicant Initiated Identification

1. The applicant group shall submit a letter of intent to the ~~Board~~ Commissioner.

2. Upon receipt of the letter of intent the ~~Board~~ Commissioner shall send these rules and a Questionnaire to the applicant group.

3. The applicant group shall submit the completed Questionnaire to the ~~Board~~ Commissioner within six months or shall make a written request for an extension of the time period. Failure to comply with either of those conditions during the six month period voids the original letter of intent and discontinues the ~~credentialing~~ regulatory decision process. The applicant group shall submit a new letter of intent if it desires to pursue credentialing.

~~4. When the Questionnaire is deemed complete by the Department, the Board shall transmit the Questionnaire to the Council.~~

4. When the Questionnaire is deemed complete by the Department, the Commissioner shall transmit the Questionnaire to the Council. If the Department deems the Questionnaire to be incomplete, it shall return the Questionnaire to the applicant group with a report describing the deficiencies. If the applicant group considers the Questionnaire to be complete, it may request that the Questionnaire be submitted to the Commissioner to determine

whether the Questionnaire contains adequate data for the Commissioner to commence the process. Nothing in this rule shall prevent the Department from informally assisting the applicant group in the completion of the Questionnaire.

B. ~~Board~~ Commissioner Initiated Identification

1. When the ~~Board~~ Commissioner, Council, other groups, or individuals have reasons to suspect that an occupational group exists or is emerging but has not applied for credentialing and the question of regulation should be addressed the ~~Board~~ Commissioner shall determine whether the need to ~~credential~~ regulate the group should be investigated. The determination shall be based upon evidence that raises the question of the need for occupational regulation. Such evidence may be derived from sources that include, but are not limited to court decisions, data collected by state and national regulatory agencies, federal law or rule, and information submitted by legislators, government or private agencies, or the public.
2. The ~~Board~~ Commissioner may direct staff to collect data substantially equivalent to that on the Questionnaire for evaluation in the manner specified in Minnesota Rules MHD 538.

C. Contents of the Questionnaire

The Questionnaire shall direct an applicant group to submit information ~~on at least~~ related to the following matters:

1. Evidence that ~~the~~ an applicant group claiming to speak for an occupational group represents a significant portion of an occupational group and that other organizations representing members of that occupational group have been identified.
2. Evidence that the occupational group meets the ~~credentialing criteria~~ regulatory factors contained in ~~Minnesota Statue and these rules~~ Minn. Stat. Sec. 214.001, subd. 2.

3. Such other and additional information or evidence consistent with the provisions of applicable statute and these rules as well as information necessary to clarify matters already contained in the application. Such information shall be requested for the sole purpose of enabling the ~~Board~~ Commissioner to fairly, adequately and completely evaluate the applicant Questionnaire to determine whether an occupational group should be ~~credentialed~~ regulated, and if an occupational group is credentialed, ~~if so by licensure or registration, and~~ under which administrative authority it will be regulated. The ~~Board~~ Commissioner may suspend or terminate the ~~credentialing~~ regulatory decision process for failure to supply the information requested ~~by the Board~~.

D. Questionnaire Processing Priorities

The ~~Board~~ Commissioner may determine the priority for processing Questionnaires. The priority of an applicant group will be based on evidence available in the Questionnaire, particularly that relating to the potential harm to the public that the continued practice of the unregulated group may cause. After a determination of priority for entering the ~~credentialing~~ regulatory decision process has been made, the ~~Board~~ Commissioner shall take the actions listed in Minnesota Rules 538.

MHD 538 ~~CREDENTIALING~~ REGULATORY DECISION PROCESS

A. Delayed Consideration

The ~~Board~~ Commissioner shall proceed to notify the applicant group of the date at which its application might reasonably expect to be considered under Minnesota Rules MHD 538 B. The notification will include the reasons for the delayed consideration.

B. Immediate Consideration

1. When a Questionnaire is received by the Council, the chairman of the

Council shall appoint a subcommittee of at least five members, none of whom shall have a conflict of interest, and shall name one of the members as subcommittee chairman. Insofar as possible the subcommittee shall be broadly representative of the Council.

2. Subcommittee Procedures

   a. The subcommittee will meet to ~~evaluate~~ study the Questionnaire as it addresses the factors contained in Minn. Stat. sec. 214.001, subd. 2, and materials available to the subcommittee and to raise any questions members feel ought to be addressed either in subcommittee meetings or at the public forum.

   b. All written material related to the ~~credentialing of~~ regulatory decision for an occupational group will be available as part of a public file retained at the Minnesota Department of Health and other locations the ~~Board~~ Commissioner deems appropriate.

3. Public Forum

   a. The subcommittee shall hold at least one public forum for the purpose of providing for public participation in the ~~credentialing~~ regulatory decision process, collecting information, raising and clarifying issues, and when possible, providing for the negotiation of differences.

   b. The first public forum shall be held within four months of the subcommittee appointments.

   c. The public forum shall be open to all persons.

   d. Notification of the public forum shall be made in the following manner:

      (1) All groups and persons identified by name as part of the occupational group by the Questionnaire and through Department study will be notified by mail.

      (2) A news release will be sent out by the ~~Board~~ Commissioner.

      (3) Notice will be published in the Department's monthly listing of health-related meetings.

(4) Notice will be sent to the public information offices of the Departments of Corrections and Public Welfare for inclusion in any bulletins they use for public notification of meetings.

(5) Notice will be published in the State Register.

e. The conduct of the public forum(s) will be in accordance with procedures adopted by the Council and available in writing to the public at the public forum. All interested persons will be given an opportunity to make a presentation although time limits may be imposed.

4. Subcommittee Recommendations

The Subcommittee shall make recommendations to the Council with respect to: the need for regulation, the type of regulation, whether any recommended credential be licensure or registration and the administrative authority for any recommended credential. The Department shall also make separate recommendations which accompany those of the subcommittee. Each recommendation shall be accompanied by the rationale/justification used in arriving at the decision. ~~Approval or denial of credentialing for~~ Regulation of an occupational group shall be based on ~~Minn. Laws 1976, Chapter 222, Section 1, subdivision 2~~ the factors contained in Minn. Stat. sec. 214.001, subd. 2.

5. Council Action

The Council will review the subcommittee recommendation and approve or modify them as necessary. A Council final report and recommendations, along with supporting documents, will be sent to the ~~Board~~ Commissioner for action. The Department report and recommendations, with supporting documents, will accompany the Council report.

6. ~~Board~~ Commisssioner Actions

The ~~Board~~ Commissioner, upon review of the Council report and recommendations, will take one of ~~the following~~ actions listed below. The Commissioner's

action will be accompanied by a report giving the reason for the decision. Notification of the action will be made in the same manner as that of the public forum as called for in Minnesota Rules MHD 538 B.3.d.

a. If the ~~Board~~ Commissioner determines that an occupational group shall be credentialed by registration with an existing health related licensing board acting as the administrative authority, ~~it~~ the Commissioner will establish procedures and adopt rules in cooperation with the identified board. The rules shall include, if appropriate, but not be limited to the following:

(1) Functional differentiation of the group.

(2) Qualifications for registration for all entry routes.

(3) Requirements for different levels of registered titles corresponding to steps in the occupation's career progression.

(4) Organizational structure of any advisory councils to the administrative authority.

(5) Procedures for registration.

(6) Requirements for registration renewal, including but not limited to provisions attempting to assure continued competency.

(7) Disciplinary procedures.

(8) Fee setting for initial application for registration and for renewal application.

(9) Such other information that the ~~Board~~ Commissioner deems necessary for the regulation of the occupational group.

b. If the ~~Board~~ Commissioner determines that an occupational group should be credentialed by licensure, with either an existing health related licensing board, the ~~Board itself~~ Commissioner, or a new and separate licensing board, acting as administrative authority, the ~~Board~~ Commissioner shall promptly so report to the legislature.

c. If the ~~Board~~ Commissioner determines that an occupational group

shall be credentialed by registration, with the ~~Board~~ Commissioner acting as the administrative authority, ~~it~~ the Commissioner shall establish procedures and adopt rules to implement the decision. The rules will include, if appropriate, but not be limited to, the items contained in Minnesota Rules MHD 538 B.6.a. (1) through (9).

d. If the ~~Board~~ Commissioner determines that an occupational group should be regulated pursuant to ~~Minnesota Laws 1976, Chapter 222, Section 1, subdivision 3(a) (b) or (d)~~ Minn. Stat. sec. 214.001, subd. 3 (a)(b) or (d) or any combination thereof or in combination with credentialing under these rules, the ~~Board~~ Commissioner shall promptly so report to the legislature.

e. If the ~~Board~~ Commissioner determines that ~~credentialing~~ regulating the occupational group is not in the public interest, the applicant group (if the application was initiated by the group) or the Council (if the application was initiated by the ~~Council~~ Commissioner) shall be so notified.

f. If the ~~Board~~ Commissioner determines that further study of the occupational group is required, the ~~Board~~ Commissioner shall refer the recommendation back to the Council for further study in accordance with ~~Board~~ the Commissioner's instructions. The instructions shall include a specified time in which to complete this study. Extensions of time may be granted if needed to complete adequately the further study.

C. Reconsideration Process

1. If an interested person or the applicant group is dissatisfied with the decision of the ~~Board~~ Commissioner, the person or applicant group may request, within 60 days of notification of that decision, that the ~~Board~~ Commissioner reconsider the application. The person or applicant group shall submit in writing, along with ~~its~~ the request for reconsideration,

~~its~~ arguments detailing why the decision of the ~~Board~~ Commissioner was not supported by the evidence presented or why new or changed evidence does not support the earlier decision of the ~~Board~~ Commissioner.

2. The ~~Board~~ Commissioner may ~~choose to~~ reconsider the ~~credentialing~~ regulatory decisions ~~itself~~ or remand them, along with all reports, recommendations, and supporting documents to the Council. If the matter is remanded, the Council shall reconsider the application and recommend either no change or appropriate changes to the ~~Board~~ Commissioner. The Council may refer the matter to the subcommittee which initially considered the application. The recommendation of the Council shall include substantiating documentation. Reconsideration by the Council may include new public forums if new or changed evidence warrants it.

3. The ~~Board~~ Commissioner shall notify the person or applicant group of the results of the request ~~to reconsider the application~~ to reconsider the regulatory decisions.

MHD 539, 540 Reserved for future use.

APPROVED AS TO FORM AND LEGALITY
FEB 15 1978 19___
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael S. Moore
ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 15 1978
Joan Anderson Growe
Secretary of State
3:40 pm

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HEALTH

In the Matter of Proposed Rules Relating to Procedures for Determining Credentialing of Human Services Occupations.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing in Minneapolis on April 20, 1977 before Steve M. Mihalchick, Hearing Examiner appointed by the Chief Hearing Examiner. The hearing continued until all interested groups or persons had an opportunity to present their views regarding the proposed rules.

This is a rules hearing pursuant to Minn. Stat. Ch. 15 to determine whether proposed new Minn. Rules MHD 536 - 538 [7 MCAR §§ 1.536 - 1.538] should be adopted.

The following persons appeared for the Department of Health, Division of Health Manpower: Corrine Larson, Director; Wayne Carlson, Health Program Representative; Kathy Lamp, Health Program Representative, and Colleen Amundson. Richard Wexler, Assistant Attorney General, appeared as counsel for the Board.

This proceeding was initiated by the Board of Health. Subsequently, the Board's authority was transferred to the Commissioner of Health. 1977 Minn. Laws, Ch. 305. For consistency, this Report will generally refer to the Board, recognizing that the Commissioner has assumed its functions.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department of Health shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules 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 Department on the issues of substantial

changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On February 18, 1977, the Board of Health filed the following documents with the Chief Hearing Examiner:

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

2. On March 10, 1977, the Board filed a copy of the proposed rules with the Office of Hearing Examiners.

3. On March 14, 1977, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 1311.

4. On March 15, 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.

5. On March 22, 1977, the Board filed the following documents:

   (a) The Order for Hearing and the Board of Health's authorizing resolution;
   (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) A Statement of Facts Establishing Reasonableness of Rules.
   (h) The Statement of Evidence, including the names of Department personnel who will represent the Board at the hearing.
   (i) The Notice of Intent to Obtain Information on Proposed Rules from Non-Agency Sources as mailed on August 29, 1975 to persons on the Secretary of State's list as mailed on September 17, 1975 as a news release and as published in 1 State Register 739 on November 8, 1976.

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

6. The record remained open through May 10, 1977 for the receipt of written comments and statements.

STATUTORY AUTHORITY

7. Minn. Stat. § 214.13, subd. 1 (1976) provides:

> The Board of Health shall promote the recognition of human services occupations useful in the effective delivery of human services. The board shall coordinate the development of a credentials policy among the health-related licensing boards consistent with section 214.001. The board shall, consistent with section 214.001, establish procedures for the identification of human services occupations not now credentialed by the state, recommend appropriate regulatory modes, and promulgate by rule standards and procedures relating to the credentialing of persons practicing the affected occupations. If the board determines that credentialing of an occupation is appropriate, the board is empowered only to register the occupation. Before promulgating any rules resulting in registration for an occupation, the board shall consult with state boards or agencies charged with regulating similar occupations in order to define the scope and range of practice for the registered occupation and the degree of supervision required. As used in this section, and section 214.14, registration shall be defined as in section 214.001, subdivision 3, clause (c).

PROPOSED MINN. RULE MHD 536 - GENERAL

8. MHD 536 A., Declaration of Purpose and Scope, is a general introductory statement. It states that the proposed rules specify the procedures by which human services occupations are identified and decisions are made regarding the need to regulate persons in specific occupations, and that the rules applies to all human services occupations that are not now credentialed.

9. One major criticism of these rules was that they contained no criteria upon which the decisions could be based. (Pub. Exs 1, 2, 5, 6, 7 and 10; T. 14-17) The comment of the Minnesota State Medical Association (MSMA) (Pub. Ex. 10) is typical.

> A major deficiency in these proposed rules is that there is absolutely no stated criteria in the rules to serve as the basis of the decision as to whether or not a human services occupation should be regulated. The factors on which a decision is to be based is only indirectly referred to in MHD 538 B.4. which states that "Approval or denial of credentialing for an occupational group shall be based on Minn. Laws 1976, Ch. 222, § 1, subd. 2."

At the hearing, and in its post-hearing written comments (Board's Ex. X), the Board stated that the proposed rules were intended to be procedural only, and that, indeed, the Board did intend to rely only on the factors set out in Ch. 222, § 1, subd. 2 [now coded Minn. Stat. § 214.001, subd. 2 (1976)]. To make that intent clear,

the Board has proposed to modify the rules by deleting all reference to the word "criteria" and by inserting several specific references to that subdivision. (Board's Ex. X) The Board proposed the following addition to MHD 536 A.:

> Approval or denial of credentialing for an occupational group shall be based on the factors contained in section 214.001, subdivision 2, at all levels of recommendation-decision process, to wit: subcommittee, Council and the Board.

10. Minn. Stat. § 214.001, subd. 2 (1976), provides:

> The legislature declares that no regulation shall hereafter be imposed upon any occupation unless required for the safety and well-being of the citizens of the state. In evaluating whether an occupation shall hereafter be regulated, the following factors shall be considered:
>
> (a) Whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;
>
> (b) Whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability; and
>
> (c) Whether the citizens of the state are or may be effectively protected by other means.

The Board essentially argues that more specific criteria are not necessary. The MSMA comments again epitomize several of the public comments.

> The criteria set out in the above statute is a broad statement of policy. The statute outlines the outer limits of what needs to be considered in the determination of whether credentialing is appropriate. The rules should reflect more specific criteria. For example, Minn. Stat. § 214.001, subd. 2(c), states that one of the factors that should be evaluated in the credentialing process is "whether the citizens of the state are or may be effectively protected by other means."
>
> The rules could and should be more specific by listing other means by which the public can be protected. The application for credentialing could then be evaluated against these other available means of public protection to see if credentialing of some form is the effective way of protecting the public.
>
> As the rules now stand, there is no way of adequately evaluating an application because there are no specific factors in the rules to use to make a decision. Just as important, there are no factors that the public can use to measure how a credentialing decision was made.
>
> Minn. Stat. § 214.14 states, "If in evaluating a currently unregistered occupation, the board determines that registration of the occupation is not appropriate, but that implementation of another mode is set

forth in section 214.001, subdivision 3, is appropriate, the board shall promptly so report to the legislature." Here the legislature expected and essentially mandated that the evaluation of the occupation be thorough enough to determine the appropriate mode of regulation. This type of evaluation requires definite criteria in the rules, not merely the broad policy guidelines for the criteria that are set out in Minn. Stat. 214.001.

It should be obvious to the general public as well as a human service occupation group at the outset what specific criteria is being used to evaluate a credentialing application. It is also necessary to have the rules clearly state that the specific criteria will be used at all levels of the process. The application should be evaluated against the criteria at the subcommittee level through to the board of health decision level. The rules should clearly state that the decisions being made by the subcommittee, then the Council, and finally the Board is based on stated, specific criteria.

Mr. Richard Wexler stated at the April 20, 1977 public hearing that criteria (factors) cannot be developed that cover all instances. This is true. However, much more specific criteria is possible, and other rules of the Department of Health are replete with specificity. The rules promulgated for the construction, equipment, maintenance, operation and licensing of hospitals can be cited as an example. These rules cite a range of specific criteria which must be met for licensure from the height of ceilings to the operation of various departments such as surgical departments.

In contrast, these proposals provide no means of measuring the possible success of an application from the outset. Instead, the criteria that is being used and must be met because apparent, if at all in the decision-making process.

11. The Board presented several arguments in support of its position in its post-hearing comments. (Board's Ex. X) First, the statute is essentially a restatement of the early guidelines used by the Board in operating the less expansive process under the Allied Health Manpower Act (Laws 1973, Ch. 709). Second, since these rules are addressed essentially to procedures and not to criteria (factors) except so far as they refer to the statute, such comments can best be considered suggestions to the Board to promulgate additional rules expanding upon or clarifying factors listed in the statute.

Lastly, the Board stated that such comments evidence a lack of understanding of the legal requirements as the Board views them with respect to the credentialing process; that the decisions the Board is required to make are of a legislative and not a regulatory nature. In Ex. X, the Board explained:

The instant situation varies greatly from that of the promulgation of rules to establish the standards one must meet in order to obtain a license statutorily required in order to practice a certain profession. In that situation, while the administrative agency responsible for issuing a license may still exercise some discretion, the criteria or standards governing that discretion must be clearly and narrowly drawn since an applicant is legally entitled to the license if the standards are met. The decision is of a regulatory nature, and the rights of each applicant must be protected since the applicant will be barred from performing the services of the profession in question if the license is not issued.

The instant situation is entirely different. Here the Board is called upon to make a legislative determination, not a regulatory one. No rights are involved since practitioners of a human services occupation which enters the credentialing process could not in any way have their right to practice prohibited or limited by action of the Board. Even after the Board decides to register a group and promulgates the rules to implement the decision, no practitioner would be prohibited from performing a service covered by the registration even if the practitioner decides not to be registered. Only the legislature can establish a licensure requirement which would limit the right to practice to those who obtain a license. The legislature can make a decision based on a policy much broader than specified in Minn. Stat. § 214.001, subd. 2, that being that the public health, safety and welfare call for the licensure obligation.

No human services occupation has a right to be credentialed. Since there are no rights to be protected, the Board has freedom to exercise its discretion within the range of the broad policy grounds specified in Minn. Stat. § 214.001, subd. 2. Because of that, this may be an example of one of the few areas in which agency could make a decision totally disregarding the statutory criteria and still have the decision upheld in a court challenge. Obviously the Board has no intention to act arbitrarily, even if it could do so legally, as evidenced by the example of the Board's processing of credentialing applications which have already been submitted to it. The remark is made only to underscore that . . . remarks concerning criteria are irrelevant and immaterial as related to the proposed procedural rules.

* * *

. . . The Board's position is that the legislature both furnished [the statutory] factors as guidance and kept them broad in an explicit recognition that the subsequent decision by the Board to credential an occupational group is a quasi-legislative decision, often based on conflicting information regarding public policy. These decisions demand much more discretion than the relatively narrow list of options available to a licensing board that is considering the qualifications of a single applicant. In the latter case, tight criteria are available. In the former, credentialing of an occupational group is a policy decision with its attendant uncertainties and a need for judgment.

12. The Examiner finds himself aligned with those persons who "evidence a lack of understanding of the legal requirements

as the Board views them with respect to the credentialing process." Assuming arguendo that the determination of a regulatory mode for a human services occupation is a legislative rather than a regulatory decision, the conclusion urged by the Board does not follow. A wide range in discretion does not depend upon nor connote a lack of standards and nothing says that any criteria that would be established would have to be narrower than the broad policy grounds specified in the statute. What may follow from the argument that the determination is legislative rather than regulative is that upon judicial review, the determination would be upheld unless it is shown by clear and convincing evidence that it is improper and that the Board may go outside of the record using its expertise in making the determination. St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, 251 N.W. 2d 350 (Minn. 1977). The Board also errs in its statement that the Legislature furnished the factors in § 214.001 in an explicit recognition of the Board's function. On the contrary, the factors were listed as policies to be followed by the Legislature itself in determining whether it is necessary to regulate an occupation, § 214.001, subd. 3, and as a guide to interpreting Minn. Stat. Ch. 214, and Laws 1976, Ch. 222.

Most important, the various comments from persons who potentially may be affected by the proposed rules indicate that those persons are unclear and confused as to the nature and requirements of the proposed rules. This is contrary to the requirements of Minn. Stat. § 15.0412, subd. 3 (Supp. 1977), which states:

> Each agency shall adopt rules setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

Those persons cannot determine with any degree of certainty how they will be judged or what the likely results are going to be. This lack of uncertainty and clarity makes the entire process unreasonable. The defect can only be cured by substantial changes which require another hearing.

(Realizing that the Commissioner of Health may disagree with

the foregoing Findings, and for the sake of completeness, the following Findings are made.)

13. One comment (Pub. Ex. 5) recommended that the reference to the need to regulate persons be changed to the need to credential persons. The Examiner disagrees and would, in fact, go further by stating that the word "credential" is used too often within the proposed rules. The purpose of the procedure is to determine whether a certain human services occupation should be regulated at all, and if so, what mode that regulation should take. Minn. Stat. § 214.001, subd. 3, list five modes of regulation of which only two, registration and licensing, constitute credentialling. If the Board determines that registration is the appropriate mode, it then proceeds to implement that registration under the procedures set up in the statute and the rules. If it determines that any of the other modes is appropriate, it so recommends to the Legislature. For that reason, the Examiner recommends that the modification to MHD 536 A. suggested by the Board (See Finding No. 9) be further modified to read: "Determination of a mode of regulation, if any, for an occupational group . . ." Overuse of the word "credentialing" throughout these rules implies that registration or licensing are the preferred forms. That is exactly contrary to Minn. Stat. § 214.001.

14. MHD 536 B. provides a list of 20 definitions that are necessary to provide common terminology and uniform interpretation of the statute and rules. The term "criteria approval" is not used in the rules. Therefore, it is not necessary and should be deleted. Except as specifically noted below, all other terms are reasonable and necessary.

15. The rule paraphrases the statutory definitions of licensure and registration. Because the terms are used so extensively throughout the proposed rules, the duplication of the statutory language is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

16. As originally proposed, the term "occupational group" was defined as a group of human service workers who have common occupational functions, practices, and roles in the delivery of

health services. Several comments pointed out the error in using the word "health" and the Board has agreed that it should be replaced with the word "human".

17. As originally proposed, "questionnaire" was defined as the document designed to provide information about an occupational group for credentialing. The National Association of Social Workers (NASW) commented that this definition did not coincide with the stated purpose that appears on the questionnaires currently being used. The point is not well taken because the statements on the questionnaire are actually preliminary instructions. However, the Board has suggested a modification to the definition to make it more clear (Board's Ex. X). They suggest that the definition read: "'Questionnaire' means document designed to provide information about an occupational group for purposes of aiding in making a credentialing decision." Once again, the use of the word "credentialing" indicates an improper emphasis on registration or licensure as the appropriate modes of regulation. The last clause should be further modified to read: ". . . for purposes of aiding in making a mode of regulation determination."

18. Several comments stated that a definition of human services occupation must be developed and inserted in the rule; otherwise it would never be clear what occupations are covered. (Pub. Exs. 1, 2, 5, 6, 10 and 11) The Board's response (Board's Ex. X) was:

> Human services occupations means what it says - those occupations affecting humans. Significantly, the Legislature did not recognize a need to define the obvious. In addition, listing the existing individual titles that might constitute human services occupations would limit the Board to dealing with the existing system and would needlessly restrict the Board in its charge to ". . . promote the recognition of human services occupations useful in effective delivery of human services." Minn. Stat. § 214.13, subd. 1.

19. The Examiner finds that the Rules are unreasonable for not including the definition of human services occupations. Without a definition, members of the public would have to guess at whether the rules apply to them. It is difficult to determine what the Legislature intended by not including a definition within

the statute, but a finding that "The Legislature did not recognize a need to define the obvious" is not clear from the words of the statute. It is just as likely that the Legislature could not agree on a definition and left it to the Board to define. The Legislature has addressed human services in other statutes; for example, Minn. Stat. Ch. 402, the Human Services Act, authorizes county boards to form human services regional commissions. Again, no specific definition of human services is given except in an indirect manner. Minn. Stat. § 402.02, subd. 2, provides in pertinent part:

> A human services regional commission shall possess all the powers and duties now assigned by law to:
>
> (a) Manage the existing public resources devoted to human services delivered or purchased by the counties, which are subsidized or regulated by the departments of corrections, health, and public welfare;
>
> * * *
>
> (d) Develop a plan for the delivery of human services, which shall include court services, public health services, public assistance, mental retardation services, social services, mental health services, and others of similar classification. . . .

It seems clear that the Legislature did not intend Minn. Stat. §§ 214.13 and 214.14 to apply to all the occupations addressed by Ch. 214, otherwise they would not have used the qualifying term "human services". Because §§ 214.13 and 214.14 amount to a rewriting and expansion of the Allied Health Manpower Act, it is also clear that the Legislature intended the term to include more than just health or allied health services occupations. It seems most likely that the Legislature intended human services occupations to include those occupations listed in Minn. Stat. § 402.02, subd. 2(d). It certainly would have been helpful if the Legislature had said so. Nonetheless, some definition must be developed so that members of the public can determine whether the rules apply to them. However, any definition at this point would be a substantial change to the proposed rules, and cannot be adopted without further hearing.

20. MHD 536 B. also contains a definition of "conflict of interest." It is necessary to consider this definition in conjunction with proposed rule MHD 536 C., Prohibition. That rule

states: "A council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest." Without discussing subsequent rules in detail, the basic procedure in determining whether an occupational group should be regulated and the mode of regulation involves completion of a questionnaire by an applicant group or Department staff. The questionnaire is then referred to the Human Services Occupation Advisory Council created by Minn. Stat. § 214.14 which then appoints a subcommittee to investigate the matter. The subcommittee then makes a recommendation to the Council, which makes a recommendation to the Board of Health, which makes the final determination. No comments objected to the prohibition, itself, though a number were directed at the definition. (Pub. Exs. 1, 4, 7 and 11; T. 12-13). The proposed rule provides:

> "Conflict of interest" means:
>
> a. A direct financial or self-serving interest in the matter under consideration.
>
> b. An indirect financial or self-serving interest in the matter under consideration so that the member is not so free from personal bias, prejudice or preconceived notion as to make it possible for the member to objectively consider the evidence presented in a decision solely on such evidence.
>
> c. Circumstances such as the member finds it difficult, if not impossible to devote himself or herself to a consideration of the matter with complete energy, loyalty, and singleness of purpose to the general public interest.

The Board presented the following justification:

> Minn. Rule 536 C. - prohibition, reiterates a general principle of law that a conflict of interest prohibits a public official from participating in business matters in which he or she has a conflict. This principle needs to be specifically reiterated in the credentialing context for two reasons. First, the Council structure is determined by statute and has several appointing authorities. There is a strong possibility that any particular member might view himself or herself as a advocate for the group he or she represents rather than as a public official advising the Board. Second, because many of the occupational groups the council investigates are new and fill some functions traditionally filled by already established professions, there is a possibility that these "turf battles" could affect the actions of a council member, particularly if he or she is part of that already established profession.

21. Senator Lewis commented that the term "self-serving" should be defined; otherwise abuse would be possible by individuals and the Board. He also stated that the responsibility for

identifying conflict of interest situations and enforcement must lie with the Board of Health (Pub. Ex. 2). The Examiner agrees with the Board's response (Board's Ex. X) that, in most cases, only the individual can determine whether he or she has a conflict of interest. The Minnesota Dental Association (Pub. Ex. 4), the Minnesota Nurses Association (Pub. Ex. 7), the Minnesota State Pharmaceutical Association (Pub. Ex. 11), and testimony at the hearing (T. 12-13) take issue with the fact that the definition of conflict of interest effectively precludes members of the profession under consideration or related professions from partaking in the recommendation process. The Board says that that is what the common law requires. Public comments, however, correctly point out that that is contrary to the entire scheme of Chapter 214. For example, Minn. Stat. § 214.13, subd.1, provides in part:

> Before promulgating any rules resulting in registration for an occupation, the board shall consult with state boards or agencies charged with regulating similar occupations in order to define the scope and range of practice for the registered occupation and the degree of supervision required.

Minn. Stat. § 214.13, subd. 2, requires that any rules promulgated by the Board regulating a specific occupation must be reviewed and approved by any agency that regulates or funds the employers of that occupation. Of greater significance is the second sentence of Ch. 214. Minn. Stat. § 214.001, subd. 1, provides:

> The legislature finds that the interest of the people of the state are served by the regulation of certain occupations. The legislature further finds: (1) that it is desirable for boards composed primarily of members of the occupation so regulated to be charged with formulating the policies and standards governing the occupation. . . ."

These statutes make it clear that if any professionals are involved in the recommendation process, members of the affected profession, or those closely related, should be included. Therefore, proposed Minn. Rule MHD 536 B.6. is unreasonable because it is contrary to the statute. The Statute provides an exception to the general conflict of interest law. The Examiner believes that this defect could be cured by a non-substantial change and would

suggest that a new subsection MHD 536 B.6.d be inserted that reads:

> "The fact that a member is engaged in the occupation under consideration, or a competing or related occupation shall not, in itself, constitute a conflict of interest."

PROPOSED RULE MHD 537 - IDENTIFICATION OF OCCUPATIONAL GROUPS, QUESTIONNAIRE CONTENTS, AND PROCESSING PRIORITIES

22. MHD 537 A. specifies the procedures to be used to initiate the process when an applicant group exists that voluntarily identifies itself and actively seeks credentialing. Several groups are so inclined. This rule provides that the applicant group shall submit a letter of intent to the Board which then sends the group a questionnaire and a copy of the rules. The group is then allowed six months to complete the questionnaire. If they fail to do so, they must submit a new letter of intent. No objection was made to any of these provisions, and they are necessary to specify a method of initiating the process and reasonable because it is a simple process that allows the Board and its staff to anticipate and schedule for incoming questionnaires and to identify potentially interested groups. The six-month period is reasonable in that it provides sufficient time for an applicant group to gather necessary information and to determine whether or not it wishes to proceed further in the credentialing process. It in no way penalizes the applicant group for it allows for a written request for extension of time or, if necessary, the re-submission of a letter of intent.

MHD 537 A.4. provides "When the questionnaire is deemed complete by the Department, the Board shall transmit the questionnaire to the council." Several comments called the lack of specificity in this section unreasonable (Pub. Exs. 1, 2, 5 and 11). For example, Senator Lewis said, "Specify who deems the quesionnaire complete; what criteria are used to prevent arbitrary and capricious decisions by the Department to delay applications?" The Department's response (Board's Ex. X and T. 39-44) was that the words are clear enough and need no further definition. A questionnaire would be deemed complete by the Department when the applicant group addresses each question or provides an explanation as to why the question wasn't addressed. There was discus-

sion at the hearing about the way the process currently works. A member of the Department's staff works with the applicant group on an informal basis to assist in completing the questionnaire and suggest avenues they may wish to pursue. There was speculation by the Board on what an applicant group might do if it considered the questionnaire complete and Department staff did not. Perhaps they could request that it be submitted to the Board; perhaps they could bring an action in court. It appears unlikely to the Examiner that any applicant group would decline the suggestions of the Department staff and attempt to submit an incomplete report, but the possibility does exist. Therefore, it should be made clear what procedure would be followed in such a case, and the failure to so specify makes this rule unreasonable. The Examiner would suggest that the rule be modified by adding a provision that states:

> "If the department deems the questionnaire to be incomplete, it shall return the questionnaire to the appplicant group with a report describing the deficiencies. If the applicant group considers the questionnaire to be complete, it may request that the questionnaire be submitted to the Board to determine whether the questionnaire contains adequate data for the Board to commence the process. Nothing in this rule shall prevent the Department from informally assisting the applicant group in the completion of the questionnaire."

23. MHD 537 B., Board initiated identification, recognizes that some groups that need to be regulated for public safety may not identify themselves and seek credentialing. The section is very general and provides that when information from any source raises questions as to whether a group exists that might be credentialed, the Board may direct staff to collect data substantially equivalent to the questionnaire. Two comments address the lack of specificity in this rule. Senator Lewis said, "Clarify this section by identifying criteria the board will use in taking the human services credentialing initiative." (Pub. Ex. 2) The MSMA stated:

> "Possibly more than any other section, this section points out the need for specific criteria to be set out in the rules. Without such rules, the Board initiated credentialing process is subject to administrative abuse. This section needs to be clarified with the specific criteria the Board will use in taking the human services credentialing." (Pub. Ex. 10)

The Examiner believes that the Board has demonstrated that the rule is reasonable, at least as far as it goes. Minn. Stat. § 214.13 charges the Board with the responsibility of establishing procedures for identifying human services occupations and recommending appropriate regulatory modes. Initiation of the process is in no way a prejudgment that any mode of regulation is appropriate. It is difficult to imagine how the rule could be made more specific. All the rule says is, "There might be something out there; let's look at it." That is not unreasonable. However, the rule is unreasonable in another aspect. Situations may well arise where the staff, in gathering information equivalent to a questionnaire, can determine that regulation of the occupation is unnecessary. Given the fact that the legislative policy stated in Minn. Stat. § 214.001, subd. 2, declares that no regulation shall be imposed unless necessary and given the long, complex and apparently high cost of the investigation process, there should be some method to interrupt the process. For example, if staff can find no evidence that the unregulated practice of the occupation may harm or endanger the health, safety and welfare of citizens of the state, it should be able to recommend to the Board, and the Board should be able to decide, that the process be terminated at that point. The authority for the Board to do so is already implied in MHD 537 C.3, which allows the Board to suspend or terminate the credentialing process for failure to supply the information requested by the Board.

The Minnesota State Pharmaceutical Association cited the lack of a definition of "substantially equivalent" as one example of a general lack of specificity throughout the rules. In this case, the Examiner disagrees; that is a fairly definitive term.

MHD 537 C., Contents of the Questionnaire, requires the applicant group to submit information on "at least" three specified areas of information. The Board stated that specific questions and information requested in the questionnaire, as well as future alterations to the questionnaire dictated by the Board's experience, would be accomplished within the guidelines of this rule. It is obvious that no guidelines exist for information

that would be requested under the "at least" clause of the introductory sentence. Those words must be deleted, or the entire rule is unreasonable.

24. MHD 537 C.1., as originally proposed, required "evidence that the applicant group represents a significant portion of an occupational group and that other organizations representing members of that occupational group have been identified." In response to comments at the hearing, (T. 52 to 54), the Board has modified the proposed section to read:

> "Evidence that an applicant group claiming to speak for an occupational group represents a significant portion of an occupational group and that other organizations representing members of that occupational group have been identified." (Board's Ex. X)

The normal situation anticipated is that an occupational group will seek credentialing, and the information required by 537 C.1. is necessary to assist the Board in insuring the widest possible input from the occupational group and to aid in identifying and contacting every interest group within the occupation. Two comments were directed at the lack of definition of "significant portions". (Pub. Exs. 5 and 8) The Minnesota Association of Optometrists and Opticians stated that more definite guidelines must be established so that minorities in various health care occupations will not waste the time and energies of the State Board of Health and its subcommittees. (Pub. Ex. 8) That objection, however, was based on the original wording of the section which implied that only groups representing a significant portion of the occupational group could make application. Hearing comments and public exhibit 5 were similar. With the modification made by the Board to the section, those comments do not apply. It is reasonable to place the burden upon a group claiming to be representative of the occupation to present evidence proving it and to require it to assist in identifying other interested groups or factions within the occupation.

25. MHD 537 C.2., as originally proposed, stated: "Evidence that the occupational group meets the credentialing criteria contained in Minnesota Statute and these rules." For reasons previously discussed the Board modified this rule to read, "Evidence

that the occupational group meets the credentialing factors contained in Minn. Stat. § 214.001, subd. 2." Comments on the need to describe the criteria more precisely made in Findings 9-12 above apply here and make this rule unreasonable. The Examiner would also note that once again the word "credentialing" is used which indicates that the Board is endorsing registration or licensing over the lesser modes of regulation or non-regulation.

26. MHD 537 C.3. is a catchall statement requiring:

> "Such other and additional information or evidence consistent with the provisions of applicable statute and these rules as well as information necessary to clarify matters already contained in the application. Such information shall be requested for the sole purpose of enabling the Board to fairly, adequately and completely evaluate the applicant questionnaire to determine whether an occupational group should be credentialed, if so by licensure or registration, and under which administrative authority. The Board may suspend or terminate the credentialing process for failure to supply the information requested by the Board."

Three public comments point out the lack of specificity in this section. (Pub. Exs. 1, 2 and 11) The Board stated that this section, "while not as explicit as the other two categories, is a recognition that there may be legitimate areas of concern which the Board may want to cover in the questionnaire which do not come directly within MHD 537 C.1. or 2. but clearly are relevant to the credentialing process on review. Additionally, this provision is a recognition that the questionnaire is a fallible instrument and that it may be necessary for the Board to ask for slightly different data than it contains, or that the questionnaire itself may generate information that requires follow-up data. In either case, the additional information is asked for solely to permit the Board to make a complete and fair evaluation of the need to regulate an occupational group within the scope of Minn. Laws 1976, Ch. 222, §§ 1, 8 and 9."

The Examiner would first note, once again, the use of the word "credentialed".

The Examiner believes that the concept of allowing the Board to require clarifying information is reasonable as long as the applicant group is fairly informed as to what is required. It is reasonably implied by the section that the Board would request

specific additional information but it could be more clearly stated.

It is also unclear as to just where in the process this rule is intended to apply. Apparently the questionnaire will have already been deemed complete by the Department, but will not have been submitted to the Council for processing. However, that is confusing because MHD 537 A.4. states that when the questionnaire is deemed complete by the Department, the Board shall transmit it to the Council. It should be made clear that the Board does a preliminary review.

If this is indeed a preliminary review of the questionnaire by the Board, the Examiner would suggest that an additional provision be added, similar to that suggested under 537 B. that would allow the Board to terminate the investigation process if the statutory factors necessary for regulation are not made out in some prima facie manner.

27. MHD 537 D., Questionnaire Processing Priorities, states that the Board may determine the priority for processing questionnaires based on evidence available in the questionnaire, particularly that relating to potential harm to the public that the continued unregulated practice may cause. This rule was called arbitrary and unreasonable by three public comments (Pub. Exs. 1, 2 and 5) for lack of criteria, especially as to what constitutes public harm. The need for the rule was based on a lack of resources and ability to handle all questionnaires as they come in. To date it has not been necessary to process questionnaires out of order, but approximately 27 groups have indicated some interest in the process. There are currently 6 or 8 groups in the process which experience so far has indicated takes 1 1/2 to 2 years. The Examiner finds that the Board has demonstrated that there exists a need to determine a priority for processing questionnaires, and that the method proposed by the Board is reasonable. Harm to the public is one of the primary considerations of § 214.001, and an initial determination of harm can be made by comparing questionnaires.

PROPOSED MINN RULE MHD 537 - CREDENTIALING DECISION PROCESS

28. MHD 538 A.,,Delayed Consideration, relates to the questionnaire processing priorities of the previous section and provides that the Board shall notify the applicant group of the date at which its application might reasonably be expected to be considered. If the situation does arise that it is necessary to delay processing of a questionnaire because of limited resources, then it is both necessary and reasonable to notify the interested persons of that delay. In response to comments at the hearing (Tr. 59-60) suggesting that those persons be notified of the reason for the delay, the Board has modified the rule by adding a sentence that reads: "The notification will include the reasons for the delayed consideration." (Board's Ex. X)

29. MHD 539 B., Immediate Consideration, is the operative portion of the rule that actually describes the process. No justification was originally given for, and no public comments questioned, the basic process of referring questionnaires to the Council and then to a subcommittee of the Council to investigate, consider and recommend determinations to the Board. The Examiner did raise the question at the hearing. The role seems unusual for an advisory council which is charged by Minn. Stat. § 214.14, subd. 1, "to assist the Board of Health in formulating policies and rules pursuant to Minn. Stat. § 214.13." Minn. Stat. § 214.14, subd. 3, provides that the advisory council shall review all rules and policies promulgated by the health regulated licensing boards and recommend any appropriate changes to the Board of Health or the related licensing board. Section 214.14, subd. 1, also provides that, "The Board shall determine the duties of the Council . . ." This provision does provide authority for using the Council in making recommendations on specific occupations. In response to the Examiner's questions at the hearing, the Board replied that the council was set up by the statute as broadly representative of a number of human services and that it provided an excellent vehicle for assuring the broadest possible participation and representation in the recommendation process. The Examiner finds that the use of the Council and subcommittee system is not unreasonable.

30. MHD 538 B.1. provides that when a questionnaire is received by the Council, the chairman shall appoint a subcommittee of at least five members, none of whom shall have a conflict of interest and who shall be broadly representative of the Council insofar as possible. The comments on conflict of interest in Findings Nos. 20-21 apply here, and the provision is unreasonable for the reasons stated there. The Examiner would only add that if members who work in the occupation under question, or a related occupation, are considered to have a conflict of interest, it would be impossible in many cases to have a subcommittee that is broadly representative and to assure the varied prospectives that the Board desires.

The Board stated that the use of a subcommittee system is necessary due to the large number of occupational groups that have already indicated an intent to proceed through the process. Essentially, the subcommittees are delegated the task of gathering all relevant facts and performing the in-depth study necessary for the comprehensive evaluation of each questionnaire. This provision is reasonable, except for the conflict clause.

31. MHD 538 B.2. provides for a review of the questionnaire and its associated material by the subcommittee prior to the subcommittee's formal call for public input. The primary purpose of these initial meetings is to identify the issues and other matters that will need to be addressed during the process. As originally proposed, MHD 538 B.2.a. provided, in part, "The subcommittee will meet to evaluate the questionnaire and materials available. . . ." In response to the comments stating that the rules lack any criteria for evaluation, the Board also modified this provision (Board's Ex. X). It now reads: "The subcommittee will meet to study the questionnaire (as it addresses the factors contained in Minn. Stat. § 214.001, subd. 2) and materials available. . . ." The comments on criteria found in Findings 9-12 need not be repeated here because it is not necessary to repeat the criteria every time their use is implied in the rule. This is simply an initial review by the subcommittee to determine what questions need to be raised. It is not necessary to specify the

criteria at this point. The rule is reasonable as modified but the Examiner would suggest that the parenthetical be omitted.

32. MHD 538 B.2.b. provides that all written material related to the process will be available as part of a public file maintained at the Department of Health and other locations the Board deems appropriate. According to the Statement of Need, they would be available at the Department's eight regional offices and the seven state-wide Health Systems Agencies' offices. The Board may find it necessary in the future to change those locations, and so decided not to specify them in the rule. The Examiner finds that the provision is reasonable.

33. MHD 538 B.3. directs the subcommittee to hold at least one public forum for the purpose of providing public participation in the credentialing process, collecting information, raising and clarifying issues, and when possible, providing for the negotiation of differences. It then specifies procedures for the public forums. The Board stated, and the Examiner agrees, that the public forum is a necessary and reasonable means of gathering information that offers two advantages. First, it gives parties interested in the particular occupational group a formal opportunity to voice their opinions, particularly if they are not interested enough to attend all the subcommittee meetings (which the Board's experience has shown includes a fairly extensive number of people), and second, it gives the subcommittee an opportunity to hear groups with varying points of view respond to each other's issues.

Procedurally, the rule provides that the first public forum must be held within four months of subcommittee appointments and that the public forum shall be open to all persons. No comments were made on these provisions, and they are reasonable.

MHD 538 B.3.d. specifies the notification procedures for the public forum. It provides that notification shall be (1) mailed to groups and persons identified as part of the occupational group by the questionnaire and through the Department study, (2) made by a news release, and (3) published in the Department's monthly listing of health-related meetings. There were three

comments on this provision of the rules (Pub. Exs. 5, 8 and 11). The Minnesota State Pharmaceutical Association stated:

> ". . . This procedure is deficient in that it allows for control by the Department of Health as to who is notified. There should be included a requirement that this notification be sent to all individuals listed as interested in human services rules and regulations with the Secretary of State's office. To date, the Advisory Council has shown good faith in providing an opportunity for all interested individuals to participate in the process. However, in the future, this goodwill may not continue."

The Minnesota Association of Optometrists and Opticians recommended that notification to the State Register, as well as notification to all persons or groups who have requested notification in advance, should be included. Mr. Jackson of House Research suggested that the news release be sent to all legal newspapers in the state. The Board stated that the procedures outlined have worked well in the past in bringing out groups and persons to provide public comment. However, in the past, the Board has been dealing with Allied Health Occupations, and the methods listed are health-oriented. The rule is unreasonable in that it provides inadequate notice to other than health-related human services occupations. At a minimum, notice should be published in the State Register and in bulletins issued by the Departments of Corrections and Public Welfare, if such bulletins exist.

34. MHD 538 B.3.e. states that the public forums will be conducted in accordance with procedures adopted by the Council and available in writing to the public at the public forum. It further states that all interested persons will be given an opportunity to make a presentation, although time limits may be imposed. Senator Lewis suggested that the rule be modified to specify that all interested persons would be given an opportunity to make "an oral and/or written" presentation. (Pub. Ex. 2) Senator Lewis was apparently attempting to broaden the type of presentation that could be given, but the Board pointed out that, in fact, his suggestion would restrict it. Presentations have already been given that included oral, written, slide and tape. There were also some comments on the time limit provision. (Pub. Exs. 2 and 5; T. 72-73) The written comments stated that it was too arbitrary. The Board replied that time limits are necessary

to keep testimony relevant and to prevent excessively repetitive testimony and that the chairman must have some prerogatives for keeping the meeting moving. (Board's Ex. X) The rule would be more clear if it stated those reasons, but it is not unreasonable as written. It was suggested at the hearing that the right to impose time limits exists any way, and that by making it explicit in the rule, there is an implication that time limits will be imposed. The Examiner disagrees; stating the requirement in the rule will encourage persons to organize and better prepare their presentations. Further, they should be aware of all the procedures.

35. MHD 538 B.4., Subcommittee Recommendations, states that the subcommittee shall make recommendations to the Council with respect to (1) the need for regulation; (2) the type of regulation; (3) whether any recommended credential be licensure or registration; and (4) the administrative authority for any recommended credential. These are the four ultimate issues on which the Board must make a final determination. The rule also specifies that the Department shall make separate recommendations which shall accompany those of the subcommittee. The purpose of the Department's recommendation was questioned (Pub. Ex. 1). There was considerable discussion on the point at the hearing. (T.74-85) The Board justified the separate report by stating that the Department, acting as the Board's staff, not only provides administrative support to the Board and Council, but is professionally oriented and is intended to assist the Board in reaching its policy decisions. Further, it is possible that the subcommittees and Council and Department may disagree on some recommendations. The general tone of most of the public comments was that the Department staff probably has too much input to the Board, especially since the staff is, by definition, health oriented. The Examiner would state that the last conclusion does not necessarily follow. It would be possible for the Department to hire persons broadly representative of human services to staff this particular division. The Minnesota Dental Association points out that the related health boards have no power to make recommenda-

tions at this point and argues that they should. The issue of Department recommendations was significantly affected by the 1977 legislation eliminating the Board of Health because it is now the Commissioner of Health who will make the final decision, probably based upon a staff recommendation. This provision needs particularly to be reconsidered. If the Council is going to be used because of its expertise and varied perspectives, its recommendation should be relied upon. On the other hand, if staff recommendations are going to be followed, there is little point in having the Council involved.

MHD 538 B.4., as modified, also provides that approval or denial of credentialing for an occupational group shall be based upon the factors contained in Minn. Stat. § 214.001, subd. 2. The comments on criteria found in Findings Nos. 9-12 apply here.

36. MHD 538 B.5., Council Action, provides that the Council will review the subcommittee recommendation and approve or modify it as necessary. The Council then submits its report, with supporting documents, to the Board for action, and the Department report and recommendations that were submitted to the Council are passed along to the Board. No comments were made specifically on this section, except as they relate to the Department report discussed above.

37. MHD 538 B.6. describes what actions the Board may take upon receipt of the Council report and recommendations. It is a necessary part of the rule.

38. MHD 538 B.6.a. states that if the Board determines an occupational group shall be credentialed by registration with an existing health-related licensing board acting as the administrative authority, it will establish procedures and adopt rules in cooperation with the identified board. It then specifies the minimum content of the rules that would be so adopted. The MSMA (Pub. Ex. 10) offered the following comments on this section:

> MHD 538 B.6.a. gives the Board of Health the role of a super-agency imposing rules on another health-related licensing board which that board must administer. This is inconsistent with the concept of each board being autonomous. Minn. Stat. § 214.13, requires consultation between the Board of Health and other appropriate boards in promulgating

registration rules for a particular occupation. This statute does not preclude more than cooperation, and the other health-related licensing board should be given the authority to approve the rules it must administer. In fact, Minn. Stat. § 214.13, subd. 2, requires rule approval by a state agency in certain instances.

MHD 538 B.6.a. should be amended to provide that the Board of Health shall adopt rules with the approval of as well as in cooperation with the appropriate existing health-related licensing board. This rule should also specifically state that the regulation activities delegated to a health-related licensing board must be with that board's concurrence as required by the Minn. Stat. § 214.13, subd. 4.

Minn. Stat. § 214.13, subd. 4, states that: "The Board of health shall whenever possible delegate the administration of regulation activities to a health-related licensing board. . . ." This section does not preclude, and in fact, presumes the delegation of regulation activities to non-health-related licensing boards. However, there is no provision in MHD 538 for an occupational group to be credentialed by registration with an existing non-health-related licensing board acting as the administrative authority.

The Board's position was that the statute gives the Board the sole authority to adopt rules registering any human services occupation and that subd. 4 only gives the Board authority to delegate the administration of such rules to health-related boards and no other. (T. 87-88) The Examiner finds that the rule is necessary and reasonable and that it precisely follows what the statute requires. The statute does make the Board a super-agency with regard to registration of human services occupations. It was perhaps a legislative oversight in subd. 4 to only allow delegation of administration to health-related licensing boards, but that is what the statute says. No health-related licensing board is going to have registration rules imposed upon it, for such delegation can only occur with the concurrence of that Board. If a health-related board does not concur, the rules would be administered by the Board of Health.

MHD 538 B.6.a. goes as far as the statute allows in soliciting the cooperation of the health-related board during the adoption of registration rules. The Board has the final authority.

39. There were only two comments on the list of minimum contents of any rules to be adopted. MHD 538 B.6.a.(2) provides that such rules shall include "qualifications for registration for all entry routes." Pub. Ex. 5 suggests that entry routes be

defined. Such a definition would improve the rule, but it is not unreasonable as written. The Minnesota Association of Optometrists and Opticians (Pub. Ex. 8) ". . . strongly urge that an additional guideline be included . . . as follows: '(10) No rule shall be promulgated whereby competition within any occupation is restrained.'" That proposal has some merit, and the Board should consider its adoption.

40. MHD 538 B.6.d. provides, "If the Board determines that credentialing the occupational group is not in the public interest, the applicant group (if the application was initiated by the group) or the Council (if the application was initiated by the Council) shall be so notified." Senator Lewis suggested that the parenthetical phrases be deleted (Pub. Ex. 2). The Board stated that it felt that these phrases served to clarify this section and that deleting them might tend to confuse the reader. The Examiner believes that the section is unreasonable for a number of other reasons. First, the term "credentialing" is used again when the appropriate word should be "regulation". Second, there is no provision in the rules for initiation by the Council (MHD 537 B. provides for initiation by the Board upon information from the Council, other groups or individuals). Third, there is no provision for notifying anyone who indicated an interest in the rule, other than the applicant group, of a decision not to regulate the occupation. Fourth, as to the preceding options, if the Board decides to implement or recommend some mode of regulation, there is no provision for notifying anybody other than the Legislature. Fifth, there is no requirement that the Board give any reasons for its decision.

41. MHD 538 B.6.f., as originally proposed, states, "if the Board determines that further study of the occupational group is required, the Board shall refer the recommendation back to the Council for further study in accordance with Board instructions." Senator Lewis suggested that a specific time limit be placed upon the Council to complete its further study. He also questioned what criteria the Board would use to decide if further study was needed (Pub. Ex. 2). As a result of public comments at the hear-

ing that some time limit should be imposed by the Board upon the Council, but that such a limit should depend upon the facts of the specific case (T. 99-100), the Board proposed adding the following sentences to this section:

> "The instructions shall include a specified time in which to complete this study. Extensions of time may be granted if needed to complete adequately the further study." (Board's Ex. X)

The Board justified the need for such a provision as a means of resolving a situation where the Council or staff recommendations are either not well supported or contain unresolved factual issues. Without the option of returning the recommendations to the Council for further study, the Board would be forced to either make a decision on incomplete or conflicting information or to do the investigation itself. The provision is not unreasonable because it would help assure well-reasoned and supported decisions. However, the Examiner would question whether this is the most reasonable method of making a determination where the evidence is unclear. Given that Minn. Stat. § 214.001, creates a rather clear presumption that no regulation should be imposed unless the need for it is shown and given the fact that the subcommittee and Council recommendations, accompanied by Department reports, summarizing information gathered over periods in excess of one year, should be adequate to provide all relevant information, it would seem that the best resolution in such a situation would be to impose no regulation.

42. MHD 538 C., Reconsideration Process, establishes an administrative procedure by which an applicant group that is dissatisfied with the Board's decision may request the Board to reconsider its action. Because the statute does not require the Board to grant such a reconsideration, limiting such appeals to arguments as to why the decision was not supported by the evidence presented or why new or changed evidence does not support the earlier decision is reasonable. The provision is unreasonable in one aspect, however. As pointed out by the Minnesota Association of Optometrists and Opticians, "An appeal must be available to dissatisfied persons other than the applicant group. It is possible

for an applicant group to be credentialed over the strong objections of persons in related occupation fields. In those instances, it is desirable that some process of appeal be available to any concerned individual or group. MHD 538 C. should make provisions for such an appeal." The Examiner agrees. If an appeal is provided to anyone, it should be provided to everyone who is interested in the proceedings. (This assumes that all interested persons are notified of the decisions, see, Finding No. 40.) The proposed rule, once again, indicates an inclination on the part of the Board to favor credentialing. It can be assumed that any applicant group is seeking credentialing, and if they are to appeal anything, it would be the denial of credentialing. As noted several times, the rule should favor non-regulation. The suggestion of the optometrists and opticians should be included within the rule.

GENERAL COMMENTS

43. Two comments were received expressing general support for the rules as proposed. (Pub. Exs. 3 and 9) Both persons are members of the Human Services Occupational Advisory Council. The Examiner would note that he is not unaware of the parochial interests of many of the occupational groups that submitted comments opposing the proposed rules. Nonetheless, the Examiner agrees with most of the comments that the rules should be withdrawn, reconsidered and rewritten. As they now exist, they do not properly emphasize the legislative intent to avoid further and unnecessary regulation of occupations. They do not say to whom they apply, and they do not specify criteria upon which decisions will be based. The basic process in the rule, while not unreasonable, may well not be the best. Alternative means of gathering the information and soliciting public participation were not discussed. The argument of the Board that specific criteria and definitions cannot be adopted because it would interfere with their broad discretionary powers under the law is apparently based on an assumption that specificity equals restriction. That assumption is not warranted. Specificity merely defines the rules of the game for everyone. It need not restrict the Board's

discretion to anything less than is already granted by the statute. The Examiner has the general impression that the Council and the Board are saying, "We've been fair in the past and we will be in the future. Our system has worked well."

In Monk and Excelsior, Inc. v. Board of Health, 225 N.W. 2d 821 (Minn. 1975), the Court stated:

> "A person dealing with the Department [of Health] is entitled to proper notice of what regulations are being promulgated and are applicable to him. The purpose of the Administrative Procedures Act is to insure that we have a government of law and not of men. Under that Act, administrative officials are not permitted to act on mere whim, nor their own impulse, however well-intentioned they might be, but must follow due process in their official acts and in the promulgation of rules defining their operations."

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Board; all other substantive and procedural requirements of statute and rule have been fulfilled.

2. The Board has demonstrated its statutory authority to adopt the proposed rules.

3. As specified in the Findings, the Board has failed to demonstrate the need for and reasonableness of the proposed rules.

RECOMMENDATION

The Hearing Examiner recommends that the proposed rules be withdrawn.

Dated this 22nd day of July, 1977.

STEVE M. MIHALCHICK
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of the Proposed Rules Relating to Procedures for Determining Credentialing of Human Services Occupations

FINDINGS OF FACT AND REASONS, CONCLUSIONS, AND ORDER

The above-entitled matter came on for hearing before Steve M. Mihalchick, Hearing Examiner appointed by the Chief Hearing Examiner to preside at the hearing initiated by the Minnesota State Board of Health on the 20th day of April, 1977, at approximately 9:00 a.m., in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. This rules hearing was held pursuant to Minn. Stat. ch. 15 to determine whether proposed new Minn. Rules MHD 536-538 [7 MCAR §§ 1.536-1.538] should be adopted.

The following persons appeared for the Department of Health, Division of Health Manpower: Corrine Larson, Director; Wayne Carlson, Health Program Representative; Kathy Lamp, Health Program Representative, and Colleen Amundson. Richard Wexler, Assistant Attorney General, appeared as counsel for the Board.

Persons making oral presentations at the public hearing and their associations are as follows: Dr. Sam Oltmans, Minnesota State Dental Association; T. Williams, President, and Rita Kaplan, both of the Minnesota Chapter of National Association of Social Workers; Robert Amundson, Hennepin County Welfare Department; Robert Cooper, Minnesota Society of Medical Technologists; Kathy Meyerle, State Pharmaceutical Association; and Anita Makar, Minnesota Chemical Dependency Association.

Although the proceeding was initiated by the Board of Health, the Board has been abolished and its authority has been transferred to the Commissioner of Health. Minn. Stat. § 144.011 (Supp. 1977). Consequently, reference will be made hereinafter to the Commissioner rather than to the Board.

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

FINDINGS OF FACT AND STATEMENT OF REASONS

Procedural Requirements

1. On February 18, 1977, the Commissioner filed the following documents with the Chief Hearing Examiner:

   a. A proposed Order for Hearing;

   b. A proposed Notice of Hearing; and

   c. A Statement of the estimated length and number of people attending the hearing.

2. On March 10, 1977, the Commissioner filed a copy of the proposed rules with the Office of Hearing Examiners.

3. On March 14, 1977, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 1311.

4. On March 15, 1977, the Commissioner mailed the Notice of Hearing to all persons, associations, and other interested groups who had registered their names with the Secretary of State for the purpose of receiving such notice, to other persons, associations and groups of which the Commissioner was aware of as possibly having an interest in the above-captioned rules, and to all persons who were members of the Minnesota Legislature as of the date of service.

5. On March 22, 1977, the Commissioner filed the following documents with the Hearing Examiner which were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing:

   a. Order for Hearing and the Board of Health's authorizing resolution;

   b. Notice of Hearing as mailed;

   c. Affidavit of Receipt of the Secretary of State's list;

   d. Affidavit of Mailing;

   e. Secretary of State's Certificate and list;

   f. Statement of Need;

   g. Statement of Facts Establishing Reasonableness of Rules;

h. Statement of Evidence, including the names of Department personnel who will represent the Board at the hearing.

i. Notice of Intent to Obtain Information on Proposed Rules from Non-Agency Sources as mailed on August 29, 1975, to persons registered with the Secretary of State for the purpose of receiving notices of hearing regarding hearings on proposes rules, as mailed on September 17, 1975, as a news release, and as published in 1 State Register 739 on November 8, 1976.

6. The record remained open through May 10, 1977, for the receipt of written comments and statements.

7. The Report of Hearing Examiner of July 22, 1977, has been available for review by all affected persons upon request for more than five days prior to the adoption of these rules.

Statutory Authority

8. Minn. Stat. § 214.13 subd. 1 (1976) provides:

> The board of health shall promote the recognition of human services occupations useful in the effective delivery of human services. The board shall coordinate the development of a credentials policy among the health related licensing boards consistent with section 214.001. The board shall, consistent with section 214.001, establish procedures for the identification of human services occupations not now credentialed by the state, recommend appropriate regulatory modes, and promulgate by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations. If the board determines that credentialing of an occupation is appropriate, the board is empowered only to register the occupation. Before promulgating any rules resulting in registration for an occupation the board shall consult with state boards or agencies charged with regulating similar occupations in order to define the scope and range of practice for the registered occupation and the degree of supervision required. As used in this section and section 214.14 registration shall be defined as in section 214.001, subdivision 3, clause (c).

Emphasis added. This provision specifically directs the Commissioner to establish the procedures to be used in the process of identifying human services occupations not now credentialed by the state and to recommend what, if any, regulatory modes would be appropriate. The procedures and recommendations are to be consistent with the legislative policy expressed in Minn. Stat. § 214.001 (1976). The Commissioner may not develop criteria on which to base regulatory decisions which go beyond the factors specified in section 214.001. Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588, 594 (1971).

9. Minn. Stat. § 15.0412 subd. 3 directs agencies to promulgate rules specifying the formal and informal procedures related to the administration of official agency duties which directly affect the rights of or procedures available to the public.

Proposed Minn. Rule MHD 536—General

10. MHD 536 A., Declaration of Purpose and Scope, is a general introductory statement. It states that the rules specify the procedures by which human services occupations are identified and decisions are made regarding the need to regulate persons in specific occupations, and that the rules apply to all human services occupations that are not now credentialed.

11. The major portion of the written and oral comments made with respect to the rules were addressed to their basic purpose. Notwithstanding that the rules were explicitly limited to expressing the mechanical process by which the Commissioner would approach the duty to identify human services occupations not now credentialed and rendered recommendations as to appropriate regulatory modes,[1/] a number of persons criticized the rules for not setting forth the criteria to be used in making the recommendations. See, for example, transcript 16, and Public Exhibit No. 10. The objections concerning criteria do not address the subject matter of the rules (which is procedures and not criteria) and evidence a lack of understanding of the legal standards, addressed at length, infra, at paragraph 14.a-g which the Commissioner must fulfill in the particular process involved. In addition, even if it is assumed, arguendo, that the Commissioner must promulgate criteria, nothing requires that the procedures which will govern how the evidence will be presented to the Commissioner must be promulgated at the same time as the criteria which will control how the evidence will be weighed and considered in making the regulatory decisions required by Minn. Stat. § 214.13.

[1/] Although the proposed rules reference criteria in their title and in several places in their body, a reading of the rules would reveal that they merely noted that the criteria to be used in making regulatory decisions regarding applicant groups were the statutory factors contained in Minn. Stat. § 214.001 subd. 2 (1976).

12. Those criticizing the rules for lack of criteria either ignore the criteria specified by the Legislature in Minn. Stat. § 214.001 subd. 2 (1976), which the Commissioner is mandated to consider,[2/] or contend that the statutory factors must be further refined. The rules as proposed and presented at hearing had several references to indicate that the regulatory decisions would be governed by the section 214.001 criteria. Proposed Minn. Rules MHD 536A.; MHD 537 C.2.; 538 B.4.; and 538 B.6.d.[3/] However, to make this intent even clearer, the rules as adopted by the Commissioner were modified in the following instances. (The old wording is indicated by strike-out and the new is indicated by underlining.)

a. Minn. Rule MHD 536 A., Declaration of Purpose and Scope: "Minnesota Rules MHD 536-540 establish the process to be used by the ~~State Board~~ Commissioner of Health and ~~its~~ the Human Services Occupations Advisory Council in carrying out the charges of Minn. ~~Laws 1976, Chapter 222, Sections 1, 8 and 9~~ Stat. sec. 214.001, 214.13 and 214.14 (1976). It specifies the procedures by which human services occupations are identified and decisions are made regarding the State's need to regulate persons in specific occupations. This rule applies to all human services occupations that are not now credentialed by the State. Determination of a mode of regulation, if any, for an occupational group shall be based on the factors contained in Minn. Stat. § 214.001 subd. 2, at all levels of the recommendation-decision process, to wit; subcommittee, Council and Commissioner."

2/ Minn. Stat. § 214.001 subd. 2 (1976) provides:

> The legislature declares that no regulation shall hereafter be imposed upon any occupation unless required for the safety and well being of the citizens of the state. In evaluating whether an occupation shall hereafter be regulated, the following factors shall be considered:
>
> (a) Whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;
>
> (b) Whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability; and
>
> (c) Whether the citizens of this state are or may be effectively protected by other means.

3/ MHD 538 B.6.d. does not directly reference the factors listed in Minn. Stat. § 214.001 subd. 2 (1976). However, this rule controls the action that the Commissioner is to take when he determines that one of the regulatory options, other than registration, specified in subdivision 3 of section 214.001 is appropriate; and subdivision 3 requires such decisions to be based upon the legislative policy expressed in subdivision 2.

b. MHD 537 C.2., governing one of the areas an applicant group must address in the questionnaire: "Evidence that the occupational group meets the ~~credentialing criteria~~ regulatory factors contained in Minnesota Statute ~~and these rules~~ sec. 214.001 subd. 2."

c. MHD 538 B.2.a., relating to subcommittee procedures: "The subcommittee will meet to ~~evaluate~~ study the questionnaire as it addresses the factors contained in Minn. Stat. sec. 214.001 subd. 2 and materials available to the subcommittee and to raise any questions members feel ought to be addressed either in subcommittee meetings or at the public forum."

d. MHD 538 B.4., relating to Subcommittee Recommendations: "The subcommittee shall make recommendations to the Council with respect to: the need for regulation, the type of regulation, whether any recommended credential be licensure or registration and the administrative authority for any recommended credential. The Department shall also make separate recommendations which accompany those of the subcommittee. Each recommendation shall be accompanied by the rationale/justification used in arriving at the decision. ~~Approval or denial of credentialing for~~ Regulation of an occupational group shall be based on the factors contained in Minn. Laws 1976, Chapter 222, ~~Section 1, subdivision 2~~ Stat. sec. 214.001, subd. 2."

13. The additional references to Minn. Stat. § 214.001 subd. 2 are for the sole purpose of clarifying what was already expressed in the rules as proposed and of placing on notice those persons reading the rules that regulatory decisions will be based upon the statutory factors. Reliance on those factors or criteria is not the result of their being referenced in the rule but the result of legislative directive. For these reasons, the changes are non-substantive.

14. The most significant flaw in the arguments of those who base their opposition to the rules on the lack of criteria is a misunderstanding of the type of procedure involved. The process involved is quasi-legislative as opposed to quasi-judicial or regulatory. The difference is significant for the legal duties, responsibilites and manner of handling the matter vary depending on which type of proceeding is involved.

a. The United States Supreme Court has set forth the factors to guide in determining whether an activity engaged in by an administrative agency is quasi-judicial or legislative. In explaining the difference, the Court stated:

> . . . A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. . .

Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 69 (1908). Clearly the process by which a determination is reached as to whether a human services occupation should be regulated is legislative for it sets a rule for the future and does not "enforce liabilities as they stand on present or past facts and under laws supposed already to exist."

b. Finding that the human services process is legislative is significant for, as the Minnesota Supreme Court has recognized, different rules apply to administrative agencies depending on the nature of the decision. Much stricter procedures must be followed by an agency when a quasi-judicial, administrative or regulatory decision is involved than when the agency renders a legislative or discretionary decision.

c. For example, in City of New Brighton v. Metropolitan Council, 306 Minn. 425, 237 N.W.2d 620 (1975), the Metropolitan Council (hereinafter "Council") was given statutory authority to purchase all sewer lines "needed" to implement its comprehensive plan. The Council did not purchase a portion of New Brighton's sewer line which resulted in the court challenge. Although the Council had developed guidelines to help it determine which lines were needed, the guidelines had not been promulgated as rules. In addition, the Council in making its determination considered factors not included in the guidelines.

d. In upholding the action of the Council, the Supreme Court found that the Council's action was legislative in nature and stated:

> . . . It is the nature of the decision, not the promulgation of criteria, that determines the permissible ambit of a governing body's decision-making authority. . . . Because the statute allows the acquisition of only those sewer lines needed for the comprehensive metropolitan plan, it is fundamental that the Council must base its decision on a wide range of factors.

City of New Brighton v. Metropolitan Council at 432, 237 N.W.2d at 625. Accord, Prentis v. Atlantic Coast Line Co., supra, at paragraph 14.a. Emphasis added. This case is significant with respect to the instant rules since the Supreme Court not only did not criticize the statutory decision-making factor of "need" as being too vague but also recognized that an agency in a legislative decision-making setting is not limited to, but may even look beyond, the criteria it has developed to define the general statutory standard. Instead of objecting to the lack of standards, the Supreme Court examined the process, found it "thorough and reasonable," and ruled that the decision itself was not arbitrary or capricious. City of New Brighton v. Metropolitan Council at 433, 237 N.W.2d at 625.

e. In another area, that of rate-making which has been long classified as a legislative function by the Minnesota Supreme Court, the Public Service Commission (hereinafter "PSC") must carry out the legislative mandate to establish "just and reasonable" rates which shall not be "unreasonably preferential, unreasonaby prejudicial or discriminatory, but shall be sufficient, equitable and consistent in application to a class of consumers." Minn. Stat. § 216B.03. This standard is no more precise than the one contained in Minn. Stat. § 214.001. However, the Minnesota Supreme Court has expressly endorsed the practice of the PSC to exercise a wide range of discretion in applying this standard and, in rendering a decision, to consider various factors which not only have not been promulgated as rules but on which no substantial evidence has been presented at the hearing. St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, ____ Minn. ____, ____, 251 N.W.2d 350, 354 (1977). Accord, Northwestern Bell Telephone Co. v. State ____ Minn. ____, 253 N.W.2d 815 (1977); cf. City of Minneapolis v. Krebes, 303, Minn. 219, 226 N.W.2d 617 (1975); Anderson v. Commissioner of Highways, 267 Minn. 308, 126 N.W.2d 778 (1964); Gnecchi v. State, 58 Wash.2d 467, 364 P.2d 225 (1961).

f. These cases represent an implicit recognition that certain decisions made by administrative agencies which are based upon social policy grounds can be made only in a more flexible factual and procedural setting. Professor Davis, one of the leading administrative law scholars, has discussed this aspect of administrative law, in drawing a distinction between agency reliance on legislative as opposed to adjudicative facts as follows:

> . . . Legislative facts are the facts which help the tribunal determine the content of law and of policy and help the tribunal to exercise its judgment or discretion in determining what course of action to take. Legislative facts are ordinarily general and do not concern the immediate parties. In the great mass of cases decided by courts and by agencies, the legislative element is either absent or unimportant or interstitial, because in most cases the applicable law and policy have been previously established. But whenever a tribunal engages in the creation of law or of policy, it may need to resort to legislative facts, whether or not those facts have been developed on the record.
>
> . . . [t] he present stage of development of social science unfortunately brings us no more than barely to the threshold of ability to solve our basic problems of law and policy through the use of a full-bodied factual technique. The result is an uneven mixture of a priori conjectures and partially informed guesses with occasional factual investigations of varying depth.

2 Davis, Administrative Law § 15.03.

g. The Legislature which relies heavily on "legislative facts" identified that the task it assigned to the Commissioner with respect to developing policy for human services occupations involved a quasi-legislative process. Thus the Legislature, in furnishing statutory factors, drafted them broadly in explicit recognition of this fact. The activity is clearly legislative in nature (see paragraph 14.a. herein) and it requires the exercise of discretion within the boundaries specified in Minn. Stat. § 214.001 (1976). Wide latitude within those policy standards without further delineation by rule has been expressly recognized and endorsed by the Minnesota Supreme Court in situations of this nature. See paragraph 14.b. through e. herein.

15. Those critical of the rules overlooked their main purpose, i.e., to establish a process in which decisions regarding the possible regulation of human service occupations could take place so as to allow for adequate presentation and development of all issues relevant with respect to the occupation under consideration. The Minnesota Supreme Court in City of New Brighton v. Metropolitan Council, supra, at paragraph 14.c., has noted that when legislative

decisions are to be made by an administrative agency, it will look more to the process to determine whether it allowed for reasonable presentation of the relevant factors. These rules meet that purpose, satisfy concerns of the Supreme Court, and are reasonable. The basis for the reasonableness of the rules was summarized in Public Exhibit No. 9 as follows:

> . . . I am satisfied that this process is fair and equitable to all parties who may have an interest in a credentialling [sic] issue. I believe the process is sufficiently thorough, yet not so cumbersome as to bog down a credentialling [sic] application in needless detail. I am satisfied that the process allows interested parties an opportunity to be informed of HSOAC's [Human Services Occupations Advisory Council] activities and to fully participate in such activities should they choose to do so. I am satisfied that the process, if utilized properly, allows HSOAC and its subcommittees an opportunity to establish a sufficient public record upon which to base a recommendation and the Board of Health to base a decision to credential or not credential an applicant group.

In addition, Board's Exhibit V, provides a practical illustration of the effectiveness, fairness, and reasonableness of the process specified in the rules and therefore of the rules themselves.

16. One comment (Public Exhibit 5) recommended that the reference to the need to "regulate" persons be changed to the need to "credential" persons. The suggestion is inappropriate since the purpose of the procedure is to determine whether a certain human services occupation should be regulated at all, and, if so, the appropriate mode of regulation. Minn. Stat. § 214.001 subd. 3 lists four modes of regulation of which only two, registration and licensing, constitute credentialing. If the Board determines that registration is the appropriate mode, it then proceeds to implement that registration under the procedures set up in the statute and the rules. If it determines that any of the other modes is appropriate, it so recommends to the legislature. For that reason, the first part of the last sentence of MHD 536 A. is being modified to read: "Determination of a mode of regulation, if any, for an occupational group . . ." In addition, other general references to "credentialing" throughout these rules are being changed to "regulation." See MHD 536 B.19; MHD 537 B.1; MHD 537 C.2. and 3; MHD 537 D; MHD 538 B. 3.a., 4., and 6.e.; and MHD 538 C.2. These changes do not change the substantial meaning of the rules and merely provide consistency with the language in the second sentence of MHD 536 A.

17. The Hearing Examiner in numerous places in his report (see, e.g., paragraph 13, 25 and 40) stated that the word "credential" and variations of it was overused since it implies that the Commissioner prefers licensing or registration as

the form of regulation. The Hearing Examiner correctly pointed out that Minn. Stat. §§ 214.001 and 214.13 subd. 5 express the legislative position that credentialing be controlled. In addition, as the immediately preceding paragraph indicates, the Commissioner agrees that it would be helpful for clarification purposes to use the word "credential" only when licensing or registration are meant and the word "regulation" when the reference is to all four regulatory options noted in Minn. Stat. § 214.001 subd. 3. However, the Hearing Examiner's assertion that the frequent use of the word credential demonstrates a bent on the part of the Commissioner to prefer licensing or registration is without foundation for the facts noted below indicate otherwise.

a. The rules as proposed did not exclusively use the word "credential." For example, the purpose clause of the rules states:

> [the rules] . . . specifies the procedures by which human services occupations are identified and decisions are made regarding the State's need to regulate persons in specific occupations.

MHD 536 A. Emphasis added. See, also, e.g., MHD 537 B.1. and 538 B.4.

b. The rules as a whole evidence an understanding and intent to determine whether some mode of regulation is appropriate rather than just whether credentialing is appropriate. See, in particular, MHD 538 B.4. and B.6.a. through f.

c. The enabling legislation itself uses the word "credential" in a sense broader than just licensing or registration when it states: "The [Commissioner] shall coordinate the development of a credentials policy . . . " Minn. Stat. § 214.13 subd. 1 (1976). Emphasis added. Obviously, since the Commissioner must determine whether or not any mode of regulation is appropriate, the Legislature could not have meant that the Commissioner could only develop a policy relating to licensing and registration.

18. MHD 536 B. provides a list of 20 definitions that are necessary to provide common terminology and uniform interpretation of the statute and rules. All of the terms, except "criteria approval" and "Board," are reasonable and necessary with the following definitions specifically noted:

a. Proposed MHD 536 B.3. defining "Board" has been deleted since the Board has been abolished. Minn. Stat. § 144.011 subd. 1 (Supp. 1977).

b. Adopted rule MHD 536 B.5. defining "Commissioner" has been added since the powers and duties of the Board were transferred to the Commissioner. Minn. Stat. § 144.011 subd. 1 (Supp. 1977). This is a nonsubstantive change since it merely reflects recent action by the legislature.

c. MHD 536 B.6. as adopted contains the definition of "conflict of interest." It is necessary to consider this definition in conjunction with MHD 536 C., Prohibition. That rule states: "A council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest." Without discussing subsequent rules in detail, the basic procedure in determining whether an occupational group should be regulated and the mode of regulation involves completion of a questionnaire by an applicant group or Department staff. The questionnaire is then referred to the Human Services Occupation Advisory Council created by Minn. Stat. § 214.14 which then appoints a subcommittee to investigate the matter. The subcommittee then makes a recommendation to the Council, which makes a recommendation to the Commissioner, who makes the final determination. No comments objected to the prohibition, itself, though a number were directed at the definition. (Public Exhibits 1, 4, 7 and 11; T. 12-13.)

(i) A comment in public exhibit no. 2 stated that the term "self-serving" should be defined to avoid this section from being abused. The exhibit also stated that the responsibility for identifying conflict of interest situations and enforcement must lie with the Commissioner. First, the definition of a conflict is basically a restatement of the existing law and recognizes that the reasons why a person may not be able to render an objective decision may be either financially or nonfinancially related. See, e.g., Thomas v. Romberg, 245 Minn. 474, 73 N.W.2d 195 (1955);

Cooper, State Administrative Law, 343, 344. Second, combining proposed MHD 536 B.6.a. and b. into one provision should clarify the entire definition as well as the term "self-serving." And third, no enforcement authority has been added to the rule since in most cases an existing conflict or bias is relatively easy to conceal thereby leaving only the person involved with the ability to determine and reveal that he or she has a conflict. The rule therefore places responsibility where it should be, i.e., on the shoulders of the public official who should reveal if he/she has a conflict. The rule furthermore follows the lead of the legislature which requires the public official to reveal any existing conflict. Minn. Stat. § 10A.07 (1976).

(ii) The Minnesota Dental Association (Public Exhibit 4), the Minnesota Nurses Association (Public Exhibit 7), the Minnesota State Pharmaceutical Association (Public Exhibit 11), and testimony at the hearing (T. 12-13) take issue with the fact that the definition of conflict of interest effectively precludes members of the profession under consideration or directly related professions from partaking in the subcommittee or council deliberations. These public comments assert that Minn. Stat. §§ 214.001 subd. 1 and 214.13 subds. 1 and 2 (1976) negate existing conflict of interest law as contained in the rule and mandates that members of the affected profession, or those closely related, should have a direct voice in the decision of whether or not to regulate an applicant group.

(iii) As a technical matter, those objecting to the rule's conflict of interest provisions misread the laws they rely upon to support their position. Minn. Stat. §§ 214.001 subd. 1(1) and 214.13 subds. 1 and 2 (1976) specifically address the question of involvement by affected parties only after the decision to regulate has been made. More importantly, those statutory provisions do not negate the laws controlling

conflicts of interest. Case law on conflicts does not prevent someone from participating in the regulatory decision process simply because that person holds certain views on a subject. The law does not require administrative decision-makers to approach a problem with a blank mind. But the law does require a decision-maker, as expressed in the rule, to be free of such interests that would prevent the person from being able to objectively consider the evidence and "base a decision solely on such evidence." Finally most conclusive in demonstrating the reasonableness of the rule, the rule does not prohibit anyone from having a voice in the regulatory decision process. All meetings of any of the bodies considering an applicant group questionnaire are open to the public. Interested parties may submit written comment at any time. Oral comments are received at the one or more public forums held on each questionnaire. All the rule does is prohibit the one Council member of an occupation or related occupation which is going through the review process from having a direct voice in the subcommittee or Council decision because that Council member, by virtue of his/her membership on the Council has a larger responsibility to serve the public only and not the sole interests of the occupation the member represents. This is reasonable and necessary.

d. Proposed rule MHD 536 B.10 defining "criteria approval" has been deleted because the term is not used in rules. It had been used in earlier drafts but dropped before the rules were submitted for hearing. The failure to remove it from the list of definitions was merely an oversight.

e. Adopted rules MHD 536 B.14. and 19. paraphrase the statutory definitions of "licensure" and "registration." Because the terms are used so extensively throughout the proposed rules, the duplication of the statutory language is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

f. As originally proposed, the term "occupational group" was defined as a group of human service workers who have common occupational functions, practices, and roles in the delivery of "health" services. Several comments pointed out the inadvertant error in using the word "health" which has been replaced with the word "human."

g. As originally proposed, "questionnaire" was defined as the document designed to provide information about an occupational group for credentialing. The National Association of Social Workers (NASW) commented that this definition did not coincide with the stated purpose that appears on the questionnaires currently being used. (Public Exhibit No. 1.) The point is not well taken because the statements on the questionnaire are actually preliminary instructions. However, as suggested in Board's Exhibit X, the following clarifying modification to the definition has been made: " 'Questionnaire' means document designed to provide information about an occupational group for [credentialing] purposes of aiding in making a regulatory decision." (The deleted wording is in brackets and the new language is underlined.)

19. Several comments stated that a definition of "human services occupation" must be developed and inserted in the rule; otherwise it would never be clear what occupations are covered. (Public Exhibits 1, 2, 5, 6, 10 and 11.) The rules without a definition of "human services occupation" are reasonable. The legislature did not define "human services occupations" in Minn. Stat. ch. 214 (1976), nor did it refer in chapter 214 to other totally unrelated legislation which has addressed "human services." However, since Minn. Stat. §§ 214.13 and 214.14 amount to a rewriting and expansion of the Allied Health Manpower Act, (Minn. Stat. §§ 145.861 through 145.866, repealed by Minn. Laws 1976, ch. 222), it is clear that the legislature intended the term to include more than just health or allied health services occupations and left the exact expansion to be determined within the discretion of the Commissioner. As explained supra at para. 14, this is a legislative determination to be made by the Commissioner. While he may choose to define "human services occupation" by rule, he does not have to so act. City of New Brighton v. Metropolitan Council, 306 Minn. 425, 237 N.W.2d 620 (1975), and other cases cited, supra.

Proposed Rule MHD 537—Identification of Occupational Groups, Questionnaire Contents, and Processing Priorities

20. MHD 537 A. specifies the procedures to be used to initiate the process when an applicant group voluntarily identifies itself and actively seeks credentialing. Several groups have already begun the review process and many others have stated their intent to submit questionnaires. This rule provides that the applicant group shall submit a letter of intent to the Commissioner who then sends the group a questionnaire and a copy of the rules. The group is then allowed six months to complete the questionnaire. If they fail to do so, they must submit a new letter of intent. In addition, when an application is submitted, the Department determines whether it is complete before it is transmitted to the Council to begin the review process. These provisions are necessary to specify a method of initiating the process and are reasonable because it is a simple process that allows the Commissioner and his staff to anticipate and schedule for incoming questionnaires and to identify potentially interested groups. The six-month period is reasonable in that it provides sufficient time for an applicant group to gather necessary information and to determine whether or not it wishes to proceed further in the credentialing process. It in no way penalizes the applicant group for it allows for a written request for extension of time or, if necessary, the resubmission of a letter of intent. Requiring that applications be complete prior to starting the review process is reasonable and plainly logical on its face.

a. MHD 537 A.4. as proposed provided: "When the questionnaire is deemed complete by the Department, the Board shall transmit the questionnaire to the council." Several comments questioned the lack of specificity in this section. (Public Exhibits 1, 2, 5 and 11.) For example, the comment in Public Exhibit No. 2 at 2 stated: "Specify who deems the questionnaire complete; what criteria are used to prevent arbitrary and capricious decisions by the Department to delay applications?"

b. The words "deemed complete" have a common and approved usage and need no further definition. Minn. Stat. § 645.08(1) (1976). Thus a questionnaire would be deemed complete by the Department when the applicant group addresses each question or provides an explanation as to why the question wasn't addressed. The determination has nothing to do with the merits of the application. (Board's Exhibit X at 9 and T. 39-44.)

c. The way the process currently works, a member of the Department's staff works with the applicant group on an informal basis to assist in completing the questionnaire and suggest avenues they may wish to pursue. While it is unlikely that any applicant group would decline the suggestions of the Department staff and attempt to submit an incomplete report, the possibility does exist. The lack of a procedure in the rule should an applicant group disagree with the Department's determination that the questionnaire is incomplete does not make the rule unreasonable. The options are plainly obvious, to wit: complete the questionnaire as suggested by the Department or file a petition for judicial review pursuant to Minn. Stat. § 15.0424 (1976) or a petition for a writ of mandamus pursuant to Minn. Stat. ch. 586 (1976). These legal options need not be specified in rule because they exist independent of the rule.

d. Notwithstanding the foregoing, it has been decided to add the following sentence to MHD 537 A.4. as suggested by the Hearing Examiner:

> If the department deems the questionnaire to be incomplete, it shall return the questionnaire to the applicant group with a report describing the deficiencies. If the applicant group considers the questionnaire to be complete, it may request that the questionnaire be submitted to the Commissioner to determine whether the questionnaire contains adequate data for the Commissioner to commence the process. Nothing in this rule shall prevent the Department from informally assisting the applicant group in the completion of the questionnaire.

The new language is for additional administrative action, but should the Commissioner concur with the Department that the questionnaire is incomplete, the applicant group is left with the same options as specified in paragraph 20.c., supra. Those options, for the reasons stated, need not be placed in rule.

21. MHD 537 B., Board Initiated Identification, recognizes that some groups that may need to be regulated for public safety may not identify themselves and seek credentialing. The section is reasonable and provides that when information is received or obtained that raises questions of the need to regulate an existing or emerging human services occupational group, the Commissioner may direct staff to collect data substantially equivalent to the questionnaire.

a. Minn. Stat. § 214.13 charges the Board with the responsibility of establishing procedures for identifying human services occupations and recommending appropriate regulatory modes. MHD 537 B is an explicit recognition that some groups which might need to be regulated for public safety might not identify themselves and seek a form of regulation. Recognizing this and that there seldom is quantifiable data that absolutely demand investigation of a group, the Commissioner will base his decision on whether or not to initiate an investigation of an occupational group on various indicators of public interest in the group. Initiation of the process is in no way a prejudgment that any mode of regulation is appropriate. Further, since these groups by definition have not voluntarily submitted information relative to regulation, directing the Department to collect data equivalent to that requested on the applicant group questionnaire is a reasonable way to accumulate data. The method allows for the collection of similar information on all occupational groups and for a consistent evaluation of all groups.

b. The two comments (Public Exhibits Nos. 2 and 10) which address the lack of specificity in this rule are found to be without merit. It is difficult to imagine how the rule could be made more specific. All the rule says is, "There might be something out there; let's look at it." That is not unreasonable.

c. The Minnesota State Pharmaceutical Association (Public Exhibit No. 11) cited the rule for the lack of a definition of "substantially equivalent" in MHD 537 B.2. The term is a fairly definite one that has a common and approved usage. Minn. Stat. § 645.08(1) (1976).

d. The Hearing Examiner, while approving the rule in general, criticized it since it did not specifically provide for terminating the process if the evidence clearly and obviously indicated that there was no need to regulate the group. Report of Hearing Examiner at paragraph 23. One reason given for his comment was that the legislative preference stated in Minn. Stat. § 214.001 subd. 2 is against regulation. That is correct, but the mere initiation of an investigation of a group under MHD 537 B. does not in any way infer that the Commissioner would always determine that regulation is necessary, a point explicitly recognized by the Hearing Examiner. A second reason

given by the Hearing Examiner is that the investigation process is long, complex and costly. Report of Hearing Examiner at paragraph 23. Assuming, arguendo, that the rule requires completion of every investigation and evaluation process, that does not make the rule legally unreasonable. Rules adopting what may not be considered the wisest choice of policy are still not legally unreasonable. In this particular situation, as the Hearing Examiner acknowledged, the authority to terminate the process is implied in MHD 537 C.3. Furthermore, even if MHD 537 C.3. did not exist, the authority to initiate the process necessarily includes the power to terminate the process. This is identical to the case of an applicant-initiated process where the applicant and Commissioner can agree to terminate the process even though there is no explicit provision therefor in the rules.

e. While the Hearing Examiner was incorrect in stating that the rule was unreasonable, his discussion of the issue suggested a meritorious addition to MHD 537 B.2. as follows:

> If the information gathered by staff indicates that there is no necessity to regulate the occupational group, staff will submit a report to the Commissioner detailing the reasons not to regulate the group. The Commissioner may at that time, terminate the investigation process without beginning the process specified in Minn. Rules MHD 538.

The new language does not constitute a substantive change for, as stated above, the Commissioner already has the authority to terminate the process at any time. All this does is build into the system a time at which a specific review of the facts will be made to determine whether or not it is worth proceeding with the formal review process.

22. MHD 537 C., Contents of the Questionnaire, requires the applicant group to submit information on "at least" three specified areas of information. Specific questions and information requested in the questionnaire, as well as future alterations to the questionnaire dictated by experience, would be accomplished within the guidelines of this rule. The words "at least" have been deleted. They were intended to convey no more than the idea presented in MHD 537 C.3. Consequently, they are superfluous. To the extent they infer that the Commissioner has greater authority than stated in MHD 537 C.3., they are misleading. Such an inference was not intended.

a. MHD 537 C.1., as originally proposed, required "evidence that the applicant group represents a significant portion of an occupational group and that other organizations representing members of that occupational group have been identified." In response to comments at the hearing, (T. 52 to 54), the rule has been modified to read:

> Evidence that an applicant group claiming to speak for an occupational group represents a significant portion of an occupational group and that other organizations representing members of that occupational group have been identified.

(Board's Exhibit X.) The normal situation anticipated is that an occupational group will seek credentialing. The information required by 537 C.1. is necessary to assist the Commissioner in insuring the widest possible input from the occupational group and to aid in identifying and contacting every interest group within the occupation. Two comments were directed at the lack of definition of "significant portions." (Public Exhibits 5 and 8.) The Minnesota Association of Optometrists and Opticians stated that more definite guidelines must be established so that minorities in various health care occupations will not waste the time and energies of the Commissioner and his subcommittees. (Public Exhibit 8.) That objection, however, was based on the original wording of the section which implied that only groups representing a significant portion of the occupational group could make application. Hearing comments and Public Exhibit 5 were similar. With the modification to the section, those comments do not apply. It is reasonable to place the burden upon a group claiming to be representative of the occupation to present evidence proving it and to require it to assist in identifying other interested groups or factions within the occupation.

b. MHD 537 C.2., as originally proposed, stated: "Evidence that the occupational group meets the credentialing criteria contained in Minnesota Statute and these rules." For the reasons contained in paragraphs 14 and 17, supra, the rule now reads: "Evidence that the occupational group meets the regulatory factors contained in Minn. Stat. § 214.001, subd. 2."

c. MHD 537 C.3. is a catch-all statement requiring the submission, if deemed necessary, of additional information or evidence consistent with the provisions of applicable statute and these rules as well as information necessary to clarify matters already contained in the application for the sole purpose of enabling the Commissioner to fairly, adequately and completely evaluate the applicant questionnaire. Three public comments stated that the section lacked specificity. (Public Exhibits 1, 2 and 11.) However, while this provision is not as explicit as the other two categories, it is a recognition that there may be legitimate areas of concern which the Commissioner may want to cover in the questionnaire which do not come directly within MHD 537 C.1. or 2., but which become apparent and relevant during the review process of an applicant group's questionnaire. Additionally, this provision is a recognition that the questionnaire is a fallible instrument and that it may be necessary for the Commissioner to ask for slightly different data than it contains, or that the questionnaire itself may generate information that requires follow-up data. In either case, the purpose for seeking additional information would be limited to enabling the Commissioner to make a complete and fair evaluation of the need to regulate an occupational group within the scope of Minn. Stat. §§ 214.001, 214.13 and 214.14 (1976). The concept of allowing the Commissioner to require clarifying information is reasonable within the limits specified in the rule.

22. MHD 537 D., Questionnaire Processing Priorities, states that the Commissioner may determine the priority for processing questionnaires based on evidence available in the questionnaire, particularly that relating to potential harm to the public that the continued unregulated practice may cause. This rule was called arbitrary and unreasonable by three public comments (Public Exhibits 1, 2 and 5) for lack of criteria, especially as to what constitutes public harm. The need for the rule is based on a lack of resources and ability to handle all questionnaires as they come in. To date it has not been necessary to process questionnaires out of order, but approximately 27 groups have indicated some interest in the process. There are currently six or eight groups in the process which experience so far has indicated takes one-and-a-half to two years. This demonstrates that there exists a

need to determine a priority for processing questionnaires, and that the method contained in the rule is reasonable. Harm to the public is one of the primary considerations of Minn. Stat. § 214.001, and an initial determination of harm can be made by comparing questionnaires.

Proposed Minn. Rule MHD 537—Regulatory-Decision Process

23. MHD 538 A., Delayed Consideration, relates to the questionnaire processing priorities of the previous section and provides that the Commissioner shall notify the applicant group of the date at which its application might reasonably be expected to be considered. If the situation does arise that it is necessary to delay processing of a questionnaire because of limited resources, then it is both necessary and reasonable to notify the interested persons of that delay. In response to comments at the hearing (Tr. 59-60) suggesting that those persons be notified of the reason for the delay, the rule has been modified by adding a sentence that reads: "The notification will include the reasons for the delayed consideration." (Board's Exhibit X.)

24. MHD 539 B., Immediate Consideration, is the operative portion of the rule that actually describes the process. Minn. Stat. § 214.14 subd. 1 (1976) provides: "The Board shall determine the duties of the Council . . ." This provision provides the authority for using the Council in making recommendations on specific occupations. The council was set up by the statute as broadly representative of a number of human services. It provides an excellent vehicle for assuring the broadest possible participation and representation in the recommendation process. The use of the Council and subcommittee system is reasonable.

a. MHD 538 B.1. provides that when a questionnaire is received by the Council, the chairman shall appoint a subcommittee of at least five members, none of whom shall have a conflict of interest and who shall be broadly representative of the Council insofar as possible. The use of a subcommittee system is necessary due to the large number of occupational groups that have already indicated an intent to proceed through the process. Essentially, the subcommittees are delegated the task of gathering all relevant facts and performing the in-depth study necessary for the comprehensive evaluation of each questionnaire. This provision is reasonable. (The findings related to conflict of interest in paragraph 18.c., supra, also apply here.)

b. MHD 538 B.2. provides for a review of the questionnaire and its associated material by the subcommittee prior to the subcommittee's formal call for public input. The primary purpose of these initial meetings is to identify the issues and other matters that will need to be addressed during the process. As originally proposed, MHD 538 B.2.a. provided, in part, "The subcommittee will meet to evaluate the questionnaire and materials available. . . ." In response to the comments and in order to more accurately reflect the intent of the rule, it has been modified to read: "The subcommittee will meet to study the questionnaire as it addresses the factors contained in Minn. Stat. § 214.001 subd. 2 and materials available. . . ." This is simply an initial review by the subcommittee to determine what questions need to be raised. The rule is reasonable.

c. MHD 538 B.2.b. provides that all written material related to the process will be available as part of a public file maintained at the Department of Health and other locations the Commissioner deems appropriate. As specified in the Statement of Facts Establishing Reasonableness of Rules, Board's Exhibit N at 8, those additional locations would be the Department's eight regional offices and the seven state-wide Health Systems Agencies' offices. Since the Commissioner may find it necessary in the future to change those locations, they are not specified in the rule. The provision is reasonable.

d. MHD 538 B.3. directs the subcommittee to hold at least one public forum for the purpose of providing public participation in the credentialing process, collecting information, raising and clarifying issues, and, when possible, providing for the negotiation of differences. It then specifies procedures for the public forums. The public forum is a necessary and reasonable means of gathering information that offers two advantages. First, it gives parties interested in the particular occupational group a formal opportunity to voice their opinions, particularly if they are not interested enough to attend all the subcommittee meetings (which experience has shown includes a fairly extensive number of people), and, second, it gives the subcommittee an opportunity to hear groups with varying points of view respond to each other's issues.

(i) Procedurally, the rule provides that the first public forum must be held within four months of subcommittee appointments and that the public forum shall be open to all persons. No comments were made on these provisions, and they are reasonable.

(ii) MHD 538 B.3.d. specifies the notification procedures for the public forum. It provides that notification shall be (1) mailed to groups and persons identified as part of the occupational group by the questionnaire and through the Department study, (2) made by a news release, and (3) published in the Department's monthly listing of health-related meetings. There were three comments on this provision of the rules (Public Exhibits Nos. 5, 8, and 11) to the effect that notice of the public forums should be given in additional ways. Notwithstanding that the procedures in the proposed rule have worked well in the past in bringing out interested groups and persons to provide public comment, a point admitted in Public Exhibit No. 11, and that anyone could ask to receive notification of the Department's monthly listing of meetings, the rule as adopted has included that notice will be published in the State Register and will be sent to the public information offices of the Departments of Correction and Public Welfare for inclusion in appropriate departmental bulletins. The rule is reasonable.

(iii) MHD 538 B.3.e. states that the public forums will be conducted in accordance with procedures adopted by the Council and available in writing to the public at the public forum. It further states that all interested persons will be given an opportunity to make a presentation, although time limits may be imposed. Senator Lewis suggested that the rule be modified to specify that all interested persons would be given an opportunity to make "an oral and/or written" presentation. (Public Exhibit 2.) Senator Lewis was apparently attempting to broaden the

type of presentation that could be given, but, in fact, his suggestion would restrict it. Presentations have already been given that included oral, written, slide and tape. There were also some comments on the time limit provision. (Public Exhibits 2 and 5; T. 72-73.) The written comments stated that it was too arbitrary. However, the rule is reasonable as time limits are necessary to keep testimony relevant and to prevent excessively repetitive testimony. The chairman must have some prerogatives for keeping the meeting moving. (Board's Exhibit X.) In addition, it was suggested at the hearing that the right to impose time limits exists anyway, and that by making it explicit in the rule, there is an implication that time limits will be imposed. There is no basis for such an assumption. Stating the requirement in the rule will encourage persons to organize and better prepare their presentations. Further, they should be aware of all the procedures.

e. MHD 538 B.4., Subcommittee Recommendations, states that the subcommittee shall make recommendations to the Council with respect to (1) the need for regulation; (2) the type of regulation; (3) whether any recommended credential be licensure or registration; and (4) the administrative authority for any recommended credential. These are the four ultimate issues on which the Commissioner must make a final determination. The rule also specifies that the Department shall make separate recommendations which shall accompany those of the subcommittee. The purpose of the Department's recommendation was questioned. (Public Exhibit 1.) There was considerable discussion on the point at the hearing. (T. 74-85.) The general tone of most of the public comments was that the Department staff probably has too much input to the Commissioner, especially since the staff is, by definition, health oriented.

(i) The rule states the obvious, i.e., that the Commissioner will look to his staff for advice. There is nothing unusual about this arrangement for it is one main purpose for which a staff exists whether it be with the Department of Health or any other state agency.

(ii) In addition, that part of the Commissioner's staff responsible for the human services program works closely with the Council and provides it with administrative support making those persons intimately familiar with the issues raised by each applicant group.

(iii) Further, the staff is professionally oriented and is intended to assist the Commissioner in reaching policy decisions in this area. In addition, as the make-up of the staff demonstrates, it does not have an unduly strong health bias. Of the four staff persons most directly involved in assisting the Council, one has a doctors degree in higher education, one has a masters degree in public health, and two have masters degrees in public affairs. Even given a different staff make-up, however, it is specious to argue that adequate and professional support cannot be provided by health-related staff any more than by other disciplines.

(iv) The provision for recommendations from both staff and the Council can be particularly useful to the Commissioner since the Council and staff, due to their respective compositions, will give the Commissioner input from different perspectives.

f. MHD 538 B.5., Council Action, provides that the Council will review the subcommittee recommendation and approve or modify it as necessary. The Council then submits its report, with supporting documents, to the Commissioner for action. The Department report and recommendations that were submitted to the Council are also passed along to the Commissioner. No comments were made specifically on this section, except as they relate to the Department report discussed above. The rule is reasonable.

g. MHD 538 B.6. describes what actions the Commissioner may take upon receipt of the Council report and recommendations. It is a necessary part of the rule. Two new sentences have been added in the introductory language of the rule as follows:

> The Commissioner's action will be accompanied by a report giving the reasons for the decision. Notification of the action will be made in the same manner as that of the public forum as called for in MHD 538 B.3.d.

Their absence from the proposed rule was an oversight for they are in keeping with the overall intent of the rules as well as with the action taken by the Commissioner in the past on applicant group questionnaires already acted upon. A report stating the reasons for the action on a questionnaire has always been made available to interested parties.

(i) MHD 538 B.6.a. states that if the Commissioner determines an occupational group shall be credentialed by registration with an existing health-related licensing board acting as the administrative authority, it will establish procedures and adopt rules in cooperation with the identified board. It then specifies the minimum content of the rules that would be so adopted.

(a) The Minnesota State Medical Association (Public Exhibit No. 10 at 3) offered the following comments on this section:

> MHD 538 B.6.a. gives the Board of Health the role of a super-agency imposing rules on another health-related licensing board which that board must administer. This is inconsistent with the concept of each board being autonomous. Minn. Stat. § 214.13, requires consultation between the Board of Health and other appropriate boards in promulgating registration rules for a particular occupation. This statute does not preclude more than cooperation and the other health related licensing board [sic] should be given the authority to approve the rules they must administer. In fact, Minn. Stat. § 214.13, subd. 2, requires rule approval by a state agency in certain instances.

MHD 538 B.6.a. should be amended to provide that the Board of Health shall adopt rules with the approval of as well as in cooperation with the appropriate existing health-related licensing board. This rule should also specifically state that the regulation activities delegated to a health-related licensing board must be with that board's concurrence as required by the Minn. Stat. § 214.13, subd. 4.

Minn. Stat. § 214.13, subd. 4, states that: "The Board of health shall whenever possible delegate the administration of regulation activities to a health-related licensing board. . . ." This section does not preclude, and in fact, presumes the delegation of regulation activities to non-health-related licensing boards. However, there is no provision in MHD 538 for an occupational group to be credentialed by registration with an existing non-health-related licensing board acting as the administrative authority.

(b) The statute gives the Commissioner the sole authority to adopt rules registering any human services occupation. Subdivision 4 of section 214.13 gives the Commissioner authority to delegate the administration of such rules to health-related boards and no other. (T. 87-88.) The rule is necessary and reasonable and it precisely follows what the statute requires. MHD 538 B.6.a. goes as far as the statute allows in soliciting the cooperation of the health-related board during the adoption of registration rules. The Commissioner has the final authority. Although it may have been a legislative oversight in subdivision 4 to allow delegation of administration to health-related licensing boards only, that is what the statute says. However, health-related licensing boards need not fear having registration rules imposed upon them for such delegation can only occur with the concurrence of that board. If a health-related board does not concur, the rules would be administered by the Commissioner.

c. There were only two comments on the list of minimum contents of any rules to be adopted. Both comments (Public Exhibit No. 5 at 2 and Public Exhibit No. 8 at 2) suggested additions to the rule. The additions are not considered necessary at this time.

(ii) As adopted MHD 538 B.6.e. provides, "If the Commissioner determines that regulating the occupational group is not in the public interest, the applicant group (if the application was initiated by the group) or the Council (if the application was initiated by the Commissioner) shall be so notified." (There are only three minor editorial word changes between the proposed and adopted versions of the rule.) It was suggested in Public Exhibit No. 2 that the parenthetical phrases be deleted. These phrases, however, serve to clarify this section. Deleting them might tend to confuse the reader.

(iii) MHD 538 B.6.f. provides for the Commissioner to refer a matter back to the Council for further study in accordance with the Commissioner's instructions. In other words, the Commissioner must detail what was lacking in the initial study and specify what additional issues should be addressed.

(a) Senator Lewis suggested that a specific time limit be placed upon the Council to complete its further study. He also questioned what criteria the Board would use to decide if further study was needed. (Public Exhibit 2.) As a result of public comments at the hearing that some time limit should be imposed by the Commissioner upon the Council, but that such a limit should depend upon the facts of the specific case

(T. 99–100), the following sentences have been added to this section:

> The instructions shall include a specified time in which to complete this study. Extentions of time may be granted if needed to complete adequately the further study.

(Board's Exhibit X.)

(b) This rule is justified as it is a means of resolving a situation where the Council or staff recommendations are either not well-supported or contain unresolved factual issues. Without the option of returning the recommendations to the Council for further study, the Commissioner would be forced to either make a decision on incomplete or conflicting information or to do the investigation himself. The provision is reasonable because it would help assure well-reasoned and supported decisions.

25. MHD 538 C., Reconsideration Process, establishes an administrative procedure by which an applicant group or any interested person that is dissatisfied with the Commissioner's decision may request the Commissioner to reconsider its action. Because the statute does not require the Commissioner to grant such a reconsideration, limiting such appeals to arguments as to why the decision was not supported by the evidence presented or why new or changed evidence does not support the earlier decision is reasonable. As originally proposed, the rule limited to the applicant group those who could request reconsideration. The rule as adopted granted interested persons the right to request reconsideration in accordance with the suggestion of the Minnesota Association of Optometrists and Opticians. (Public Exhibit No. 8.)

26. Any rule not specifically addressed herein is found to be reasonable. The Statement of Facts Establishing Reasonableness of Rules, Board Exhibit N. and Board Exhibit X fully justify the rules.

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Commissioner; all other substantive and procedural requirements of statute and rule have been fulfilled.

2. Statutory authority to adopt the proposed rules has been demonstrated.

3. The need for and reasonableness of the rules have been demonstrated.

4. Any changes in the rules between those proposed and those actually adopted are of a nonsubstantial nature and merely clarify the original intent of the rules.

ORDER ADOPTING RULES

NOW, THEREFORE, IT IS ORDERED That these rules identified as MHD 536 to 540, Rules of Procedures for Determining Regulation of Human Services Occupations, are adopted this 3rd day of January, 1978, pursuant to authority vested in me by Minn. Stat. § 214.13 (1976) and Minn. Stat. § 144.011 (Supp. 1977).

STATE OF MINNESOTA

WARREN R. LAWSON, M.D.
Commissioner of Health

Proposed Rules of the
Minnesota State Board of Health

CHAPTER 30

Human Services Occupations
Part I

PROPOSED RULES OF PROCEDURES AND CRITERIA
FOR DETERMINING CREDENTIALING OF
HUMAN SERVICES OCCUPATIONS

MHD 536 GENERAL

A. Declaration of Purpose and Scope

Minnesota Rules MHD 536-540 establish the process to be used by the State Board of Health and its Human Services Occupations Advisory Council in carrying out the charges of Minn. Laws 1976, Chapter 222, Sections 1, 8 and 9. It specifies the procedures by which human services occupations are identified and decisions are made regarding the State's need to regulate persons in specific occupations. This rule applies to all human services occupations that are not-now-credentialed by the State.

B. Definitions

For the purposes of Minnesota Rules MHD 536 to 540, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

1. "Administrative authority" means the state agency responsible for administering the law and rules establishing a credential for a human services occupation.
2. "Applicant group" means an occupational group that has submitted

a letter of intent to begin the credentialing process.

3. "Board" means the Minnesota State Board of Health.

4. "Career progression" means opportunity to move up a career ladder or enter a related profession without loss of credit for previous education and experience.

5. "Competence" means possession of requisite abilities to fulfill work obligations.

6. "Conflict of interest" means

   a. A direct financial or self-serving interest in the matter under consideration.

   b. An indirect financial or self-serving interest in the matter under consideration so that the member is not so free from personal bias, prejudice or preconceived notion as to make it possible for the member to objectively consider the evidence presented and base a decision solely on such evidence.

   c. Circumstances such that a member finds it difficult, if not impossible to devote himself or herself to a consideration of the matter with complete energy, loyalty, and singleness of purpose to the general public interest.

7. "Continuing education" means education or training beyond the individual's pre-credentialing preparation for an occupation.

8. "Council" means the Human Services Occupations Advisory Council.

9. "Credentialing" means licensure or registration and the processes by which they are obtained and administered.

10. "Criteria approval" means evaluation, by the administrative agency, of the qualifications of an individual already licensed or

registered by a state other than Minnesota to determine whether the individual's past practice and/or preparation meet Minnesota requirements for licensing or registration.

11. "Department" means Minnesota Department of Health.

12. "Function" means a special task, duty or performance required in the course of work or activity.

13. "Functional differentiation" means those functions carried out by a particular occupational group that distinguish that group from others.

14. "Letter of intent" means an applicant group's written expression of aim to pursue credentialing.

15. "Licensure" means a system whereby a practitioner must receive recognition by the state that he or she has met predetermined qualifications, and persons not so licensed are prohibited from practicing.

16. "Not now credentialed" means those occupations whose members are not currently licensed or registered by the state and those occupations whose members are currently licensed or registered by the state but who seek to expand or specialize their functions within that licensed or registered occupation such that the group members seek further state recognition by new, expanded or specialty licensure or registration.

17. "Occupational group" means a group of human service workers that have common occupational functions, practices, and roles in the delivery of health services.

18. "Public forum" means public meeting(s) called to obtain comments on an applicant group's questionnaire. The meeting is open to the public, but it is not a hearing and does not require the hearings notification procedures called for by Minnesota Statutes.
19. "Questionnaire" means document designed to provide information about an occupational group for credentialing.
20. "Registration" means a system whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications.

C. Prohibition

A Council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest.

MHD 537 IDENTIFICATION OF OCCUPATIONAL GROUPS, QUESTIONNAIRE CONTENTS, AND PROCESSING PRIORITIES

A. Applicant Initiated Identification

1. The applicant group shall submit a letter of intent to the Board.
2. Upon receipt of the letter of intent the Board shall send these rules and a Questionnaire to the applicant group.
3. The applicant group shall submit the completed Questionnaire to the Board within six months or shall make a written request for an extension of the time period. Failure to comply with either of those conditions during the six month period voids the original letter of intent and discontinues the credentialing process. The applicant group shall submit a new letter of intent if it desires

to pursue credentialing.

4. When the Questionnaire is deemed complete by the Department, the Board shall transmit the Questionnaire to the Council.

B. Board Initiated Identification

1. When the Board, Council, other groups, or individuals have reasons to suspect that an occupational group exists or is emerging but has not applied for credentialing and the question of regulation should be addressed the Board shall determine whether the need to credential the groups should be investigated. The determination shall be based upon evidence that raises the question of the need for occupational regulation. Such evidence may be derived from sources that include, but are not limited to court decisions, data collected by state and national regulatory agencies, federal law or rule, and information submitted by legislators, government or private agencies, or the public.

2. The Board may direct staff to collect data substantially equivalent to that on the Questionnaire for evaluation in the manner specified in Minnesota Rules MHD 538.

C. Contents of the Questionnaire

The Questionnaire shall direct an applicant group to submit information on at least the following matters:

1. Evidence that the applicant group represents a significant portion of an occupational group and that other organizations representing members of that occupational group have been identified.

2. Evidence that the occupational group meets the credentialing criteria contained in Minnesota Statute and these rules.
3. Such other and additional information or evidence consistent with the provisions of applicable statute and these rules as well as information necessary to clarify matters already contained in the application. Such information shall be requested for the sole purpose of enabling the Board to fairly, adequately and completely evaluate the applicant Questionnaire to determine whether an occupational group should be credentialed, if so by licensure or registration, and under which administrative authority. The Board may suspend or terminate the credentialing process for failure to supply the information requested by the Board.

D. Questionnaire Processing Priorities

The Board may determine the priority for processing Questionnaires. The priority of an applicant group will be based on evidence available in the Questionnaire, particularly that relating to the potential harm to the public that the continued practice of the unregulated group may cause. After a determination of priority for entering the credentialing process has been made, the Board shall take the actions listed in Minnesota Rules 538.

MHD 538 CREDENTIALING DECISION PROCESS

A. Delayed Consideration

The Board shall proceed to notify the applicant group of the date at which its application might reasonably expect to be considered

under Minnesota Rules MHD 538 B.

B. Immediate Consideration

1. When a Questionnaire is received by the Council, the chairman of the Council shall appoint a subcommittee of at least five members, none of whom shall have a conflict of interest, and shall name one of the members as subcommittee chairman. Insofar as possible the subcommittee shall be broadly representative of the Council.

2. Subcommittee Procedures

   a. The subcommittee will meet to evaluate the Questionnaire and materials available to the subcommittee and to raise any questions members feel ought to be addressed either in subcommittee meetings or at the public forum.

   b. All written material related to the credentialing of an occupational group will be available as part of a public file retained at the Minnesota Department of Health and other locations the Board deems appropriate.

3. Public Forum

   a. The subcommittee shall hold at least one public forum for the purpose of providing for public participation in the credentialing process, collecting information, raising and clarifying issues, and when possible, providing for the negotiation of differences.

   b. The first public forum shall be held within four months of the subcommittee appointments.

   c. The public forum shall be open to all persons.

d. Notification of the public forum shall be made in the following manner:

(1) All groups and persons identified by name as part of the occupational group by the Questionnaire and through Department study will be notified by mail.

(2) A news release will be sent out by the Board.

(3) Notice will be published in the Department's monthly listing of health-related meetings.

e. The conduct of the public forum(s) will be in accordance with procedures adopted by the Council and available in writing to the public at the public forum. All interested persons will be given an opportunity to make a presentation although time limits may be imposed.

4. Subcommittee Recommendations

The subcommittee shall make recommendations to the Council with respect to: the need for regulation, the type of regulation, whether any recommended credential be licensure or registration and the administrative authority for any recommended credential. The Department shall also make separate recommendations which accompany those of the subcommittee. Each recommendation shall be accompanied by the rationale/justification used in arriving at the decision. Approval or denial of credentialing for an occupational group shall be based on Minn. Laws 1976, Chapter 222, Section 1, subdivision 2.

5. Council Action

The Council will review the subcommittee recommendation and

approve or modify them as necessary. A Council final report and recommendations, along with supporting documents, will be sent to the Board for action. The Department report and recommendations, with supporting documents, will accompany the Council report.

6. Board Actions

The Board, upon review of the Council report and recommendations, will take one of the following actions:

a. If the Board determines that an occupational group shall be credentialed by registration with an existing health related licensing board acting as the administrative authority, it will establish procedures and adopt rules in cooperation with the identified board. The rules shall include, if appropriate, but not be limited to the following:

(1) Functional differentiation of the group.

(2) Qualifications for registration for all entry routes.

(3) Requirements for different levels of registered titles corresponding to steps in the occupation's career progression.

(4) Organizational structure of any advisory councils to the administrative authority.

(5) Procedures for registration.

(6) Requirements for registration renewal, including but not limited to provisions attempting to assure continued competency.

(7) Disciplinary procedures.

(8) Fee setting for initial application for registration and for renewal application.

(9) Such other information that the Board deems necessary for the regulation of the occupational group.

b. If the Board determines that an occupational group should be credentialed by licensure, with either an existing health related licensing board, the Board itself, or a new and separate licensing board, acting as administrative authority, the Board shall promptly so report to the legislature.

c. If the Board determines that an occupational group shall be credentialed by registration, with the Board acting as the administrative authority, it shall establish procedures and adopt rules to implement the decision. The rules will include, if appropriate, but not be limited to, the items contained in Minnesota Rules MHD 538 B.6.a. (1) through (9).

d. If the Board determines that an occupational group should be regulated pursuant to Minnesota Laws 1976, Chapter 222, Section 1, subdivision 3(a)(b) or (d) or any combination thereof or in combination with credentialing under these rules, the Board shall promptly so report to the legislature.

e. If the Board determines that credentialing the occupational group is not in the public interest, the applicant group (if the application was initiated by the group) or the Council (if the application was initiated by the Council)

shall be so notified.

f. If the Board determines that further study of the occupational group is required, the Board shall refer the recommendation back to the Council for further study in accordance with Board instructions.

C. Reconsideration Process

1. If the applicant group is dissatisfied with the decision of the Board, the group may request, within 60 days of notification of that decision, that the Board reconsider the application. The applicant group shall submit in writing, along with its request for reconsideration, its arguments detailing why the decision of the Board was not supported by the evidence presented or why new or changed evidence does not support the earlier decision of the Board.

2. The Board may choose to reconsider the credentialing decisions itself or remand them, along with all reports, recommendations, and supporting documents to the Council. If the matter is remanded, the Council shall reconsider the application and recommend either no change or appropriate changes to the Board. The Council may refer the matter to the subcommittee which initially considered the application. The recommendation of the Council shall include substantiating documentation. Reconsideration by the Council may include new public forums if new or changed evidence warrants it.

3. The Board shall notify the applicant group of the results

of the request to reconsider the application.

MHD 539, 540 Reserved for future use.

HLTH-77-044-SM

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA COMMISSIONER OF HEALTH

IN THE MATTER OF THE PROPOSED)
RULES RELATING TO PROCEDURES)
FOR DETERMINING CREDENTIALING)
OF HUMAN SERVICES OCCUPATIONS)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 20, 1977, before Steve M. Mihalchick, 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 Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Health on July 22, 1977; and

WHEREAS, the Department of Health has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Health 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 Department of Health has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

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

Dated this 31st day of
January, 1978.

Duane R. Harves
DUANE R. HARVES
Chief Hearing Examiner

CERTIFICATE OF BOARD OF HEALTH'S

AUTHORIZING RESOLUTION

I, Warren R. Lawson, M.D., do hereby certify that I am the Secretary and Executive Officer of the Minnesota State Board of Health, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 10th day of November, 1976, that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that Warren R. Lawson, M.D., Secretary and Executive Officer of the Minnesota State Board of Health, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board of Health relating to procedures and criteria for determining credentialing of appropriate human services occupations 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 17 day of February, 1977.

STATE OF MINNESOTA

BOARD OF HEALTH

Warren R. Lawson

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Procedures
and Criteria for Determining
Credentialing of Human
Services Occupations

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 (Supp. 1975), in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Wednesday, April 20, 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 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 Mr. Steve Mihalchick, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8112, either before the hearing or within twenty (20) 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.

If adopted, the proposed rules would specify the procedures for processing applications for credentialing human services occupation groups and the criteria for making credentialing decisions. In general the proposed rules specify:

1. Procedures for identifying occupational groups either through initiation by the group itself or by the Board of Health;

2. The general subject areas to be covered in an application (referred to in the rules as a Questionnaire);

3. The procedure and criteria for determining the processing priority for each group seeking a credential;

4. The process and procedures for obtaining public input and for evaluating each application (Questionnaire);

5. Criteria for approving or denying credentialing for an occupational group seeking a credential;

6. Decisional options available to the Board of Health with respect to each application for a credential and the actions to be taken as a result of the option chosen; and

7. The process and procedures available to a group seeking a credential which is dissatisfied with the Board of Health's decision for having its application reconsidered.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to the Minnesota Department of Health, Division of Health Manpower, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

A Statement of Need explaining the Board of Health's 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 Health to promulgate and adopt these rules is contained in Minn. Laws 1976, ch. 222 §§ 1, 8, and 9.

In addition, please be advised that pursuant to Minn. Stat. § 10A.01 subd. 11 (1974), as amended by Minn. Laws 1976, ch. 307 § 3, and Minn. Stat. § 10A.03 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as promulgation of the proposed rules captioned above, must register with the State Ethical Practices Board as a lobbyist within five (5) days of the commencement of such activity by the individual. The State Ethical Practices Board is located at 41 State Office Building, Saint Paul, Minnesota 55155.

Dated: February 17, 1977.

STATE OF MINNESOTA

BOARD OF HEALTH

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Procedures
and Criteria for Determining
Credentialing of Human
Services Occupations

ORDER FOR HEARING

To effectively implement Minn. Laws 1976, ch. 222 §§ 1, 8, and 9, the Minnesota State Board of Health deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in it by the above-referenced legislation.

NOW, THEREFORE, IT IS ORDERED this 17 day of February, 1977, that a public hearing on the proposed rules captioned above be held in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Wednesday, April 20, 1977, commencing at 9:00 a.m., and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard.

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

STATE OF MINNESOTA

BOARD OF HEALTH

Warren R. Lawson

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the Matter of Proposed
Rules Relating to Procedures
and Criteria for Determining
Credentialing of Human
Services Occupations

AFFIDAVIT
OF MAILING

Karen M. Harris, being first duly sworn, deposes and says:

That on the 15th day of March, 1977, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by depositing in the mail room of the Minnesota State Department of Health for placement 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.

Karen M. Harris

Subscribed and sworn to before
me this 18th day of March, 1977.

Mildred Olson

MILDRETH OLSON
Notary Public, Ramsey Co. Mn.
MY COMMISION EXPIRES
October 31, 1980

Exhibit A

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of Proposed
Rules Relating to Procedures
and Criteria for Determining
Credentialing of Human
Services Occupations

CERTIFICATE

I hereby certify that the 506 general labels and 3 page list for the Minnesota State Health Department, all of which are attached and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 9:00 o'clock a.m., this 14th day of March, 1977, have requested pursuant to Minn. Stat. § 15.0412 subd. 4 (Supp. 1975), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
SECRETARY OF STATE

JOAN ANDERSON GROWE

By Ceil Doan

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Procedures
and Criteria for Determining
Credentialing of Human
Services Occupations

STATEMENT OF NEED

The above-captioned rules are newly proposed rules of the State Board of Health (hereinafter "Board"). The statutory authority of the Board for promulgation of these rules is contained in Minn. Laws 1976, ch. 222 §§ 1, 8, and 9.

Minn. Laws 1976, ch. 222 § 1 subd. 2 specifies the legislative policy that "no regulation shall hereafter be imposed upon any occupation unless required for the safety and well being of citizens." In order to carry out the policy, the Legislature directed the Board to: (1) " . . . promote the recognition of human services occupations useful in the effective delivery of human services"; (2) " . . . coordinate the development of a credentials policy among the health related licensing boards . . . "; and (3) " . . . establish procedures for the identification of human services occupations not now credentialed by the state, recommend appropriate regulatory modes, and promulgate by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations." Minn. Laws 1976, ch. 222, § 8 subd. 1.

The need to adopt the rules, however, is not limited solely to implementation of the above noted legislative directive. In promulgating these rules, the public and all interested and affected persons are provided the opportunity to comment upon and thus help shape the procedures and criteria to be used by the Board in carrying out legislative policy. Additionally, the rule making process serves as a means of providing full

notice to all interested persons of what the procedures and criteria will be. The proposed rules, therefore, satisfy the need to specify the procedures used to investigate not-now-credentialed occupations, the process by which interested parties may be heard in matters relating to the proposed credentialing of human services occupational groups, the criteria by which credentialing decisions will be made, and related matters.

STATE OF MINNESOTA

BOARD OF HEALTH

Date: March 2, 1977.

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Procedures
and Criteria for Determining
Credentialing of Human
Services Occupations

AFFIDAVIT OF RECEIPT
OF THE
SECRETARY OF STATE'S LIST

Wayne R. Carlson, being duly sworn upon oath, deposes and says:

1. That he is an employee of the Minnesota State Department of Health.

2. That on the 10th day of March, 1977, he called the Minnesota Secretary of State's office and requested 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 pursuant to Minn. Stat. § 15.0412 subd. 4 (Supp. 1975).

3. That on the 14th day of March, 1977, in response to the above request, the Secretary of State provided him with such a list, a photocopy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Wayne R. Carlson
WAYNE R. CARLSON

Subscribed and sworn to before me
this 14th day of March, 1977.

Marie B. Tromiczak

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed Rules
Relating to Procedures and Criteria
for Determining Credentialing of
Human Services Occupations

STATEMENT OF FACTS
ESTABLISHING REASONABLENESS
OF RULES

The Minnesota State Board of Health (hereinafter "Board"), pursuant to Minn. Stat. § 15.0412 subd. 4 (Supp. 1975), hereby affirmatively presents facts establishing the reasonableness and justifying the adoption of the above-captioned proposed rules. The need and statutory authority for the proposed amendments is set forth in the Statement of Need. Terms used throughout this Statement will have the definitions given them in proposed rule MHD 536 B.

1. The proposed rules captioned above are an outgrowth of the experience of the Board over the last several years in administering a health manpower program. Minn. Laws 1976, ch. 222 §§ 8 and 9 essentially constitute an amendment to Minn. Stat. §§ 145.861 to 145.866 (1974) which was initially enacted in 1973. The 1973 legislation represented a new approach to credentialing not only in Minnesota but across the country. The main purpose of the 1973 health manpower legislation to review and determine the need for credentialing of not-now-credentialed occupational groups remains basically unchanged in chapter 222. As the Board began implementation of the 1973 law, it developed procedures. They were not put into rule form primarily because there was a need to gain some experience in exactly what procedures would be most appropriate. Procedures and changes thereto were developed with full public input. Procedures presently in force have been operational for approximately a year. The proposed rules basically represent these procedures which have been justified through operational experience.

2. Minn. Laws 1976, ch. 222 § 8 subd. 1, places upon the Board, among other responsibilities, the duties of "... [establishing] procedures for the identification of human services occupations not now credentialed by the state, ... [recommending] appropriate regulatory modes, and ... [promlgating] by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations." It is necessary therefore to establish the procedures for carrying out these duties and the criteria for making credentialing decisions. The procedures and criteria, being statements "... of general applicability and future effect ... made [by the Board] to implement or make specific ..." the credentialing law, meet the definition of "rule" as contained in Minn. Stat. § 15.0411 subd. 3 (Supp. 1975) and must be promulgated as rules as specifically directed by section 8 of chapter 222.

3. Minn. Rule MHD 536 A., Declaration of Purpose and Scope, cites the statutory authority for these rules and explains their intent. It specifies that all human services occupations "not now credentialed" by the state are governed by this rule. This specification, combined with the definition of "not now credentialed," results in these rules applying to both emerging occupations and to traditional licensed and/or registered occupations in which some members seek further licensure or registration as expanded or specialty practitioners. Defining the scope of the rules in this manner is consistent with legislative intent as expressed in Minn. Laws 1976, ch. 222 § 8 subd. 1: "The board ... shall promote the recognition of human services occupations useful in the effective delivery of human services. The board shall coordinate the development of a credentialing policy among the health related licensing boards consistent with section 1 [of chapter 222]." (Emphasis added.) The policy declared in section one is that "... no regulation shall hereafter be imposed upon any occupation unless required for the safety and well being of the citizens of the state." Clearly it is the Board's responsibility to investigate the usefulness of an occupation in coordination with other boards to determine the necessity for credentialing. This can only be accomplished effectively in the context of the larger delivery system which includes the investigation not only of those occupations for which no credential presently exists but also of the specialty and expanded functions within occupations already credentialed.

4. The definitions contained in Minn. Rule MHD 536 B. are needed to provide common terminology in discussing and understanding the substantive provisions of the rules.

5. Minn. Rule 536 C., Prohibition, reiterates a general principle of law that a conflict of interest prohibits a public official from participating in business matters in which he or she has a conflict. This principle needs to be specifically reiterated in the credentialing context for two reasons. First, the Council structure is determined by statute and has several appointing authorities. There is a strong possibility that any particular member might view himself or herself as an advocate for the group he or she represents rather than as a public official advising the Board. Second, because many of the occupational groups the Council investigates are new and fill some functions traditionally fulfilled by already established professions, there is a possibility that these "turf battles" could affect the actions of a Council member, particularly if he or she is part of that already established profession.

6. The Board is directed by Minn. Laws 1976, ch. 222 § 8 subd. 1 to "... establish procedures for the identification of human services occupations not now credentialed by the state ...." The purpose behind this provision is to allow for a detailed study of human services occupations to determine which ones, if any, are required for the safety and well being of the citizens of the state to be credentialed. Experience has already demonstrated that many occupational groups will voluntarily identify themselves and actively seek a credential. However, it is also possible that some occupational groups which need to be regulated for the public safety might not identify themselves. Recognizing these two approaches, separate procedures have been proposed by the Board in Minn. Rule MHD 537 A. and B. for the identification of occupational groups.

a. Minn. Rule MHD 537 A., Applicant Initiated Identification, specifies the initial procedures to govern groups that have identified themselves and have requested to go through the Board's credentialing process.

(1) Requiring the submission of a letter of intent is necessary to permit the Board to plan the effective utilization of staff resources and to enable the Board to sort out casual inquiries from those of occupational groups that

have made a commitment to enter the process. If this sorting were not made, the process for applicant groups could be delayed. Board staff available to assist in the credentialing process is limited; yet a significant amount of time must be devoted to Questionnaire processing which includes both providing of all administrative staff support services to the Council and its committees and conducting an independent evaluation of its own. In addition, the letter of intent will aid in the early identification of groups claiming the same occupational functions. Such early identification will at a minimum eliminate duplicative work for Board staff and the Council, facilitate consolidation of similar groups, and minimize delays in the processing system.

(2) Based upon experience of the Board in working with applicant groups which have already initiated the credentialing process, specifying a six month limit between the submission of a letter of intent and the date by which a Questionnaire must be submitted is reasonable. The six month limit, experience has shown, provides sufficient time for an applicant group to gather necessary information required for completion of the Questionnaire and to determine whether or not it wants to proceed further in the credentialing process at that time. As with the letter of intent requirement, the main purpose behind the six month limit is to facilitate planning of staff resources by permitting the Board to make some determination of expected work load. Additionally, the requirement will not work any hardship on any applicant group which seriously intends to proceed with the credentialing process in view of the provision authorizing the extension of the six month limit merely upon request of the applicant group. Furthermore, when a letter of intent lapses, an applicant group is not prejudiced thereby since it faces no penalty for doing so. A letter of intent may be resubmitted at any time.

b. Minn. Rule MHD 537 B., Health Department Initiated Identification, is an explicit recognition that some groups which might need to be regulated for public safety might not identify themselves and seek credentialing. Recognizing this and that there seldom is quantifiable data that absolutely demand investigation of a group, the Board will base its decision on whether or not to initiate an investigation of an occupational group to determine the need to credential the group on various indicators of public interest in the group. The initiation of an investigation is not a prejudgment that the occupational group should be credentialed but only indicates that the matter should be thoroughly investigated. Further, since these groups by definition have not voluntarily submitted information relative to regulation, directing Board staff to collect data equivalent to that on the applicant group Questionnaire is a reasonable way to accumulate data that is consistent with that collected for all occupational groups. Obviously the occupational group involved may submit any data relevant to the matter.

7. Minn. Rule MHD 537 C., Contents of the Questionnaire, addresses the general categories of information the Board needs to properly evaluate the need to credential an occupational group. The specific questions and information requested in the Questionnaire as well as future alterations to the Questionnaire dictated by the Board's experience may be accomplished within the guidelines of this rule.

a. MHD 537 C. 1. seeks to establish that the group submitting the questionnaire is representative of the occupation because regulatory decisions apply to all members of an occupational group. These questions also seek to determine what other organizations that are not participating as part of the applicant group have been identified and notified of the application. These questions seek to insure the widest possible input from the occupational group that would be affected by potential regulation. It is important that the Board solicit diverse opinions from within each occupation rather than aligning itself with one special interest group. MHD 537 C. 1. is thus intended to foster this diversity.

b. MHD 537 C. 2. authorizes the Board to request applicant groups to submit information designed to insure that the legislative intent of Minn. Laws 1976, ch. 222 § 1 subd. 2 is fulfilled.

c. MHD 537 C. 3., while not as explicit as the other two categories, is a recognition that there may be legitimate areas of concerns which the Board may want to cover in the Questionnaire which do not come directly within MHD 537 C. 1. or 2. but clearly are relevant to the credentialing process and review. Additionally, this provision is a recognition that the questionnaire is a fallible instrument and that it may be necessary for the Board to ask for slightly different data than it contains, or that the questionnaire itself may generate information that requires follow-up data. In either case, the additional information is asked for solely to permit the Board to make a complete and fair evaluation of the need to regulate an occupational group within the scope of Minn. Laws 1976, ch. 222 §§ 1, 8 and 9.

8. Minn. Rule MHD 537 D., Questionnaire Processing Priorities, makes explicit a need for determining which occupational groups should enter the process first since Board resources are not available to investigate all groups which have applied for credentialing or which have been identified in accordance with the process of MHD 537 B. Consistent with Minn. Laws 1976, ch. 222, § 1 subd. 2 which declares that " . . . no regulation shall hereafter be imposed upon any occupation unless required for the safety and well being of the citizens of the state," the Board will seek a preliminary determination of which of the occupational groups can cause the most public harm if it operates in an unregulated manner. This in no way prejudges the necessity for occupational regulation for the decision is administrative rather than substantive in nature. It is instead, a recognition that the decision process takes time, that the completed questionnaire contains potentially useful information, and that if the Board is to provide for the public safety through regulatory action, the immediacy of that action should be based on the potential to cause harm as supported by the best information available.

9. Minn. Rule MHD 538, Credentialing Decision Process, governs the procedures by which the Council gathers information and makes recommendations, and by which the Board acts on Council and staff recommendations in implementing credentialing decisions. These procedures need to be stated so that the public and

applicant groups are aware of how an applicant group questionnaire will be handled, how it will be published, what procedures the Council follows in seeking information, what criteria will be used in making decisions, and what actions result from various Board decisions.

10. Minn. Rule MHD 538 A., Delayed Consideration, is the result of the actions provided for in MHD 537 D., Questionnaire Processing Priorities. When a decision is made that the resources to deal with an applicant group are unavailable and that a particular group is a lower priority than others, the Board will notify the applicant group that consideration of their application will be delayed. The Board will further notify the group of an approximate date at which the applicant group might reasonably expect its application to be considered. The term "reasonably expect" is used advisedly, recognizing that between the notification and the projected date of consideration, other groups may submit applications that require higher processing priorities. This is not intended to provide a stalling tactic for the Board. Rather, it is a recognition that finite Board, Council, and staff resources need to be allocated as best as possible on the basis of "safety and well being of the citizens of the state."

11. Minn. Rule MHD 538 B., Immediate Consideration, establishes procedures for a group that will be investigated upon receipt of a completed questionnaire and for groups in the delayed consideration category when their questionnaire is to be processed.

12. Minn. Rule MHD 538 B. 1. specifies the Council chairman's actions when the Council receives a completed questionnaire from the Board pursuant to MHD 537 A. 4.

a. Due to the large number of occupational groups which have already indicated their intent to proceed through the credentialing process, it is necessary to delegate to a subcommittee of the Council the responsibility for gathering all relevant facts identifying the issues to be addressed and for performing the investigation and in-depth study which is necessary for a comprehensive evaluation of each Questionnaire and applicant group to permit the Board, in the end, to make an informed and reasoned determination.

b. The delegation to a subcommittee does not abdicate the Council's statutory responsibility to advise the Board as the subcommittee only performs the "leg work." While it will make its recommendation to the Council, the recommendations will be accompanied by a full documentation of the issues and facts that came to light during the subcommittee's proceedings. Furthermore, the Council will have access to all written material accumulated or developed by the subcommittee.

c. The Council chairman, in appointing the subcommittee, is directed to reflect the Council's statutory constituency in his/her appointments. The justification for this provision is that subcommittee members, with their diverse backgrounds, are likely to raise, debate and resolve many of the same issues the Council would take up in full session.

13. Minn. Rule MHD 538 B. 2. allows for a review of the Questionnaire and its associated material by the subcommittee prior to the subcommittee's formal call for public input.

a. The primary purpose of these initial meetings is to identify the issues and other matters which will need to be addressed during the credentialing process with respect to the particular applicant group under consideration.

b. This part of the credentialing process, as is the entire process, will be open to the public. Providing the subcommittee with this initial period of familiarization and study will enable the subcommittee to conduct more useful public forums and to better understand and evaluate the testimony presented at the forums. Additionally, all file material relative to any applicant group will be available not only at the Department of Health Building but also at the Department's eight state-wide regional offices and at the seven state-wide Health Systems Agencies' offices. Copies of the files may also be obtained by individuals by paying reproduction costs. This should insure an open credentialing decision process with material readily available to members of the public interested in an occupational group. The Board has decided not to specify these locations in the rule but to leave it discretionary to permit a change in locations as experience indicates a need to alter the locations at which additional copies of the file material should be located.

14. Minn. Rule MHD 538 B. 3. directs that at least one public forum shall be held and specifies the procedures related thereto. The public forum is considered a crucial and valuable aspect of obtaining public input into the credentialing decision process. The public forum, as the main means of gathering information offers two advantages. First, it gives parties interested in a particular occupational group a formal opportunity to voice their opinions, particularly if they are not interested enough to attend all the subcommittee meetings inherent in the credentialing process. Second, it gives the subcommittee an opportunity to hear groups with varying points of view respond to each other's issues. There are three procedures relating to the public forum that require particular mention.

a. The time constraint of four months from subcommittee appointment to holding the public forum is an effort to insure that the credentialing process will proceed rapidly, but not so rapidly that interested persons don't have time to comment on the questionnaire or other information concerning the occupational group.

b. MHD 538 B. 3. d. provides for notification procedures for the public forum. Initial experience with applicant groups has shown that groups which have not commented on the application prior to the public forum are reached through this notification procedure and do come forward to comment. The notification procedures cover all interested parties that have been directly identified and over 500 interested persons who receive the Department's monthly list of health-related meetings. (All subcommittee meetings are announced in this publication.) Additionally, the Department issues a press release announcing the public forum. The procedure has proven to be a reasonable and effective way to notify the public and all interested parties of the public forum.

c. MHD 538 B. 3. e. simply states that all interested persons at a public forum may make their presentation. The format for these presentations or for all public forums was not made explicit in rule because procedures need to be variable for different public forums. For example, forums dealing with the technical aspects of radiation safety (x-ray machine operators) lend themselves to different information gathering techniques than those dealing with chemical dependency counseling.

15. Minn. Rule MHD 538 B. 4. through MHD 538 B. 6. are primarily procedural and specify how a questionnaire, related material, and the recommendations related thereto will proceed from the subcommittee through the Council to the Board for final action.

a. The Board's staff (i.e., the Department) is not just to provide administrative support to the Board and Council but is professionally oriented and is intended to assist the Board in reaching its policy decisions. In this context it is possible that the subcommittees and Council and Department may disagree on some recommendations. Thus, to avoid any misunderstanding concerning the process, the proposed rule provides that recommendations with justifications, be submitted not only by the subcommittee and Council but by the Department also.

b. The four ultimate issues on which the Board must make a final determination are specified in MHD 538 B. 4.:

(1) Whether or not an occupational group should be regulated;

(2) If it should be regulated, the level or type of regulation as specified in Minn. Laws 1976, ch. 222, § 1 subd. 3;

(3) If it should be credentialed, whether by licensure or registration; and

(4) What administrative structure should be developed for the credentialing program.

These issues present themselves based upon the Board's statutory authority and credentialing review structure and policy established by the legislature in Minn. Laws 1976, ch. 222 §§ 1, 8 and 9. The legislation, in addition, states the criteria and standards on which the Board's decisions must be based.

c. Once the decision is made to regulate an applicant group and in what manner, the optional actions available to the Board are limited, logically apparent and inferred from the statutory scheme contained in Minn. Laws 1976, ch. 222 §§ 1, 8, and 9. MHD 538 B. 6. a. through e. lists the actions available to the Board by addressing the

various combinations of statutory changes, credentials and administrative authorities by which a group can be regulated. It specifies what agencies are responsible for developing rules governing a newly regulated group and clarifies which Board decisions, by statute, must be referred to the legislature. Finally, this section contains a minimum number of subjects which the rules must cover.

d. MHD 538 B. 6. f. provides for the return of a recommendation to the Council if the Board determines further study of the issues is warranted. The provision grants needed flexibility if the Council or staff recommendations are either not well supported or contain unresolved factual issues. Without the option of returning the recommendations to the Council for further study, the Board would be forced to either make a regulatory decision on incomplete or conflicting information or to do the investigation itself, thereby negating the legislative intent of providing the Council to the Board as an advisory body.

16. Minn. Rule MHD 538 C., Reconsideration Process, establishes an administrative procedure by which an applicant group that is dissatisfied with the Board's decision may request that the Board reconsider its credentialing action.

a. The grounds for reconsideration are either the discovery of new or changed evidence relating to the credentialing of a group or that the Board decision was not consistent with the evidence presented. In either case the Board seeks to insure that the credentialing decision was proper and supported by facts and that all arguments relevant to the regulation of a group have been heard. At the same time, it seems reasonable for the Board to impose time requirements for the reconsideration request and to require written arguments addressing the evidence and the decision. The time limit prevents applicant groups from delaying implementation of the Board's regulatory decision by asking for reconsideration and then failing to submit relevant information.

b. The Board has the option of either remanding the matter to the Council or deciding the matter itself without remand. The provision permits the Board to decide in the first instance whether or not any meritorious questions have been raised by the reconsideration petition. If not, or if the matter raised on petition is one on which the Board determines that no further study is necessary, then the Board may act without remanding to the Council. In this way, where appropriate, the Board can act and prevent further prolongation of the credentialing process. However, when issues are raised on reconsideration which merit further study, the Board may remand the matter. As in the initial handling of the Questionnaire, all recommendations of the Council and its subcommittee must be fully documented.

Dated: March 7, 1977.

STATE OF MINNESOTA

BOARD OF HEALTH

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the Matter of the Proposed
Adoption, Amendment, or
Revision of the Rules of the
Minnesota State Board of Health

AFFIDAVIT
OF MAILING

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

That on the 29th day of August, 1975, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Intent to Obtain Information on Proposed Rules from Non-Agency Sources 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 addressess listed on the Certificate of the Secretary of State attached and made a part hereof as Exhibit A, as well as to all members of the Minnesota Legislature as of the date of mailing.

Janis Broz

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

Marie B. Tromiczak

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of the Proposed Adoption, Amendment or Revision of the Rules of the Minnesota State Board of Health.

NOTICE OF INTENT TO OBTAIN INFORMATION ON PROPOSED RULES FROM NON-AGENCY SOURCES

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Minnesota Laws 1975, Chapter 380, section 2, subdivision 6, that the Minnesota State Board of Health will propose the adoption of new rules on the subjects noted below (items A through G) and the amendment and revision of the existing rules noted below (items H through K).

All interested parties desiring to submit data or views relating to the proposed adoption, amendment or revision of the rules noted below should address their comments (either written or oral) to the Minnesota Department of Health (717 Delaware Street S.E., Minneapolis, Minnesota 55440) by writing or calling the persons designated. Any evidence submitted for consideration should be pertinent to the matter at hand. Any written material received by the Department of Health will become part of the hearing record.

A. Rules implementing the provisions of Minnesota Laws 1975, Chapter 211, also known as the Minnesota Clean Indoor Air Act.

Contact: Kent Peterson
Phone: (612) 296-5365

B. Rules relating to the control and regulation of clinical laboratories.

Contact: Division of Medical Laboratories
Attn: Dr. Henry Bauer
Phone: (612) 296-5241

C. Rules relating to the transfer of patient's x-ray records.

Contact: Dr. Ellen Z. Fifer
Assistant Commissioner for Programs
Phone: (612) 296-5391

D. Rules relating to the distribution of monies to aid in the construction of water filtration and purification plants and systems for those communities using Lake Superior as a drinking water source under the state grant program established by Minn. Laws 1975, Chapter 437, Art. XI, §2, subd. 2.

Contact: Division of Environmental Health
Attn: Fred Heisel
Phone: (612) 296-5320

E. Rules implementing the provisions of Minnesota Laws 1975, Chapter 346, also known as the Maternal and Child Nutrition Act of 1975.

Contact: Division of Personal Health Services
Section of Maternal and Child Health
Attn: Dr. Ronald Campbell
Phone: (612) 296-5265

F. Rules relating to the approval of laboratories performing bacteriological examinations of water.

Contact: Division of Environmental Health
Analytical Services Section
Attn: Russell Frazier
Phone: (612) 296-5300

G. Rules relating to the establishment of application procedures for the credentialing of allied health manpower groups.

Contact: Section of Allied Health Manpower
Attn: Corrine Larson
Phone: (612) 296-5393

H. MHD 44-71, Rules of the Minnesota State Board of Health for the construction, equipment, maintenance, operation and licensing of nursing homes and boarding care homes, and for the establishment of levels of assessments for violations of the regulations.

Contact: Division of Health Facilities
Attn: H. Michael Tripple
Phone: (612) 296-5294

I. MHD 76-116, Rules of the Minnesota State Board of Health for the construction, equipment, maintenance, operation and licensing of hospitals, and for the establishment of levels of assessments for violations of the regulations.

Contact: Division of Health Facilities
Attn: Janet Brodahl
Phone: (612) 296-5440

J. MHD 21-35, Rules of the Minnesota State Board of Health relating to Morticians, Funeral Directors, and the Disposition of the Dead.

Contact: Mortuary Science Unit
Attn: Eugene Larson
Phone: (612) 296-5491

K. MHD 181, Rule of the Minnesota State Board of Health relating to the limitation of the use of x-ray machines in the screening for detection and evaluation of health conditions.

Contact: Division of Environmental Health
Attn: Alice Dolezal
Phone: (612) 296-5323

Any materials submitted shall be reviewed and considered by the Department of Health during the preparation of the proposed rules. Notice of the public hearing on the proposed rules shall be given to all interested parties in accordance with the provisions of the Administrative Procedures Act.

Under the provisions of Minn. Stat. § 10A.01, subd. 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at Room 401, State Office Building, Saint Paul, Minnesota 55155.

Dated: August 20th, 1975

STATE OF MINNESOTA
BOARD OF HEALTH

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

Exh. 6.1 A

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed
Adoption, Amendment, or
Revision of the Rules of the
Minnesota State Board of Health.

CERTIFICATE

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

Joan Anderson Growe
SECRETARY OF STATE

JOAN ANDERSON GROWE

By Ceil Dunn

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H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HARVEY MICHAEL
1390 W M HAHA PKWY
MPLS MN

EWALD DOUGLAS MINN HOSP A
2333 UNIV AVE SE
MPLS MN
55414

FARMERS ELEVATOR ASSN
852 GRAIN EXCH BLDG
MPLS MN
55415

FINNEGAN J.R.
55 E. 4TH
ST.PAUL MN
55101

FORBES GORDON MINN RRS AS
203 HANOVER 480 CEDAR
ST PAUL MN
55101

FREDIN CONRAD M
811 FIRST NATL BK BLDG
DULUTH MN
55802

GEO A HORMEL & CO LAW DE
PO BOX 800
AUSTIN MN
55912

GLEN. HILLS HOSP.R.VAN HA
3901 GOLDEN VALLEY RD.
MPLS. MN
55422

GREATER MET AREA HOSPITAL
5152 CEDAR AVE S
MPLS MN
55417

GUSTAFSON DAN-LABOR TEMPL
312 CENTRAL
MPLS MN
55414

HANFT PHILIP M
1200 ALWORTH BLDG
DULUTH MN
55802

HALLBERG LEE & MCCABE
4927 34TH AVE S
MPLS MN

HAUN DR J W GEN MILLS
PO BOX 1113
MPLS MN
55440

HESS DONALD MIDWEST PLANNING
2101 HENN BLDG
MPLS MN
55403

HEIM PAUL
1320 SOO LINE BLDG
MPLS MN
55402

HILL JIM ASSOC.MILK PROD.
7650 METRO PARKWAY
MINNEAPOLIS MN
55420

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUMAN RIGHTS
200 CAPITOL SQ BLDG
ST PAUL MN
55101

INTERSTATE POWER RW STEELE
1000 MAIN ST
DUBUQUE IA
52001

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

JOHNSON M.D. FRUNDT & FRUNDT

HAYES, THOMAS W
700 SELLWOOD BLG
DULUTH MN
55812

HART PATRICK V
112 E LIBERTY BOX 3271
MANKATO MN
56001

HEINTZ MARY ELLEN
PO BOX 599
CINCINNATI OH
45201

HINRICHSEN PATRICK
MANKATO FREE PRESS
MANKATO MN
56001

HOPKINS WM.B. DIR.MISCCA
3915 GOLDEN VALLEY ROAD
GOLDEN VALLEY MN
55422

HOUSE ED STANDING SUB COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HUNT JAMES P JR
11470 GALTIER DR
BURNSVILLE MN
55378

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

IUOE LOC 49 CHAS SWENSON
2560 UNIV AVE
ST PAUL MN
55101

JACKMAN DONALD G
4023 E LAKE ST
MPLS MN
55406

JOHNSEN & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSEN LANGE J
265 S LAFAYETTE RD

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HARTFELDT WILL
434 HAMM BLDG
ST PAUL MN
55102

HEISENFELT WM
BOX 516
BEMIDJI MN
56601

HOLDAHL SCOTT
380 N BLDG GRAIN EXCH
MPLS MN
55415

HORNER WALDORF - KAZIUKEWICZ
PO BOX 3260
ST PAUL MN
55165

HOLSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN
56201

HUTCHISON R.M. ANOKA CO.COMP
COURT HOUSE
ANOKA MN
55303

INGVALSON VERN MN.FARM BUR.
3110 WOODDALE DR PO 337
OST PAUL MN
55165

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

JAIN NIRMAL ENIV PROCESS
1220 GLENWOOD AVE
MPLS MN
55405

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
55406

HENTHORN GARY WOODSTOCK
7365 LANDAU DR
BLOOMINGTON MN
55438

HEAD & TRUHN
1007 SOO LINE BLDG
MPLS MN
55402

HICHINGER-MARK PLANNING
421 WABASHA ST
ST PAUL MN
55102

HOLEY GEO AERONAUTICS
DOWNTOWN AIRPORT
ST PAUL MN
55107

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HULTMAN WARREN R
C/O BARBAROSSA R3
OSSEO MN
55369

HYLAND DEAN
1501 W 50TH ST
MPLS MN
55419

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

IZAAK WALTON LEAGUE MN DI
106 TIMES BLDG 57 S 4TH
MPLS MN
55401

JENUS INC
525 LAKE AVE SO
DULUTH MN
55801

JOHNSON LEROY
9939 BLUEBIRD ST NW
COON RAPIDS MN
55433

KABLE RICHARD W

BETHEL MN

KAVANEY RICHARD
1220 NORTHERN FED BLDG
ST PAUL MN
55102

KEABLE MIKE
509 6TH AVE N
ST CLOUD MN
56301

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

KIMBALL ROBERT
647 CAPITOL SQ BLDG
ST PAUL MN
55101

KING, TIMOTHY
3333 OAKLAND AVE S
MPLS MN
55407

KLOSTER MARION PEAVEY CO
730 2ND AVE S
MPLS MN
55402

KLUZ STEVEN J
1910 1ST NATL BK BLDG
MPLS MN
55402

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

KNUTSON DR KEITH, BIOLOGY DPT
ST CLOUD STATE
ST CLOUD MN
56301

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KNUDSON ROBT
4375 BROWNDALE AVE
MPLS MN
55424

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KRAMER ERNEST H
717 DELAWARE ST SE
MPLS MN
55440

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

LAKE SUPERIOR INDUSTRIAL BUR
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LANAHAN E F - SIBLEY CO
164 E 6TH ST
ST PAUL MN
55101

LANGVIN DAVID
7500 80TH ST S
COTTAGE GROVE MN
55016

LANSING & OAKES
400 SIBLEY ST
ST PAUL MN
55101

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LARSON HANS P DIV HOSP SERV
717 DELAWARE ST SE
MPLS MN
55440

LEAGUE MN MUNIC
300 HANOVER 480 CEDAR
ST PAUL MN
55101

LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LIBBEY LEONARD
BLK 17011 NOKOMIS STA
MPLS MN
55417

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

LOES CALVIN J
6809 LYNDALE AVE SO
MPLS MN
55423

LOKE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

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

MCDONALD PHILIP M
2077 SCOTT AVE
ST PAUL MN
55104

MCFADDEN G H DISPATCH-PRESS
55 E 4TH ST
ST PAUL MN
55101

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

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

MANKATO STAT STUDENT SENATE
CENTENNIAL STUDENT UN
MANKATO MN
56001

MANKATO STATE STUDENT AS
BOX 58 MANKATO COLLEGE
MANKATO MN
56001

MANTHEY T J PICKARDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MASTOR & MATTSON LTD
315 PEAVEY BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MAYO FOUNDATION G ORHOLL
200 FIRST AVE NW
ROCHESTER MN
55901

MCCOA
867 GRAND AVE
ST PAUL MN
55105

MEIEROTTO, JOAN
1754 SO LEXINGTON
ST PAUL MN
55118

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

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

METROPOLITAN COUNCIL LIBRARY
300 METRO SQUARE
ST PAUL MN
55155

MIDLAND GLASS- HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER RICHARD A
1020 PLYMOUTH BLDG
MPLS MN
55402

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

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

MPLS CITY ATTORNEY
325M CITY HALL
MPLS MN
55415

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MIDLAND GLASS-HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER PAUL J PHARMACY SERV
ST MARYS HOSP
ROCHESTER MN
55901

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

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

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

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

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

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

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

MINN ASSN WATERSHED DIST'S

ADA MN
56510

MINN AUTOMOBILE DEALERS ASSN
GRIGGS MIDWAY BLDG
ST PAUL MN
55104

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

MINN COMMUNITY DEVELOP SERV
512 ROSSMOR BLDG
ST PAUL MN
55101

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

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

MINN DENTAL HYGIENISTS
5041 YVONNE TERRACE
MPLS MN
55436

MINN ELECTRICAL ASSN INC
525 SO 7TH
MPLS MN
55415

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

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

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN HEREFORD-LJ SCHAFER

BUFFALO LAKE MN
55314

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

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

MINN HWYS MANAGEMENT SERV
407 HWY BLDG
ST PAUL MN
55101

MINN LAND USE COMMITTEE
4344 IDS CENTER
MPLS MN
55402

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

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

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

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POULTRY & HATCHERY ASSN
BOX 158
MADELIA MN
56062

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

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

MINN RETAIL FEDERATION
7600 PARKLAWN STE 457
MPLS MN
55435

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN SCH BUS OPERATORS ASSN

FARIBAULT MN
55021

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

MINN SOC CERTIFIED PUB ACCTS
1102 KESSLER TEMPLE BLDG
MPLS MN

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN

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

MINN STATE CAPITOL EMP UN
PO BOX 3215
ST PAUL MN

MINN STATE MED ASSN
575 JACKSON ST
ST PAUL MN
55101

MINN STATE RETIREMENT SYSTEM
529 JACKSON ST
ST PAUL MN
55101

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MINN.TURKEY GROWERS ASSN
2363 UNIV AVE
ST PAUL MN
55114

MINN VETERANS MED ASSN
2175 W HWY 36
ROSEVILLE MN
55113

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

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

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

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

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

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

MORTON BUILDINGS INC
R #1
FOLEY MN
56329

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

MUELLER SHIRLEY A
767 W COTTAGE AVE
ST PAUL MN
55117

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

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

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

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

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

NELSON DONALD E NSP CO
414 NICOLLET AVE
MPLS MN
55401

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

NESBITT JOHN
7601 METRO PKWY S 118
MPLS MN
55420

NELMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NIELSEN STOCK & BLACKBURN
415 730 BLDG
MPLS MN

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

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

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

NUTTER JULIA
743 W MONTANA
ST PAUL MN
55117

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

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

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

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

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

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

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

OSTRUM DONALD E
PO BOX 33163
COON RAPIDS MN
55433

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

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PAYNE COL ALVIN

DEGRAFF MN
56233

PAYNE WM B
2400 FIRST NATL BK BLDG
MPLS MN

PETERSON JOHN W
510 NW BK BLDG
ST PAUL MN

PETERSON GARY
854 MIDLAND BK BLDG
MPLS MN

PFEIFER AND SHULTZ, INC
1433 UTICA AVE S
MPLS MN

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

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

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

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER LYLE D

TRACY MN
56175

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

POSS DONALD G
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

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

PROCTOR&GAMBLE L THECHAROUS
IVORYDALE TECH CENTER
CINCINNATI OH
45217

PULSCHER ROBT SPRINGSTED INC
613 OSBORN BLDG
ST PAUL MN
55102

QUINN E W
408 MAY BLDG
ST PAUL MN
55155

RADMAN RICHARD-LABOR TEMPLE
416 AUDITORIUM
ST PAUL MN
55102

RANALLO CLARENCE
800 CENTRAL AVE N E
MPLS MN
55413

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

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REID DAVID H
5633 WASHBURN AVE S
MPLS MN
55410

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

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

RICHARDSON THOS
7651 METRO PKWY S 103
MPLS MN
55420

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROE DAVID
175 AURORA
ST PAUL MN
55103

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

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

ROSS ALFRED
6356 WAKE RD
LINO LAKES MN
55014

RUDY FLOYD
118 AVE C
CLOQUET MN
55720

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

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SATHRE, HARVEY
375 MARION STREET
ST PAUL MN
55103

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

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

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

ST PAUL FOOD RETAILERS AS
1220 ARCADE
ST PAUL MN
55106

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

SCHLICHT REV ROBT
611 W MAIN ST
BELLE PLAINE MN
56011

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

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

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

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHWARTAU NEAL METH HOSP
201 W CENTER ST
ROCHESTER MN
55901

SCHWERMAN EARL JR
1555 6TH AVE SE
ROCHESTER MN

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

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

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN

SENATE COUN OFF ROOM 24
STATE CAPITOL
ST PAUL MN
55101

SENATE FINANCE COMMITTEE
113 STATE CAPITOL
ST PAUL MN
55101

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

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SHARP BOB
4125 HIGHWOOD RD
ST LOUIS PK MN
55416

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

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

SITE ENGINEERS INC
900 REDWELL LANE
APPLE VALLEY MN
55124

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

SLOCUM CHARLES A
1203 IDS TOWER
MPLS MN
55402

SMERIKA WM.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SMITH MICHAEL
1423 NEWTON AVE N
MPLS MN
55411

SNELL LYN
BOX 314
EDEN VALLEY MN
55329

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

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

SODERMAN ANTHONY
152 S PLAZA BLDG
MPLS MN
55416

STANSFIELD ARLENE LAND OLKS
PO BOX 116
MPLS MN
55440

STATE BD.BARBER EXAMINERS
555 WABASHA
ST PAUL MN
55102

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

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

STEELWORKERS CREDIT UNION
BOX 250
BABBITT MN
55706

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

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

STUPKA & MOREM
MIDTOWN BLDG
AUSTIN MN
55912

SULLIVAN J KIRK
PO BOX 200
BOISE ID
83701

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

SUSSEL CO.ATTN:TED SCHWENKER
1650 COMO AVE.
ST PAUL MN
55108

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

SWANSON DALE
P O BOX 339
FOREST LAKE MN
55025

SWANSON GERALD H
212 CITY HALL
ROCHESTER MN
55901

SWEITZER R L HONEYWELL INC
2701 4TH AVE S
MPLS MN
55406

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

THOMPSON CONRAD
1107 23RD ST NW
ROCHESTER MN
55901

THOMPSON HESSIAN ET AL
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

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

TOUCHE ROSS & CO K H STUCKE
700 NORTHSTAR CNTR
MPLS MN
55402

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

UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VAN CLEVE JOHN H
2101 HENN AVE
MPLS MN
55405

VAN DRAKE STEPHEN R
BOX 353
PELICAN RAPID MN
56572

VAN EVERA MUNDT ET AL
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STATE OF MINNESOTA

COUNTY OF HENNEPIN

In the Matter of the Proposed Adoption, Amendment or Revision of the Rules of the Minnesota State Board of Health

AFFIDAVIT OF MAILING

H. Michael Tripple, being first duly sworn, deposes and says:

That on the 17th day of September, 1975, at the City of Minneapolis, County of Hennepin, State of Minnesota, he mailed the attached Press Release by depositing in the 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 Exhibit A, attached and made a part hereof.

H. Michael Tripple

Subscribed and sworn to before me this 15th day of ~~September~~ October, 1975.

John E. Diehl

JOHN E. DIEHL
Notary Public, Ramsey County, Mn.
My Commission Expires,
September 22, 1978

YOUR HEALTH

NEWS RELEASE FROM THE MINNESOTA DEPARTMENT OF HEALTH

September 16, 1975 Contact: Bill Moore
FOR IMMEDIATE RELEASE (612) 296-5294

The State Board of Health has announced its intent to obtain the input of Minnesota residents as it considers the adoption of new rules in seven different subject areas and the amendment and revision of existing rules in five different areas.

Minnesotans interested in submitting data or views relating to the proposed adoption, amendment or revision of rules should address their written or oral comments to the Minnesota Department of Health, 717 S.E. Delaware St., Minneapolis 55440, through the contact persons listed below.

The proposed new rules relate to the following subjects:

* Implementing provisions of the Minnesota Clean Indoor Air Act; Kent Peterson, (612) 296-5365.

* Control and regulation of clinical laboratories; Dr. Henry Bauer, Division of Medical Laboratories, (612) 296-5241.

* Transfer of patient's x-ray records; Dr. Ellen Z. Fifer, Assistant Commissioner for Programs, (612) 296-5391.

* Distribution of monies to aid in construction of water filtration and purification plants and systems for communities using Lake Superior as a drinking water source; Frederick Heisel, Division of Environmental Health, (612) 296-5320.

* Implementing provisions of the Maternal and Child Nutrition Act of 1975; Dr. Ronald Campbell, Section of Maternal and Child Health, (612) 296-5265.

* Approval of laboratories performing bacteriological examinations of water; Russell Frazier, Analytical Services Section, (612) 296-5300.

- MORE -

* Establishment of application procedures for the credentialing of allied health manpower groups; Corrine Larson, Section of Allied Health Manpower, (612) 296-5393.

Amendments or revisions of existing rules are proposed in the following subject areas:

* Construction, equipment, maintenance, operation and licensing of nursing homes and boarding care homes, and the establishment of levels of assessments for violations of the regulations; H. Michael Tripple, Division of Health Facilities, (612) 296-5418 (effective Oct. 1).

* Construction, equipment, maintenance, operation and licensing of hospitals, and the establishment of levels of assessments for violations of the regulations; Janet Brodahl, Division of Health Facilities, (612) 296-5440.

* Morticians, funeral directors, and the disposition of the dead; Eugene Larson, Mortuary Science Unit, (612) 296-5491.

* Limitation of the use of x-ray machines in the screening for detection and evaluation of health conditions; Alice Dolezal, Division of Environmental Health, (612) 296-5323.

* Construction, equipment, maintenance, operation and licensure of supervised living facilities; Hans Larsen, Division of Health Facilities, (612) 296-5451.

Any materials submitted will be reviewed and considered by the Department of Health during the preparation of proposed rules, amendments or revisions. Notice of public hearings on proposed rules will be given to all interested parties, and any written materials submitted will become part of the hearing record.

Under state law, any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity.

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Radio Station KATE
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Radio Station KASM
Albany, Minnesota

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Duluth, Minnesota 55802

70

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Duluth, MN 55802

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Radio Station WKLK
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KYBR
Brainerd, Minn.

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Brainerd, Minnesota

News Director
KBEW
Blue Earth, Minn.

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News Director
KBMO
Benson, Minnesota

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News Director
Radio Station KDUN
Bemidji, Minnesota

News Director
KQAQ
Austin, Minn.

65

News Director
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Winona, Minnesota 60

News Director
KAGE
Winona, Minnesota 60

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KDOM
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KQIC Radio
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71
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STATE OF MINNESOTA

Office Memorandum

DEPARTMENT HEALTH

TO : Addressograph Unit

DATE: Sept. 16, 1975

FROM : Section of Public Health Education

SUBJECT: News Release Additions

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Grand Rapids, Minnesota 55744 75

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
STATE BOARD OF HEALTH

In the Matter of Proposed
Rules Relating to Procedures
and Criteria for Determining
Credentialing of Human
Services Occupations

STATEMENT OF EVIDENCE

The State Board of Health (hereinafter "Board") will introduce the following evidence at the hearing in the above-entitled matter scheduled for Wednesday, April 20, 1977, commencing at 9:00 a.m. in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, 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) Notice of Hearing and copy of the above-captioned rules as published in the State Register, 1 S.R. 1311, March 14, 1977;

(d) Certificate of Board's Authorizing Resolution;

(e) Affidavit of Mailing of the Notice of Hearing with the Certificate of the Secretary of State attached thereto;

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

(g) "Notice of Intent to Obtain Information on Proposed Rules From Non-Agency Sources," relating to the above-captioned rules:

(i) As mailed on August 29, 1975, to everyone named on the rule making list maintained by the Secretary of State as of August 25, 1975;

(ii) As mailed on September 17, 1975, as a news release; and

(iii) As published in the State Register, 1 S.R. 739, on November 8, 1976; and

(h) Statement of Number of Persons Expected to Attend and Length of Hearing.

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 Facts Establishing Reasonableness of Rule.

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

(a) Corrine Larson, Director, Division of Health Manpower, Minnesota Department of Health;

(b) Colleen Amundson, Credentialing Process Supervisor, Division of Health Manpower;

(c) Wayne R. Carlson, Credentialing Process Staff, Division of Health Manpower; and

(d) Kathryn Lamp, Credentialing Process Staff, Division of Health Manpower.

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 documents listed in paragraph 2 above and attached hereto.

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 HEALTH

Dated: March 21, 1977.

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

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

STATE BOARD OF HEALTH

In the Matter of Proposed Rules Relating to Procedures and Criteria for Determining Credentialing of Human Services Occupations

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 twenty.

It is estimated that the length of the hearing will be two hours.

Dated: February 17, 1977.

STATE OF MINNESOTA

BOARD OF HEALTH

Warren R. Lawson

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

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Assistant Attorney General Richard A. Wexler, do hereby declare that I have examined the proposed rules MHD 536 to 540 relating to procedures for determining regulation of human services occupations 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. Please note that although a Certificate of Board's Authorizing Resolution (Board's Exhibit I) is included in the record relating to these rules, there is no Certificate of Board's Adoption of Rules Resolution. The latter form is not included because the Board was abolished and its duties and responsibilities were transferred to the Commissioner of Health. Minn. Stat. § 144.011 (Supp. 1977).

Dated: December 23, 1977.

RICHARD A. WEXLER
Assistant Attorney General

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

HLTH-77-044-SM

AFFIDAVIT OF SERVICE

STEVE M. MIHALCHICK, being first duly sworn, deposes and says that on the 22nd day of July 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice to Interested Persons

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the Hearing Register who indicated thereon that they wished to be notified when the Examiner's Report was submitted to the Agency.

Steve M. Mihalchick

Subscribed and sworn to before me
this 22nd day of July, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

July 22, 1977

TO ALL INTERESTED PARTIES:

RE: In the Matter of Proposed Rules Relating to Procedures for Determining Credentialing of Human Services Occupations.

Docket No. HLTH-77-044-SM

The Report of the Hearing Examiner in the above-entitled matter has been submitted to the Commissioner of Health. Please note that the Report is a recommendation only and that the Commissioner may accept, modify or reject any part of it. However, the Commissioner may not take any final action on the proposed rule until at least five days have expired. During that time, the Commissioner and the Office of Hearing Examiners will make a copy of the Report available for review by any interested individual. Copies will be furnished by the Office of Hearing Examiners for $4.30 each. Please use the enclosed order form.

A copy of the Report has also been filed with the Legislative Reference Library.

Yours very truly,

Susan K. Derus

SUSAN K. DERUS
Administrative Assistant

SKD/eag
Enc.1

TO: Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota - 55104

Please send me _____ copy(ies) of the Report of the Hearing Examiner in Docket No. HLTH-77-044-SM. I have enclosed a check in the amount of $_____ made payable to: State Treasurer - Hearing Examiners' account.

_____ (name)

_____ (address)

_____ (city)

(Please type or print the above information clearly.)

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

Re: In the Matter of Proposed Rules Relating to Procedures for Determining Credentialing of Human Services Occupations.

CERTIFICATION OF OFFICIAL RECORD

Docket No. HLTH-77-044-SM

I, Steve M. Mihalchick , Hearing Examiner in the above-entitled matter, do hereby certify that the items identified on the attached list(s) constitute the entire official record in the above-entitled matter to date.

All the listed items are enclosed herewith unless specifically excepted below.

Exceptions:

( ) None.

(X) The original transcript of the proceedings herein was previously delivered. Additional copy enclosed.

( ) The proceedings have not been transcribed. The reporter's notes or recording tapes will be maintained until the time for appeal has run.

( ) Other exceptions:

Dated: 7/22/77

Steve Mihalchick

DOCKET HLTH-77-044-SM

DATE

TITLE RULES RE: CREDENTIALING OF HUMAN SERVICES OCCUPATIONS

EXHIBIT	PARTY		MARKED	REC'D	OBJECTION
	BOARD'S	PUBLIC'S			
PROPOSED ORDER FOR HEARING	A		✓	2-18-77	
PROPOSED NOTICE OF HEARING	B		✓	"	
STATEMENT OF EXPECTED ATTENDANCE	C		✓	"	
PROPOSED RULES	D		✓	3-10-77	
STATEMENT OF EVIDENCE	E		✓	3-22-77	
ORDER FOR HEARING	F		✓	"	
NOTICE OF HEARING AS MAILED	G		✓	"	
1 S.R. 1311, 3-14-77	H		✓	"	
BOARD'S AUTHORIZING RESOLUTION	I		✓	"	
AFFIDAVIT OF MAILING - 3-18-77	J		✓	"	
CERT. OF SEC'Y'S LIST, 3-15-77 3-14-77	K		✓	"	
AFF. OF RECEIPT OF SEC'Y'S LIST	L		✓	"	
STATEMENT OF NEED	M		✓	"	
STATEMENT OF FACTS	N		✓	"	
NOTICE TO SOLICIT INFO 1 S.R. 739 - 11-8-76)	O		✓	"	
AFFIDAVIT OF MAILING 8-29-76	P		✓	"	
AFF. OF MAILING, 10-15-75	Q		✓	"	
PRESS RELEASE, 9-16-75	R		✓	"	
STATEMENT OF EXPECTED ATTENDANCE	S		✓	"	
Nat. Ass'n of Social Workers		1	✓	3-28-77	
Sen. Lewis		2	✓	4-8-77	
Returned Notices (8)	T		✓	4-20-77	
Bd's Procedures	U		✓	"	

KET HLTH-77-044-SM

DATE

TITLE

EXHIBIT	PARTY: Boards	PARTY: Public's	MARKED	REC'D	OBJECTION
Example - X-ray Mach Operators	V		✓	4-22-77	
Hearing Register	W		✓	"	
Cntr for Behavior Med		3	✓	5-3-77	
MN Dental Assn		4	✓	5-9-77	
S. Jackson, Leg'e Analyst		5	✓	"	
Sen. Lewis		6	✓	5-12-77	
MN Nurses Assn		7	✓	"	
MN Assn of Optometrists, Opticians		8	✓	"	
Consumer Services		9	✓	"	
MN State Medical Assn		10	✓	"	
" " Pharmaceutical Assn		11	✓	"	
Health Dept Ltr	X		✓	"	
Report to the Legislature	Y		✓	"	
MHD Report April 77	Z		✓	"	
Transcript	-	-	-	4/21/77	
Examiners Report	-	-	-	7/22/77	