

Minnesota Attorney General: Administrative Rules Proceedings

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ADMIN 1000 (Rev. 1/78)
SF-00006-01

593

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : RICHARD A. WEXLER
Assistant Attorney General

DATE: May 19, 1980

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Department of Health Relating to the Collection of Information Pertaining to Health-Related Manpower

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JA/bw
Enclosure
cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Jerry Anderson
Administration Division

DATE: April 24, 1980

FROM : Richard A. Wexler
Assistant Attorney General

PHONE: 341-7272

SUBJECT: Rules of the Department of Health Relating to the Collection of Information Pertaining to Health Manpower

Attached are the above subject rules plus all of the supporting documents required by the Administrative Procedures Act, the Rules of the Office of Hearing Examiners, and the Rules of the Attorney General Relating to Rulemaking which are submitted to you for approval as to form and legality pursuant to Minn. Stat. § 15.0411, subd. 4. The specific documents attached are listed below. In each case three copies are enclosed unless a different number is indicated.

1. Rules as Adopted (five copies).
2. Rules as Proposed.
3. Statement of Number of Persons Expected to Attend and Length of Hearing.
4. Order for Hearing.
5. Notice of Hearing.
6. Affidavit of Mailing with Affidavit of Receipt of the Secretary of State's List and copy of the list attached as an exhibit.
7. Statement of Need and Reasonableness.
8. Notice of Intent to Solicit Outside Opinion.
9. Affidavit of Consultation.
10. Report of Hearing Examiner.
11. Findings and Conclusions (of the Commissioner).
12. Order Adopting Rules.
13. Statement of Compliance With Manual of Rulemaking Procedures.

14. Report of Chief Hearing Examiner.

15. Exhibits and other items submitted at the hearing or prior to the close of the record (one copy).

A transcript of the hearing was not prepared; however, I do have the tapes on which the hearing was recorded. If you want them sent to you, please let me know and I will have them delivered immediately.

The basic statutory authority for these rules is contained in Minn. Stat. §§ 144.051 and 144.052. Those sections directed the Commissioner to promulgate rules relating to the types of information to be collected and the forms used for collection with respect to establishment of a system for the collection, analysis and reporting of data on individuals licensed or registered by the Commissioner or the health-related licensing boards. While, as with just about any set of rules, some questions and comments were raised during the rulemaking process, I do not believe that there are really any significant issues raised by this set of rules.

Notice of submission of these rules to your office was sent by the Department of Health to those who had requested it at least no later than the day this memorandum and the attached documents were sent to you.

If you have any questions, please feel free to call me.

RAW:rlb

Attachments
cc: Connie Larson

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of a Proposed Rule
Relating to the Collection of
Information from Health-Related Manpower

STATEMENT OF NEED
AND REASONABLENESS

The Minnesota Commissioner of Health (hereinafter "Commissioner"), pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), hereby affirmatively presents facts establishing the need for and reasonableness of the above-captioned proposed rule. Terms used throughout this statement will have the definitions given them in proposed rule 7 MCAR § 1.235 A. 2.

I. STATUTORY AUTHORITY AND NEED FOR PROMULGATION OF 7 MCAR § 1.235.

Minn. Stat. §§ 144.051 and 144.052 authorize the Commissioner to collect types of information pertaining to the numbers, distribution, and characteristics of individuals licensed or registered by the Commissioner or the health-related licensing boards (hereinafter "the Boards") as defined in Minn. Stat. § 214.01, subd. 2. The data to be collected, according to Minn. Stat. § 144.052, subd. 1, is "needed in order to make decisions pertaining to health manpower."

The data provided by licensees or registrants is to be maintained in an information system which Minn. Stat. § 144.051, subd. 2 requires the Commissioner of Health to establish "for the collection, analysis and reporting of data on individuals" licensed or registered in health-related occupations.

The information system will constitute a resource making health manpower information available to a variety of users from local, state, and national levels, including local and state planning agencies, legislative policy-makers, educational institutions, professional associations, health services researchers, and others interested in health manpower information. The purpose of the information system is to assist the users in making meaningful and valid decisions regarding health-related manpower.

The proposed rule identifies, as required by Minn. Stat. §§ 144.051 and 144.052, the types of information which the Commissioner will require from licensees and registrants for the information system and the types of forms used for the data collection. The proposed rule also enables the Commissioner to solicit on a voluntary basis other information helpful to the Commissioner in making decisions pertaining to health manpower. Finally, the rule in 7 MCAR § 1.235 C. 2. b. provides that under certain limited circumstances, parties other than the Commissioner may request health manpower-related information on the forms developed by the Commissioner for collection of the information specified in 7 MCAR § 1.235 B. 1. and B. 2. Solicitation of information on behalf of other parties is pursuant to Minn. Stat. §§ 15.0412, subd. 3 and 144.05, which provide that among other duties the Commissioner shall coordinate, facilitate, assess, and evaluate services affecting public health.

As required by Minn. Stat. § 144.052, subd. 1, the Commissioner consulted with the Boards with respect to these rules, first through a meeting with the executive secretaries of the Boards on April 20, 1978, second by a formal request made July 10, 1978, for comment from the Boards on an initial draft, and finally in a distribution for comment on a final draft of the proposed rule as well as on a draft of the Statement of Need and Reasonableness on May 16, 1979. The consultation process is described in detail in an affidavit of Mary Volk. The affidavit will be submitted in the record as a separate document.

In addition, on July 17, 1978, a draft of the proposed rule was also distributed by mail to potentially interested parties, including professional associations in the state, the seven Minnesota health systems agencies, the State Health Planning and Development Agency, the Higher Education Coordinating Board, and other government agencies concerned with manpower data and manpower planning. Written comments that were received as a result of this mailing will be included in the record as separate items.

Finally, the Commissioner published in the State Register pursuant to Minn. Stat. § 15.0412, subd. 6, a Notice of Intent to Solicit Outside Opinion concerning this rule, 2 S.R. 2033 (May 15, 1978). Only one letter was received in response to this Notice and will be included in the record as a separate item.

II. REASONABLENESS OF PROPOSED RULE

7 MCAR § 1.235 A. 1. Purpose

This section cites the statutory authority for this rule and indicates the two areas the rule addresses as required by the statutes:

(1) The types of information to be required, and

(2) The forms to be used to collect information.

7 MCAR § 1.235 A. 2. Definitions

The definitions in this section provide common terminology and meaning for terms used in discussing and understanding the substantive provisions of this proposed rule.

7 MCAR § 1.235 B. Types of Information

1. In addition to the types of information specified in Minn. Stat. § 144.052, subd. 1, the types of information pertaining to the numbers, distribution, and characteristics of health-related manpower to be submitted pursuant to 7 MCAR § 1.235 B. by individuals licensed or registered by the Commissioner or Boards shall consist of that information "needed to make decisions pertaining to health manpower." Minn. Stat. §§ 144.051 and 144.052. The specific justification for each of the types of information specified in 7 MCAR § 1.235 B. is as follows:

a. Permanent license or registration number is needed in order to provide each individual's record in the information system's files with a unique identifying number which remains the same over time for the individual.

The use of name as an identifier does not necessarily meet the criteria of uniqueness and consistency over time. The intent of unique identification of each record is the provision of reasonable assurance that accurate numbers can be obtained from the data in the system's files. A unique identification number which is provided by the licensing or registration authority allows the elimination of duplicate records for the same individual, deletion of records if individuals are no longer licensed or registered, correct addition of new records, and correct addition of data to the records on the system's files.

b. Race or ethnicity is needed in order to obtain data on the distribution of different racial or ethnic groups in the health-related occupations. The data are used in the educational system to establish training programs for and to recruit minority students for the health-related occupations. The data also serve as baseline data for affirmative action employment efforts made by health care service facilities in the state.

c. Locality of principal residence is needed in order to construct patterns of mobility between locality of residence and locality of work (see 7 MCAR § 1.235 B. 1. f.) for health manpower. These patterns are used in assessing geographical distribution and the availability of types of health-related manpower, particularly within regions of the state and between Minnesota and neighboring states, and as data for planning to meet health manpower shortages in particular localities.

d. Minn. Stat. § 144.052, subd. 1 identifies educational background as a type of information which is to be collected from individuals licensed or registered by the Commissioner or the Boards. The rule specifies the nature of the information to be sought about educational background.

(1) Name and locality of school from which graduated with professional degree required for licensure or registration and year degree was received are needed in order that information be available for planning related to the training of health manpower. The information is necessary for planning activities such as identification of patterns that indicate where categories of health manpower obtain their educational training in order to: assess the need to continue or establish future educational programs; monitor the distribution of graduates

and general migration patterns after completion of training; identify trends in age at completion of initial training; and perform similar analyses related to educational planning for health manpower.

(2) Name and locality of school from which post-secondary educational preparation was received, if a specific type of professional degree is not required for licensure or registration, and year preparation was completed are needed in order to monitor educational and migration patterns over time of categories of health manpower who may not receive a professional degree.

The information is necessary for planning activities which assess the need to continue or establish educational programs; monitor migration patterns after completion of training; identify age trends for certain programs; and to perform similar analyses related to health manpower planning.

(3) Degrees received from educational institutions are needed to develop information on the trends in educational training obtained by health manpower. This information, in conjunction with information from 7 MCAR § 1.235 B. 1. d. (1) and (2), is necessary to provide summary data in planning for changes in existing educational programs and to plan the establishment of new programs to train health manpower.

(4) Professional training beyond first degree received is needed in order to describe the types of advanced or additional training obtained by those licensed or registered in the health professions, and to monitor trends in training beyond the initial training.

This information is also necessary for planning pertaining to the advanced education of health manpower, and in conjunction with information obtained through 7 MCAR § 1.235 B. 1. d. (1), (2), and (3), provides summary data for educational program planning for initial though advanced levels of training for health manpower.

e. "Professional activity status" is identified as a type of information to be collected by the Commissioner under Minn. Stat. § 144.052, subd. 1. The rule specifies what information will be sought about activity status.

(1) Number of weeks worked in the occupation during the 12 months preceding the data collection survey period is needed in order to summarize activity patterns of health professionals for planning which involves assessment of present supplies of health manpower.

This information is a factor in providing an accurate picture of the active labor force in the health-related occupations by qualifying data on the number of persons indicating they are active in the health-related occupations for which they are licensed or registered.

(2) Whether currently working in the occupation is needed to provide accurate counts of persons working in health-related occupations at the point in time covered by the survey. The counts are necessary for assessment of the present supplies of health manpower and planning for future supply.

(3) Average number of hours per week currently working in the occupation for which licensed or registered distributed among categories of professional or occupational activities is needed to provide information to be used in describing how and in what ways those licensees and registrants active in health-related ocupations spend their active time. This information is an element of productivity measurement, and is necessary in planning for determination of health manpower supply.

(4) If not currently working in the occupation, status as a member of the potential labor force for the occupation is needed in order that estimates can be made of the potential total supply of health manpower. This information is used as a factor in planning for the training of additional health manpower, for anticipating needs for retraining, including continuing education programs, and planning for future supply.

f. Locality where currently working in the occupation is needed in order that the distribution of the health manpower supply can be described and the description revised on a regular basis. This description is essential to planning both for the future need for health manpower and the effective use of existing manpower.

g. Type of setting where currently working in the occupation is needed in order to provide information to be used in planning for the supply of health manpower. The information is necessary for planning and decision-making activities which involve the assessment of current health manpower distribution and employment setting patterns; estimations of the types and amounts of health care services provided, and of employment trends for health manpower.

h. Category of current form of employment is needed in order to provide information, in conjunction with that on setting of current employment, to be used in planning for the supply of health manpower. Information on the form of employment is necessary for planning and decision-making activities which involve the assessment of patterns of health manpower distribution and employment settings; estimation of the types and amount of services provided and in what settings, and of employment trends for health manpower.

i. Occupational specialty is needed for the purpose of identifying the numbers of licensees or registrants providing types of services within the health-related occupations. The information is necessary for planning which takes into account the extent of available health manpower resources providing both direct and indirect health care services to the public.

j. Current licensure or registration held in other states is needed to provide information on the potential mobility of categories of health manpower.

2. There are several health-related occupations from which it is necessary to request certain types of information for the purposes of making decisions pertaining to health manpower, in addition to the types of information identified in 7 MCAR § 1.235 B. 1. The application of the request depends on the characteristics of the occupation.

a. The approximate number of patients treated in the course of the licensee's or registrant's currently active practice during a specified period is to be asked of those licensees or registrants, such as physicians, dentists, chiropractors, and podiatrists, who provide health-care services through a practice mode. The information is needed in order to estimate productivity of categories of health manpower practitioners, and therefore anticipate additional current or future health manpower needs for various populations.

b. The range of employment of auxiliary personnel is to be requested of those practitioners who would be likely to employ auxiliaries. The practitioners include physicians, dentists, chiropractors, podiatrists, pharmacists, and veterinarians. The information is needed to identify the extent of the use of auxiliaries such as assistants, aides, and technicians in order to assess the impact of auxiliaries on total practice productivity, changes in practice patterns over time, allied health manpower distribution, and potential impact on educational program need for allied health manpower.

c. Professional title is to be asked of members of certain health-related occupations, such as registered nurses, hospital administrators, nursing home administrators, and pharmacists, the majority of whom are employed in organizational or institutional settings. The information is needed in order to describe the employment of these types of health manpower and to point to the types of services they render in different organizational or institutional settings.

7 MCAR § 1.235 C. Types of Forms for Collection of Information

1. Each of the health-related occupations identifies itself as different from another by virtue of training, practice characteristics, skills, or other professional characteristics. Therefore:

a. The exact form and wording of the questions used to obtain the types of information specified in 7 MCAR § 1.235 B. 1. and 2. will necessarily vary among the occupations surveyed, in order that the questions will be specific and relevant to the characteristics of each occupation surveyed.

b. In addition, it is possible that the focus of the types of decisions pertaining to health manpower may change over time, so questions may have to be clarified, or the emphasis of questions have to be modified to provide the types of information specified in 7 MCAR § 1.235 B. 1. and 2. The rule reasonably provides for flexibility to modify specific questions while it remains limited to addressing only the subjects listed in the rule.

2. The rule recognizes that in certain circumstances the Commissioner may seek information other than that identified in 7 MCAR § 1.235 B. 1. and 2. The requesting party may be the Commissioner or another party using the Commissioner's form.

a. In order to obtain comprehensive information pertaining to numbers, characteristics and distribution of health-related manpower, the Commissioner may solicit information which, while necessary in making certain planning decisions, is of a more limited nature in the description of health manpower than that specified in 7 MCAR § 1.235 B. 1. and 2, thus justifying making its submission voluntary with the licensee or registrant.

b. Minn. Stat. § 144.052, subd. 2 provides that the collection of information pertaining to health-related manpower should not impose unnecessary burdens on

licensees or registrants, nor require additional administrative costs to the state. Minn. Stat. § 144.05 (f) provides that the Commissioner shall coordinate and integrate programs and services affecting public health. It is recognized there are other parties such as the health-related licensing boards or registration advisory councils, the State Health Planning and Development Agency, the Higher Education Coordinating Board, the Department of Public Welfare, academic units of the health sciences of the University of Minnesota, the health-related professional associations and the National Center for Health Statistics which need the same information as the Commissioner in order to carry out their functions which involve making decisions pertaining to health-related manpower. Collection of such information by the Commissioner at the same time as information is collected under the provisions of Minn. Stat. § 144.052 is in keeping with the statutory directives to ease the burden of data provision on licensees and registrants, to limit administrative costs, and to coordinate programs affecting public health.

(l) Since the Commissioner is charged with responsibility for establishing a system for the collection, analysis, and reporting of data on individuals licensed or registered by the state in health-related occupations while assuring that the administrative cost to the state is kept at a minimum, it is reasonable that the Commissioner should:

(a) Review the legitimacy of another party's need for the information, its relevancy to making decisions pertaining to health-related manpower, and the questions to be

asked in order that the questionnaire be used in a manner in keeping with the intent of the legislation authorizing the information collection by the Commissioner;

(b) Maintain control over the expenditure of resources available for the information collection;

(c) Assure that the addition of questions would not contribute to problems with obtaining response to the questions which provide information as required by the legislature in Minn. Stat. §§ 144.051 and 144.052 and this rule.

(2) The requirements specified in 7 MCAR § 1.235 C. 2. b. (2) are necessary so that the licensees or registrants supplying the information are fully informed as to who is making the request and what their responsibilities and rights are with respect to each individual question.

Dated: October 4, 1979.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Pettersen M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of a Proposed Rule Relating to the Collection of Information from Health-Related Manpower (7 MCAR § 1.235)

ORDER ADOPTING RULE

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the Office of Hearing Examiners, on the 5th day of November, 1979, at 9:00 AM, Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose, notice was also served upon other persons, associations and groups of which the Commissioner of Health was aware of as possibly having an interest in the above-captioned rule, and following timely publication of the proposed rule and Notice of Hearing in the State Register.

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

NOW, THEREFORE, IT IS ORDERED that this rule identified as 7 MCAR § 1.235 relating to the Collection of Information From Health-Related Manpower is adopted this 31 day of March, 1980, pursuant to authority vested in me by Minn. Stat. §§ 15.0412, subd. 3, 144.05, 144.051, and 144.052 (1978).

STATE OF MINNESOTA
COMMISSIONER OF HEALTH

George R. Pettersen MD

GEORGE R. PETTERSEN, MD
Commissioner

Minnesota Department of Health

Division of Manpower

Adopted Rules Relating to the Collection of

Information Pertaining to Health Manpower

7 MCAR § 1.235

A. GENERAL

1. Authority and Purpose

7 MCAR 1.235 has been developed as required by Minn. Stat. §§ 15.0412, subd. 3, 144.05, 144.051 and 144.052. The rule pertains to:

a. The types of information relating to numbers, distribution, and characteristics of health-related manpower which the Commissioner of Health deems necessary to collect as specified in this rule from individuals licensed or registered by the Commissioner or the Boards for the purpose of establishing an adequate information resource at the state level for making informed and reasonable decisions pertaining to health manpower; and

b. The forms which shall be used to collect the information.

2. Definitions

For the purposes of this rule, the words, terms, and phrases listed below shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

a. "Boards" means the health-related licensing Boards as defined in Minn. Stat. § 214.01, subd. 2.

b. "Commissioner" means the Commissioner of Health.

c. "Form of employment" means whether self-employed, working as employee, or other.

d. "Individual" means a natural person.

e. "Licensed" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3(d).

f. "Licensure or registration status" means the status of the individual license or registration as active or inactive under the regulatory authority of the Commissioner or the Boards. An active status means the individual is duly authorized to engage in the practice of activities for which he or she is licensed or registered. An inactive licensure or registration status means that the license or registration is not in effect.

g. "Locality" means city, state or foreign country, county and zip code.

h. "Occupation" means the health-related occupation for which an individual is licensed or registered by the Commissioner or a Board.

i. "Occupational specialty" means the area emphasized, such as clinical, teaching or specialty practice, in the activities the licensee or registrant performs in the health-related occupation for which he or she is licensed or registered.

j. "Permanent license or registration number" means the number assigned to each licensee or registrant by the Commissioner or a Board upon initial licensure or registration and retained by the licensee or registrant over the period of his/her licensure or registration. The permanent number may differ from a number the individual may receive upon periodic renewal of his/her license or registration.

k. "Professional activity status" means the licensee's or registrant's participation or potential participation in the practice of activities in the occupation for which he/she is licensed or registered. The individual's activity status may be identified as either active or inactive. If active, the extent to which the licensee or registrant is active is indicated by factors such as the duration over

time of work in the occupation, whether currently working in the occupation, and by the average number of hours worked per week. If inactive, the potential for participation in the occupational labor force is indicated by the licensee's or registrant's status as retired, working in another occupation, disabled, or other employment statuses such as unemployed but seeking employment in the health-related occupation for which the individual is licensed or registered.

l. "Professional title" means the title which designates the position held by a licensee or registrant in his/her work setting in the health-related occupation for which he/she is licensed or registered.

m. "Registered" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3 (c).

n. "Type of setting" means the physical environment which may be institutional, such as a hospital, or non-institutional, such as the patients' homes, in which the individual engages in the occupation for which he or she is licensed or registered.

B. TYPES OF INFORMATION

1. Individuals who are licensed or registered by the Commissioner or the Boards shall submit to the Commissioner, on forms provided by him/her, the following types of information.*

a. Permanent license or registration number.

b. Race or ethnicity.

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*In addition to the types of information listed in this rule, name, current (mailing) address, licensure or registration status (at the time of data collection), birth date, sex, professional activity status, and educational background shall be included in the required information, as specified in Minn. Stat. § 144.052, subd. 1.

c. Locality of principal residence.

d. Educational background which shall include:

(1) Name and locality of school from which graduated with educational degree required for licensure or registration, and year degree was received.

(2) Name and locality of school from which post-secondary educational preparation was received if a specific type of educational degree is not required for licensure or registration, and year preparation completed.

(3) Degrees received from educational institutions.

(4) Professional training beyond first degree received.

e. Professional activity status in the occupation which shall include:

(1) Number of weeks worked in the occupation during the 12 months preceding data collection survey period.

(2) Whether currently working in the occupation.

(3) Average number of hours per week currently working in the occupation for which licensed or registered, apportioned by categories of activities in the occupation.

(4) If not currently working in the occupation, status as a member of the potential labor force for the occupation.

f. Locality where currently working in the occupation.

g. Type of setting where currently working in the occupation.

h. Category of current form of employment in the occupation.

i. Occupational specialty.

j. Current active licensure or registration held in other states.

2. The following types of information shall be collected only from the licensees or registrants in occupations for which the information is applicable given the practice characteristics of the occupation.

a. The approximate number of patients treated in the course of the licensee's or registrant's currently active practice during a specified period.

b. The range of employment of auxiliary personnel in the practice setting.

c. Professional title of licensee or registrant.

3. The Commissioner may at his option reduce the types of information for which responses are requested from licensees and registrants residing and practicing out-of-state.

C. TYPES OF FORMS FOR COLLECTION OF INFORMATION

1. Information shall be collected on forms designed by the Commissioner which shall contain ~~a statement~~ statements of the statutory authority for collecting the information and of the data classification as classified pursuant to the Minnesota Government Data Practices Act. Whenever a survey form is sent to licensees or registrants in the same envelope as their license or registration renewal application, a statement will be added to the form to the effect that the survey is independent of licensure or registration renewal and that responses to the survey will have no bearing on license or registration renewal. The exact form and wording of the questions may vary depending upon the specific occupation surveyed:

a. So that the questions will be specific and relevant to the characteristics of each occupation; and

b. May change in form and wording over time so that a question can be classified or its emphasis modified.

2. When resources available to the Commissioner permit, the form may include questions in addition to the types of information specified in 7MCAR § 1.235 B.1. and B.2. Such questions may solicit:

a. Information sought by the Commissioner for the purpose of making decisions pertaining to health manpower, but to be provided by the licensee or registrant on a voluntary basis:

b. Information sought by parties other than the Commissioner for purposes of making decisions pertaining to health manpower. In these instances:

(1) The proposed additional questions may be included only if the Commissioner determines that:

(a) The additional questions are relevant to making decisions pertaining to health manpower;

(b) Resources permit the inclusion of additional questions on the form;

(c) The information collection required by 7 MCAR § 1.235 B.1. and B.2. would not be delayed or otherwise inconvenienced by the inclusion of additional questions on the form.

(2) The form shall clearly identify the party requesting the additional information, the specific questions asked by the party, whether or not it is mandatory for the licensee or registrant to supply the information, and if mandatory, the citation to the mandating legal authority.

APPROVED AS TO FORM AND LEGALITY

MAY 14 1980 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry S. Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 16 1980
Joan Anderson Growe
Secretary of State

3:00 PM

Our File 593

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 4/28 DUE DATE 5/18

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State 5/16
b. Approved 5/14 Date Sent Back to Agency 5/19

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 4.5.79
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency _____
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓ copy not submitted but see HE rpt. p. 2.
    At least 30 days prior to hearing 10.1.79
11. A. Statement of Need and Evidence ✓ Letter from MDH to HE ✓
    B. Affidavit of Consultation ✓ see Minn Stat. 144.052
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ 5.15.78 SR.
20. Petition by Public, where applicable N/A

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of a Proposed Rule Relating to the Collection of Information from Health-Related Manpower (7 MCAR § 1.235)

FINDINGS AND CONCLUSIONS

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the Office of Hearing Examiners, on the 5th day of November, 1979, at 9:00 AM, Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, after proper notice required by Minn. Stat. § 15.0412 (1978) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose, notice was also served upon other persons, associations and groups of which the Commissioner of Health was aware of as possibly having an interest in the above-captioned rule, and following publication of the proposed rule and Notice of Hearing in the State Register.

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

1. The Findings of Fact contained in paragraphs 1 through 7 of the Report of theHearing Examiner (hereinafter "Report") are hereby adopted and made a part hereof.

2. The agency panel consisted of Ms. Mary Volk, Division of Manpower, Section of Manpower Information. The Department of Health called upon one witness, Mr. Garrie Losse, US Department of Health, Education and Welfare, National Center for Health Statistics, to testify in support of the adoption of this rule.

3. Approximately 20 people attended the hearing. Twelve persons signed the hearing register. Four individuals spoke at the hearing. The hearing continued until all interested persons and groups had an opportunity to be heard.

4. Pursuant to Minn. Stat. § 15.0412, subd. 4, the Report has been made available for review to all affected persons upon request for at least five working days.

5. Paragraph 8 of the Report pertaining to statutory authority is hereby adopted and made a part hereof. In addition to the statutes referenced in the Report, authority is contained in Minn. Stat. § 15.0412, subd. 3 to promulgate the procedures contained in 7 MCAR § 1.235C.2. as explained in the Statement of Need and Reasonableness at page 2.

6. Paragraphs 9 through 23 of the Report pertaining to the need and reasonableness of the rule are hereby adopted and made a part hereof with the following exceptions:

a. Paragraph 10 of the Report is deleted in its entirely and the following adopted in its place:

> The Statement of Need and Reasonableness and the letter of November 20, 1979, from the Department of Health to the Hearing Examiner are adopted and incorporated herein as demonstrating the justification for the rule as adopted.

b. Paragraph 14 of the Report is deleted in its entirety and the following adopted in its place:

> 7 MCAR § 1.235B.1.b. includes race or ethnicity as part of the data to be collected. Several groups objected to the inclusion of race or ethnicity as a mandatory question on the data survey. The Hearing Examiner, citing Wallace v. Commissioner, 289 Minn. 220, 184 N.W.2d 588, 594 (1971), found that the mandatory inclusion of race or ethnicity exceeds statutory authority and purpose as it is not sufficiently similar to the enumerated types of data listed in the statute for the purpose set forth in Minn. Stat. §§ 144.05 and 144.051 (1978).

The Hearing Examiner's conclusion must be rejected. The enumerated types of data listed in Minn. Stat. § 144.052, subd. 1 (1978) are name, current address, licensure or registration status, birth date, sex, professional activity status, and educational background. There is no similarity to these items other than that they are "characteristics" of health-related manpower. Characteristics along with number and distribution are the factors which the Legislature considered important in developing an accurate health manpower information resource. Race or ethnicity are as much characteristics about health manpower as are, for example, birth date and sex.

The Hearing Examiner rejected inclusion of race or ethnicity because Minn. Stat. §§ 144.051 and 144.052 do not deal with affirmative action. (Of course, sex is also included in affirmative action programs but is also a factor which the Legislature found important enough to include in the health manpower information system.) The point is, however, that while race or ethnicity may be factors to be considered in affirmative action programs, as is sex, they are also, separate from affirmative action programs, characteristics of health manpower. The legislation is clear. It gives the Commissioner broad authority to obtain a wide range of information regarding numbers, distribution, and characteristics of health manpower.

Thus, the inclusion of race or ethnicity is within the statutory authority of this rule. The question of what types of information should be requested is policy question. As such cases as Northwestern Bell Telephone Co. v. State, 253 N.W.2d 815 (Minn. 1977) and St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, 251 N.W.2d 350 (Minn. 1977) make clear, when an agency develops policy by rule, it is given wide latitude. There is nothing in the record to show that race or ethnicity have no

relationship to numbers, distribution, or characteristics of health manpower. To the contrary, the record demonstrates the need and reasonableness of those items.

7. In paragraph 13.a. of the Report, the Hearing Examiner found that the addition of section 1.235B.3. was reasonable. This section allows the Commissioner to reduce the types of information requested of licensees and registrants residing and practicing out-of-state. The Hearing Examiner also noted, however, that the section would be improved if it stated the conditions which would control the discretion of the Commissioner in deciding when and what information would be required. This particular finding is hereby rejected as being without foundation.

It should be noted that in paragraph 20 of the Report, the Hearing Examiner specifically found that with respect to all health manpower, whether in or out-of-state that "the Legislature leaves the frequency of data collection and tabulation within the discretion of the Commissioner." The Hearing Examiner went on to find that "since, [sic] Minn. Stat. §§ 144.051 do not mandate it, the omission of stated frequency of collection and tabulation periods is not unreasonable nor is its inclusion in the rules necessary."

Since frequency of data collection is not a matter which the Legislature directed to be covered by rule for the program in general, it certainly need not be covered just for out-of-state licensees and registrants. The rule sets out the types of information that any licensee or registrant can be required to supply. This is what the Legislature wanted covered by rule. It is not necessary to cover frequency of collection. The Legislature recognized that the Commissioner needed freedom and flexibility to effectively administer the program. Such administrative matters are not required to be promulgated as rules.

CONCLUSIONS

8. Paragraphs 1 through 4 of the Conclusions contained in the Report are hereby adopted and incorporated herein.

Dated: March 31, 1980

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Pettersen MD

GEORGE R. PETTERSEN, MD
Commissioner

HLTH-80-012-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of a Proposed Rule Relating to the Collection of Information from Health-Related Manpower (7 MCAR § 1.235).

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on November 5, 1979, at 9:00 a.m. in the Minnesota Department of Health Building, Room 105, 717 Delaware Street Southeast, Minneapolis, Minnesota.

The agency panel included Richard A. Wexler, Assistant Attorney General, appearing on behalf of the Department of Health, and Ms. Mary Volk, Division of Manpower, Section of Manpower Information. The Department of Health called upon one witness, Mr. Garrie Losse, U.S. Department of Health, Education and Welfare, National Center for Health Statistics, to testify in support of the adoption of this rule.

Approximately 20 people attended the hearing. Twelve persons signed the hearing register. Four individuals spoke at the hearing. The hearing continued until all interested persons and groups had an opportunity to be heard.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15 to determine whether the proposed rules should be adopted and given the force of law. Copies of this Report are available for review from the Office of Hearing Examiners and the Department of Health, Division of Manpower.

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 rule either as originally proposed or amended, submit a copy of the Order Adopting the Rule, a copy of any additional agency findings, a copy of the rule as originally proposed, and a copy of the rule as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Agency on the issues of substantial changes in the rules and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Agency will be responsible for filing the rules with the Attorney General for review and for notifying persons who have indicated that they wish to be notified of such filing.

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

FINDINGS OF FACT

Procedural Requirements

1. On September 6, 1979, the Department of Health filed the following documents with the Hearing Examiner:

(a) Copy of proposed rules.
(b) Order for Hearing proposed to be issued.
(c) Notice of Hearing proposed to be issued.
(d) Statement of number of persons expected to attend the hearing and estimated length of Agency's presentation.

2. On October 1, 1979, Notice of Hearing and a copy of the proposed rule was published at 4 State Register 523.

3. On October 1, 1979, the Department of Health mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On October 9, 1979, the Department of Health filed the following documents:

(a) Order for Hearing.
(b) Notice of Hearing as mailed.
(c) Affidavit of Receipt of the Secretary of State's list.
(d) Affidavit of Mailing of Notice of Hearing.
(e) Statement of Need and Reasonableness.
(f) Notice of Intent to Solicit Outside Opinion concerning above subject rule published in State Register on May 15, 1978, at 2 State Register 2033, pursuant to Minn. Stat. § 15.0412, subd. 6 (1978) and one written response received pursuant to this Notice from Robert S. Flom, M.D. (June 14, 1979).
(g) Affidavit of Consultation pursuant to Minn. Stat. § 144.052, subd. 1.

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

5. On October 9, 1979, the Department of Health also submitted a letter sent on July 17, 1978, to interested parties and associations listed with the Department soliciting comments on the proposed rule. A copy of the proposed rule and a proposed questionnaire were attached. The Department received two written comments and several informal comments (oral) from interested parties.

6. The Department of Health issued a news release on October 31, 1979, publicizing the hearing on November 5.

7. The record remained open through November 20, 1979, for the receipt of written comments. One prehearing comment was received. One written response was submitted at the hearing and received as Public Exhibit 1. Two post-hearing comments were received and made part of the record herein.

Statutory Authority

8. The Agency based their authority to promulgate these rules on Minn. Stat. §§ 144.05, 144.051 and 144.052.

Minn. Stat. § 144.051 provides:

> Subdivision 1. Purpose. The legislature finds that accurate information pertaining to the numbers, distribution and characteristics of health-related manpower is required to order that there exist an adequate information resource at the state level for purposes of making decisions pertaining to health manpower.

(sic) "in order"

Subd. 2. Information system. The commissioner of health shall establish a system for the collection, analysis and reporting of data on individuals licensed or registered by the commissioner or the health-related licensing boards as defined in section 214.01, subdivision 2. Individuals licensed or registered by the commissioner or the health-related licensing boards shall provide information to the commissioner of health that he may, pursuant to section 144.052, require. The commissioner shall publish at least biennially, a report which indicates the type of information available and methods for requesting the information.

Minn. Stat. § 144.052 provides:

Subdivision 1. Rules. The commissioner, after consultation with the health-related licensing boards as defined in section 214.01, subdivision 2, shall promulgate rules in accordance with chapter 15 regarding the types of information collected and the forms used for collection. The types of information collected shall include licensure or registration status, name, address, birth date, sex, professional activity status, and educational background or similar information needed in order to make decisions pertaining to health manpower.

Subd. 2. Coordination with licensure renewal. In order that the collection of the information specified in this section not impose an unnecessary burden on the licensed or registered individual or require additional administrative cost to the state, the commissioner of health shall, whenever possible, collect the information at the time of the individual's licensure or registration renewal. The health-related licensing boards shall include the request for the information that the commissioner may require pursuant to subdivision 1 with the licensure renewal application materials, provided, however, that the collection of health manpower data by the commissioner shall not cause the licensing boards to incur additional costs or delays with regard to the license renewal process.

Minn. Stat. § 144.052 specifically authorizes the Commissioner of Health (hereinafter "Commissioner") to promulgate rules regarding the type of information collected and the forms used for collection of data relating to health manpower. Subdivision 1 of Minn. Stat. § 144.052 provides authority for the Commissioner to collect information similar to the types of information specifically included in the statute, provided that additional data are needed to implement the purpose specified in the statute herein. The statutes authorize the collection of data related to the numbers, distribution and characteristics of health manpower from individuals licensed or registered by the Commissioner of Health.

Need and Reasonableness

9. The Minnesota Department of Health, Division of Manpower, proposed Rule 7 MCAR § 1.235 to fulfill the legislative mandate for the Commissioner to promulgate rules relating to collection of data pertaining to health manpower pursuant to Minn. Stat. §§ 141.051 and 144.052. This rule relates to the type of information collected and the forms which shall be used to gather such data. The proposed rule provides for the Commissioner to request the specific types of information enumerated in Minn. Stat. § 144.052, subd. 1. The rule further provides that the Commissioner may request additional information which he deems necessary to make decisions pertaining to health manpower, but to be provided by licensee or registrant on a voluntary basis, and information

sought by parties other than the Commissioner for the purpose of making health manpower determinations.

10. The following subdivisions of Rule 7 MCAR § 1.235 received no public comments: A.1.a., A.1.b.; A.2.b. - A.2.n.; B.1.a., B.1.c., B.1.d., B.1.f., B.1.g., B.1.h., B.1.i.; B.2.c. The Hearing Examiner adopts the Agency's Statement of Need and Reasonableness as facts, and finds these subdivisions needed and reasonable.

11. Public comments were received at the prehearing, hearing and post-hearing stages. The public comments expressed a common concern that certain proposed provisions exceeded the legislative mandate, protection of the individual's right to privacy, the individual's right to notice of the public nature of the information gathered, and the need to avoid burdensome surveying of health professionals. In reviewing the public comments, in this regard, it is important to recall the scope of review of proposed rules. The proposed rules must (1) be based on statutory authority, and (2) must not be unreasonable or arbitrary. Administrative rules may not go beyond the scope of the authorization granted by the Legislature. They must be reasonable and used for purposes of carrying out the legislative enactments. If the rules are rationally related to the end sought to be achieved by the statute they must be upheld as within the Agency's rulemaking authority. If reasonable minds differ as to the reasonableness of the rule, the Agency's decision must be upheld. With this in mind, the following public comments were received.

12. Proposed Rule 7 MCAR § 1.235 A.2.a. is the definition of "Boards" as used in the proposed rules. The provision defines "Boards" by referring to the definition in Minn. Stat. § 214.01, subd. 2. A representative from the Board of Optometry commented that the definition in Minn. Stat. § 214.01, subd. 2 refers to future boards. The proposed rule refers to Boards with respect to licensing and registration of health-related manpower. The definition in 7 MCAR § 1.235 A.2.a. is taken verbatim from the enabling statute, Minn. Stat. § 144.051, subd. 2.

The Hearing Examiner finds the proposed definition of "Boards" necessary and reasonable to clarify the proposed rule. The duplication of the language is crucial to the ability of a person affected by the proposed rule to comprehend its meaning and effect.

13. 7 MCAR § 1.235 B.1. pertains to the types of information which individuals licensed or registered by the Commissioner or the Boards shall submit to the Commissioner. There was no public comment relating to the statutorily mandated submission of information specifically listed in Minn. Stat. § 144.52, subd. 1. However, there was public comment regarding the Agency's determination of the type of information which is "needed in order to make decisions pertaining to health manpower". Minn. Stat. § 144.052, subd. 1.

a. The Minnesota Medical Association objects to the collection of data from licensed or registered persons living and practicing out-of-state. The Agency takes the position that those who are licensed in Minnesota represent potential members of the health manpower work force in the State and as such, are important to making decisions relating to health manpower. The Agency does, however, recognize that while there is a need to collect data

from licensees or registrants residing out-of-state, that data could be collected less frequently, or that not all of the information covered by 7 MCAR § 1.235 B. need be asked. Consequently, the Agency proposes the following amendment be incorporated as section 1.235 B.3.

> The Commissioner may at his option reduce the types of information for which responses are requested from licensees and registrants residing and practicing out-of-state.

Minn. Stat. §§ 144.051 and 144.052 state that individuals licensed or registered by the Commissioner or the Boards shall provide information to the Commissioner which he/she may require pursuant to section 2; and that the health-related boards shall include the request for information which the Commissioner may require pursuant to the statute. The statutes do not mandate how often the Commissioner must collect data, nor do they say that all individuals must be surveyed at the same frequency. The statutes delegate a certain amount of discretion to the Commissioner with respect to the frequency of collection. The Legislature states that the Commissioner shall establish a system for collection, analysis and reporting of data on persons licensed or registered by the Commissioner or Boards and that those persons shall provide the requested information. Complete disregard of those individuals licensed or registered by the Commissioner or the health-related boards who reside outside the State of Minnesota would be in derogation of legislative mandate.

The Hearing Examiner finds the proposed addition of section 1.235 B.3. by the Agency is not unreasonable. The proposed provision of the rule, as amended, benefits the out-of-state registrants or licensees by reducing the burden of submitting information and should be voluntary on the part of the out of state person to reduce the type of information submitted. The proposed addition, however, appears to allow the Commissioner complete discretion in deciding when and what information is required. The proposed rule should state what conditions dictate this option by the Commissioner by listing them in this provision to cure any defects in its drafting. This addition appears not to constitute a substantial change.

not complied with

b. The Board of Optometry suggested that the complete form be submitted under proposed provision B. of the rule to the licensing or registering board rather than the Commissioner. Minn. Stat. § 144.051, subd. 2 provides, in pertinent part:

> . . .[I]ndividuals licensed or registered by the commissioner or the health-related licensing boards shall provide information to the commissioner of health that he may, pursuant to section 2, require.

The Hearing Examiner finds that provision B. of the rule, requiring the submission of information to the Commissioner, is in compliance with the statute and is, therefore, necessary and reasonable.

c. The Board of Optometry and Minnesota Chiropractic Association questioned the mandatory submission of information. Both groups contended that the data should be gathered on a voluntary basis. The Board of Optometry suggests that because the enabling statute provides no disciplinary sanctions against a person who does not comply with the request for information, the submission of data should be voluntary.

Minn. Stat. § 144.051, subd. 2, provides for mandatory submission of information. The proposed provision complies with the statute. This is not the proper forum to challenge the reasonableness of the statute itself. The Hearing Examiner finds the mandatory submission of information to the Commissioner pursuant to Minn. Stat. §§ 144.051 and 144.052 is needed and reasonable.

14. 7 MCAR § 1.235 B.1.b. includes race or ethnicity in addition to the types of information listed in Minn. Stat. § 144.052, subd. 1. Several groups objected to the inclusion of race or ethnicity as a mandatory question on the data survey. The Agency offers in its Statement of Need and Reasonableness that such information ". . . is needed to obtain data on distribution of racial or ethnical groups in the health-related occupations." Such data would be used in recruitment of minority students for health-related occupations and as a baseline data for affirmative action employment efforts.

Minn. Stat. § 144.052, subd. 1, does not mandate the inclusion of race or ethnicity in the types of information to be collected. By the statute's conspicuous exclusion of race from that list, it appears that the legislature purposefully omitted race or ethnicity from the list of intended mandatory data to be collected. Race or ethnicity is not sufficiently similar to the enumerated types of data listed in the statute for the purpose set forth in the statute (Minn. Stat. §§ 144.05 and 144.051). The purpose of this chapter does not deal with affirmative action.

The Hearing Examiner finds that while data on race or ethnicity may be needed to make certain decisions on Equal Employment Opportunities relating to health-related manpower, the mandatory inclusion of race or ethnicity exceeds statutory authority and purpose. Wallace v. Commissioner, 289 Minn. 220, 184 N.W.2d 588, 594 (1971). This proposed provision should be deleted. not complied with

15. Section 1.235 B.1.e. states the licensees and registrants shall submit to the Commissioner information pertaining to professional activity status in the occupation. Such data include number of weeks worked in the occupation, whether currently working in the occupation, average number of hours per week currently working in the occupation, and status as member of the potential labor force for the occupation. The objections to this section include (1) this information goes beyond the scope of the legislative mandate, (2) it is burdensome to provide, and (3) this information may be misleading. Minn. Stat. § 144.052, subd. 1, mandates the collection of information relating to professional activity status. Proposed provision B.1.e. of the rule spells out the components of professional activity status. The Agency requests estimates concerning the number of hours worked per week and the number of weeks per year worked in the occupation. These approximations will not be unduly burdensome on licensees and registrants.

The Hearing Examiner finds this section 1.235 B.1.e. necessary and reasonable.

16. Section 1.235 B.1.j. mandates submission of data on current active licensure or registration held in other states. Public comment included objections to this provision as ultra vires. The statute does not mandate submission of such information. However, the Agency states that such data is needed ". . . to provide information on the potential mobility of categories

of health manpower." This information corresponds to professional activity status.

The Hearing Examiner finds this proposed provision is within the scope of the statute and is necessary and reasonable. Adequate justification for this proposed provision is established in the Agency's Statement of Need and Reasonableness.

17. 7 MCAR § 1.235 B.2. provides that the approximate number of patients treated and range of employment of auxiliary personnel in practice setting shall be collected only from licensees or registrants in occupations where such information is applicable. The Minnesota Medical Association strongly objected to this section. The Association submits that estimating productivity exceeds the legislative intent of collecting data on the individual's professional activity status. It further suggests that such information is, by nature, complex and therefore may be misleading. The Association also offers that reporting on the range of employment of auxiliary personnel would be too burdensome and such information could be redundant or misleading in circumstances where several auxiliary personnel are accountable to various persons. The Agency justifies this section saying that: (1) estimation of productivity is necessary to ". . . anticipate additional current or future health manpower needs for various populations." and (2) to identify the extent of the use of auxiliaries.

Data relating to productivity of various categories of health manpower and to auxiliary personnel rationally relates to the stated intent of the Legislature to gather accurate information pertaining to numbers, distribution and characteristics of health-related manpower for planning purposes.

The Hearing Examiner finds this proposed provision reasonable and needed. (See the Agency's Statement of Need and Reasonableness).

18. Section C of proposed rule 7 MCAR § 1.235 addresses the types of forms for collection of information.

a. There were several public comments regarding safeguards which should be added to dispel any confusion which might arise from the form. The two major suggestions requested that the forms also contain a statement as to the public status of the data and that this form is not related to licensure or registration. Consequently, by post-hearing comment, the Agency proposes to amend 7 MCAR § 1.235 C.1. to read as follows:

> Information shall be collected on forms designed by the Commissioner which shall contain ~~a statement~~ statements of the statutory authority for collecting the information and of the data classification as classified pursuant to the Minnesota Government Data Practices Act. Whenever a survey form is sent to licensees or registrants in the same envelope as their license or registration renewal application, a statement will be added to the form to the effect that the survey is independent of licensure or registration renewal and that responses to the survey will have no bearing on license or registration renewal. The exact form and wording of the questions may vary depending upon the specific occupation surveyed.
>
> (Changes or additions to proposed rule indicated by underline and deletions by ~~strikeout~~.)

b. The Minnesota Chiropractic Association comments that the section of C.1. which states that ". . . the form and wording of the questions may

vary. . ." is ambiguous and that the form and wording should be made mandatory, thus taking away the discretion of the Commissioner. Minn. Stat. § 144.052, subd. 1, states that the Commissioner shall promulgate rules regarding the types of information collected and type of forms used for collection. This does not require the Commissioner to include the exact form and wording of the questions in the rules. The discretion to vary the exact form or wording of the questions depending on the specific occupation surveyed is both reasonable and necessary.

The Hearing Examiner finds this proposed rule as amended necessary and reasonable. The modifications appear not to constitute a substantial change.

19. Section 1.235 C.2. permits the Commissioner, within his discretion and when resources are available, to include questions in addition to those specified in sections B.1. and B.2. which (1) the Commissioner seeks for purposes of making health manpower decisions but which may be provided by the licensee or registrant on a voluntary basis, and (2) parties other than the Commissioner seek for purposes of making decisions pertaining to health manpower. Section C.2.b.(1) sets out guidelines within which the Commissioner's discretion may be exercised. Section C.2.b.(2) presents safeguards for the licensee and registrant requiring that:

> The form shall clearly identify the party requesting the additional information, the specific questions asked by the party, whether or not it is mandatory for the licensee or registrant to supply the information, and if mandatory, the citation to the mandating legal authority.

These guidelines minimize the unfettered discretion of the Commissioner.

Several public groups commented that this provision goes beyond the legislative mandate and provides no safeguards for individual privacy. Concern was also expressed that the discretion given to the Commissioner to include additional questions on the form may produce an extensive and burdensome request for information.

This provision reflects the legislative directives of Minn. Stat. §§ 144.05(f), 144.051, and 144.052. Minn. Stat. § 144.05(f) provides that the Commissioner shall coordinate and integrate programs and services pertaining to public health. Minn. Stat. § 144.052, subd. 2, expresses the concern for minimizing the burden of supplying information deemed necessary to decision-making process relating to health-related manpower. The discretion granted the Commissioner in section 1.235 C.2. is an attempt to alleviate the burden on health-care manpower of filling out many different forms when questions can be consolidated in one form, while protecting the individual's privacy by clearly identifying the rights and responsibilities of the licensee and registrant with respect to each individual additional question.

The Hearing Examiner finds this proposed provision of the rule necessary and reasonable.

20. Additional comments and suggestions on the rules as a whole include: (1) that the Commissioner should consult with the licensing and registration boards regarding the exact form and wording of questions prior to publication and dissemination; and (2) that the rules include a provision stating the frequency of collection and tabulation of data. While it may be desirable for the Commissioner to consult with the various licensing and registration boards

in compiling the exact form and wording to ensure the questions are specific and relevant to each occupational group, such consultation is not required by the Legislature, nor is it apparent that this was the Legislature's intent. Therefore, the Hearing Examiner finds that although this suggested amendment may be considered by the Agency, these proposed provisions of the Agency are not unreasonable. Furthermore, such decisions to promulgate more reasonable provisions are internal administrative and managerial discretion.

The Legislature leaves the frequency of data collection and tabulation within the discretion of the Commissioner. Because of the range of health-related occupations and in-state and out-of-state licensees and registrants who will be surveyed, the Commissioner may not want to mandate the frequency of collection and tabulation of data in the promulgated rules. Since, Minn. Stat. §§ 144.051 and 144.052 do not mandate it, the omission of stated frequency of collection and tabulation periods is not unreasonable nor is its inclusion in the rules necessary.

21. All of the Associations speaking at the hearing expressed concern about the classification of collected data being classified as public. The Associations suggested that the data be classified as private or confidential. The Agency stated it would seek a non-public classification of certain data under the temporary provision of the Data Practices Act from the Commissioner of Administration after consulting with various licensing boards. Permanent classification of the data must come from the Legislature.

22. All references in the definition section and the repetition of statutory language in the proposed rule are crucial to the ability of a person affected by the proposed rule to comprehend its meaning and effect.

23. Any Findings herein which may be termed as Conclusions are hereby adopted as such.

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

CONCLUSIONS

1. The Minnesota Department of Health gave proper notice of the promulgation of the proposed rule provisions.

2. The Agency has statutory authority, as cited, to take the action proposed, to wit, the promulgation of the proposed rules.

3. The Agency has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. The Agency has demonstrated the need for and reasonableness of the proposed rules and the proposed amendments and deletions by an affirmative presentation of facts in the record.

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

RECOMMENDATION

It is recommended that the proposed rules be adopted by the Minnesota Department of Health as recommended herein by the Hearing Examiner.

Dated: December 19, 1979.

Harry Seymour Crump

HARRY SEYMOUR CRUMP
Hearing Examiner

Minnesota Department of Health

Division of Manpower

Proposed Rules Relating to the Collection of Information Pertaining to Health Manpower

7 MCAR § 1.235

A. GENERAL

1. Authority and Purpose

7 MCAR 1.235 has been developed as required by Minn. Stat. §§ 15.0412, subd. 3, 144.05, 144.051 and 144.052. The rule pertains to:

a. The types of information relating to numbers, distribution, and characteristics of health-related manpower which the Commissioner of Health deems necessary to collect as specified in this rule from individuals licensed or registered by the Commissioner or the Boards for the purpose of establishing an adequate information resource at the state level for making informed and reasonable decisions pertaining to health manpower; and

b. The forms which shall be used to collect the information.

2. Definitions

For the purposes of this rule, the words, terms, and phrases listed below shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

a. "Boards" means the health-related licensing Boards as defined in Minn. Stat. § 214.01, subd. 2.

b. "Commissioner" means the Commissioner of Health.

c. "Form of employment" means whether self-employed, working as employee, or other.

d. "Individual" means a natural person.

e. "Licensed" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3(d).

f. "Licensure or registration status" means the status of the individual license or registration as active or inactive under the regulatory authority of the Commissioner or the Boards. An active status means the individual is duly authorized to engage in the practice of activities for which he or she is licensed or registered. An inactive licensure or registration status means that the license or registration is not in effect.

g. "Locality" means city, state or foreign country, county and zip code.

h. "Occupation" means the health-related occupation for which an individual is licensed or registered by the Commissioner or a Board.

i. "Occupational specialty" means the area emphasized, such as clinical, teaching or specialty practice, in the activities the licensee or registrant performs in the health-related occupation for which he or she is licensed or registered.

j. "Permanent license or registration number" means the number assigned to each licensee or registrant by the Commissioner or a Board upon initial licensure or registration and retained by the licensee or registrant over the period of his/her licensure or registration. The permanent number may differ from a number the individual may receive upon periodic renewal of his/her license or registration.

k. "Professional activity status" means the licensee's or registrant's participation or potential participation in the practice of activities in the occupation for which he/she is licensed or registered. The individual's activity status may be identified as either active or inactive. If active, the extent to which the licensee or registrant is active is indicated by factors such as the duration over

time of work in the occupation, whether currently working in the occupation, and by the average number of hours worked per week. If inactive, the potential for participation in the occupational labor force is indicated by the licensee's or registrant's status as retired, working in another occupation, disabled, or other employment statuses such as unemployed but seeking employment in the health-related occupation for which the individual is licensed or registered.

l. "Professional title" means the title which designates the position held by a licensee or registrant in his/her work setting in the health-related occupation for which he/she is licensed or registered.

m. "Registered" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3 (c).

n. "Type of setting" means the physical environment which may be institutional, such as a hospital, or non-institutional, such as the patients' homes, in which the individual engages in the occupation for which he or she is licensed or registered.

B. TYPES OF INFORMATION

1. Individuals who are licensed or registered by the Commissioner or the Boards shall submit to the Commissioner, on forms provided by him/her, the following types of information.*

a. Permanent license or registration number.

b. Race or ethnicity.

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*In addition to the types of information listed in this rule, name, current (mailing) address, licensure or registration status (at the time of data collection), birth date, sex, professional activity status, and educational background shall be included in the required information, as specified in Minn. Stat. § 144.052, subd. 1.

c. Locality of principal residence.

d. Educational background which shall include:

(1) Name and locality of school from which graduated with educational degree required for licensure or registration, and year degree was received.

(2) Name and locality of school from which post-secondary educational preparation was received if a specific type of educational degree is not required for licensure or registration, and year preparation completed.

(3) Degrees received from educational institutions.

(4) Professional training beyond first degree received.

e. Professional activity status in the occupation which shall include:

(1) Number of weeks worked in the occupation during the 12 months preceding data collection survey period.

(2) Whether currently working in the occupation.

(3) Average number of hours per week currently working in the occupation for which licensed or registered, apportioned by categories of activities in the occupation.

(4) If not currently working in the occupation, status as a member of the potential labor force for the occupation.

f. Locality where currently working in the occupation.

g. Type of setting where currently working in the occupation.

h. Category of current form of employment in the occupation.

i. Occupational specialty.

j. Current active licensure or registration held in other states.

2. The following types of information shall be collected only from the licensees or registrants in occupations for which the information is applicable given the practice characteristics of the occupation.

a. The approximate number of patients treated in the course of the licensee's or registrant's currently active practice during a specified period.

b. The range of employment of auxiliary personnel in the practice setting.

c. Professional title of licensee or registrant.

C. TYPES OF FORMS FOR COLLECTION OF INFORMATION

1. Information shall be collected on forms designed by the Commissioner which shall contain a statement of the statutory authority for collecting the information. The exact form and wording of the questions may vary depending upon the specific occupation surveyed:

a. So that the questions will be specific and relevant to the characteristics of each occupation; and

b. May change in form and wording over time so that a question can be classified or its emphasis modified.

2. When resources available to the Commissioner permit, the form may include questions in addition to the types of information specified in 7 MCAR § 1.235 B. 1. and B. 2. Such questions may solicit:

a. Information sought by the Commissioner for the purpose of making decisions pertaining to health manpower, but to be provided by the licensee or registrant on a voluntary basis;

b. Information sought by parties other than the Commissioner for purposes of making decisions pertaining to health manpower. In these instances:

(1) The proposed additional questions may be included only if the Commissioner determines that:

(a) The additional questions are relevant to making decisions pertaining to health manpower;

(b) Resources permit the inclusion of additional questions on the form;

(c) The information collection required by 7 MCAR § 1.235 B. 1. and B. 2. would not be delayed or otherwise inconvenienced by the inclusion of additional questions on the form.

(2) The form shall clearly identify the party requesting the additional information, the specific questions asked by the party, whether or not it is mandatory for the licensee or registrant to supply the information, and if mandatory, the citation to the mandating legal authority.

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Jerry Anderson
Special Assistant
Attorney General

DATE: May 8, 1980

FROM : Richard A. Wexler
Assistant Attorney General

PHONE: 341-7272

SUBJECT: Department of Health Rules Relating to the Collection of Information Pertaining to Health Manpower

By memorandum of April 24, 1980, I forwarded to you the above-subject rules for your review pursuant to Minn. Stat. § 15.0411, subd. 4. It occurred to me, as a result of a comment you made at a recent Administrative Law Committee meeting, that I did not indicate in the material that I sent over to you the format used for typing the rules as adopted as opposed to the rules as proposed.

The rules as proposed constituted an entirely new set of rules. Consequently, in the rules as adopted, any material which is underlined is material which was added to the rules after the public hearing (with such additions being approved by the Chief Hearing Examiner as not constituting a substantial change). The words which are struck out are words which are being deleted from the rules as originally proposed.

I hope this information will aid you in determining exactly what changes were made in the rules as proposed from those which were actually adopted.

RAW:sil

RECEIVED
MAY 12 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

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minnesota department of health
717 s.e. delaware st. minneapolis 55440
(612) 296-5221

RECEIVED
NOV 20 1979
OFFICE OF HEARING
EXAMINERS

November 20, 1979

Harry S. Crump
Hearing Examiner
Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

Re: In the Matter of a Proposed Rule Relating to the Collection of Information from Health-Related Manpower
HE File No. HLTH-80-012-HC

Dear Mr Crump:

At the public hearing on the above subject rules which was held on Monday, November 5, 1979, several persons commented upon the proposed rules. While the Department of Health believes that the information contained in its Statement of Need and Reasonableness as well as the comments at the hearing of the Department's witness, Mary Volk, sufficiently address the statements made at the hearing, the following is submitted as a summary of the Department's position with respect to each item or issue raised.

1. Data privacy.

a. Classification of collected data. This item was raised by the Minnesota Medical Association, Board of Optometry, Board of Nursing, Minnesota Dental Association, and Minnesota Chiropractic Association. 1/

The basic concern here is that the data when collected will be classified as public while those commenting on this issue believe that the data should be protected with at least a private classification. As most of the speakers recognized, however, the Department has no authority to classify data as either private or confidential in this or any other rule. Such a classification can be granted by the Commissioner of Administration but only on a temporary basis. The ultimate responsibility for classification of data rests with the Legislature. Minn. Laws 1979, ch. 328, § 7, subd. 1. Thus, were the Department to seek a temporary classification from the Commissioner of Administration under Minn. Stat. § 15.1642 as

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1/ If the position of any person or group is not accurately stated or if a position is attributed to someone or group which they did not take, the mistake is inadvertent. It is due to the fact that statements as to anyone's position is based upon notes taken at the hearing and not upon a verbatim transcript.

amended by Minn. Laws 1979, ch. 328, §§ 9 to 13, that classification would lapse unless extended or enacted into law by the Legislature. Minn. Stat. § 15.1642, subd. 5 as amended by Minn. Laws 1979, ch. 328, § 13.

Consequently, any comments concerning the classification of data with respect to the proposed rule are irrelevant. They are addressed to the wrong governmental body, i.e., the comments should be directed to the Legislature rather than the Department of Health. Minn. Stat. §§ 144.051 and 144.052, the enabling legislation for the rule, can be amended by a bill even if the Department did not request it.

The Department, however, is sensitive to the concerns expressed regarding the privacy classification. For that reason the Department, some time ago, requested the Commissioner of Administration to classify the information submitted on the survey forms as private. After review, the request was returned without action. It was suggested by Administration, however, that the Department resubmit the application after it identified specific types of information which should be protected as opposed to requesting a blanket protection for all of the information as the Department had done the first time. The Department has decided to resubmit a request to Administration. Before doing so, it will contact the various licensing boards and professional associations to obtain their suggestions as to which items should be protected and why.

b. Notation of classification on collection forms. This item was raised by the Minnesota Medical Association and Board of Nursing.

It was requested that the form on which the data will be collected clearly state that the data will be classified as public. While Minn. Stat. § 15.165, subd. 2 only requires notation of data classification for private or confidential data, the Department will place such a notation on the forms. By doing so the Department feels that this is one way it can respond to the concerns raised by persons with respect to the data classification. Accordingly, the Department will amend 7 MCAR § 1.235C.1. to read as follows:

> 1. Information shall be collected on forms designed by the Commissioner which shall contain ~~a statement~~ statements of the statutory authority for collecting the information and of the data classification as classified pursuant to the Minnesota Government Data Practices Act. The exact form and wording of the questions may vary depending upon the specific occupation surveyed:

(Changes or additions indicated by underline and deletions by ~~strikeout~~.)

By wording the amendment as indicated, the statement on the form can be changed without amending the rule should the Commissioner of Administration or the Legislature approve a change in the classification.

2. Statutory authority.

a. Types of information that may be collected under Minn. Stat. §§ 144.051 and 144.052. The Minnesota Medical Association argued that the only data that the Department can specify for collection in the rule is that specifically identified in Minn. Stat. § 144.052, subd. 1. That subdivision reads as follows:

> Rules. The commissioner, after consultation with the health-related licensing boards as defined in section 214.01, subdivision 2, shall promulgate rules in accordance with chapter 15 regarding the types of information collected and the forms used for collection. The types of information collected shall include licensure or registration status, name, address, birth date, sex, professional activity status, and educational background or similar information needed in order to make decisions pertaining to health manpower.

Under this statute, the Commissioner is to promulgate rules regarding the types of information needed "in order that there exist an adequate information resource at the state level for purposes of making decisions pertaining to health manpower." Minn. Stat. § 144.051, subd. 1. The Legislature then listed seven specific types of information which it considered necessary to be included in the information system. However, if that is the only information that the Legislature thought necessary for collection, it would not have given the Department rule making authority with respect to the types of information. Listing those seven items in statute would have been sufficient. Furthermore, the very wording of the statute clearly states that aditional types of information shall be listed in the Department's rule. The list of seven items contained in the statute is introduced by the words "shall include." The word "include" is not a limiting word but one which means that more may be added. Finally, Minn. Stat. § 144.052, subd. 1, after listing seven items to be included in the information system, states that information similar to those seven items shall be included in the types of information collected which is "needed in order to make decisions pertaining to health manpower." Thus, Minn. Stat. §§ 144.051 and 144.052 clearly authorize the Department to provide in rule for types of information beyond the seven categories specifically stated in the statute.

b. Agency to which information is submitted. The Board of Optometry suggested that the form, once completed by a licensee or registrant, should be submitted to the Board by whom the individual is licensed or registered since the person is under the jurisdiction of the Board. The proposed rule, to the contrary, requires that the forms be submitted to the Commissioner of Health. The reason for this is statutory. Minn. Stat. § 144.051, subd. 2 states in pertinent part that "[i]ndividuals licensed or registered by the commissioner or the health-related licensing boards shall provide information to the commissioner of health that he may, pursuant to section 144.052, require." (Emphasis added.) The Commissioner cannot provide otherwise by rule.

c. Mandatory or voluntary submission of information. The Board of Optometry questioned whether or not licensees or registrants should be required to submit the information requested on the forms. The Board suggested that since the statute does not provide for any disciplinary action against a person who fails to submit the information that submission should be on a voluntary rather than mandatory basis.

The Minnesota Chiropractic Association also objected to the mandatory requirement. The Association contended that a response rate of 76%, as was allegedly obtained on the Department's 1978 voluntary survey, was sufficient. (The Chiropractic Association's objection to this program is somewhat puzzling since it admitted encouraging its members to participate in past surveys and, in fact, saw the value of the data collection by requesting the Department to add several questions to the survey. Public Exhibit No. 1.)

The answer, again, is contained in the controlling statutes. Minn. Stat. § 144.051, subd. 2. provides for mandatory submission of information. The Department could not therefore provide otherwise by rule. Concerns regarding the need for the law should be addressed to the Legislature and not to the Department. (In addition, Mr. Garrie Losse, of the U.S. Department of Health, Education and Welfare who spoke in favor of this rule, explained the need for a high response rate. His explanation provides ample justification for the legislatively mandated requirement that all persons licensed or registered respond to the Department's request for information.)

d. Collection of data from licensees and registrants living and practicing outside Minnesota. The Minnesota Medical Association asked that the Department limit its data collection to only those licensees and registrants who are living in Minnesota.

The suggestion that health professionals who reside outside the geographical boundaries of Minnesota should be exempted from data collection infers that such individuals have no impact on health manpower planning in Minnesota. The assumption is false.

First, simply because a health professional resides out-of-state, does not mean that the person never practices within the state. Minnesota is bordered by four other states. Many health professionals who reside near the state line in those states practice in Minnesota. Even the licensees or registrants who live too far from Minnesota to practice in the state nevertheless are potential members of the health manpower work force in Minnesota. 2/ The mere fact that they are living out of state does not mean that they never plan on returning. 3/ If that were the case, most would not want to continue paying the licensure renewal

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2/ Responses to questions from those residing and practicing out of the state can shed light on why Minnesota licensed or registered personnel have chosen to live out-of-state. This type of information can also be an aid in health planning. In addition, since this information is shared on a national level, collection from out-of-state individuals will help avoid under or double counting in national tabulations.

3/ Individuals move out-of-state for many reasons. For example, some are serving in the armed forces for a temporary period of time and plan on returning to Minnesota. Some leave because of the employment situation of a spouse. Retirement is another reason. Yet of these three examples, only the last suggests that the person will never return to Minnesota to practice.

fee and meet the continuing education requirements which are required of many health professionals.

Based on the foregoing, it is not only reasonable but necessary, in order to have a valid data base on which the health manpower planning decisions will be based, to include the out-of-state licensees and registrants in the data collection system. In fact, to totally exempt such persons from data collection is probably contrary to legislative intent which did not provide for any exemption from its requirement that licensees and registrants submit the information requested by the Commissioner. Minn. Stat. § 144.051, subd. 2.

Notwithstanding the need to collect data from licensees and registrants residing out-of-state, the Department recognizes that perhaps the data could be collected less frequently than from those residing in-state or that not all of the information covered by 7 MCAR § 1.235B. need be asked. Thus, the Commissioner proposes to add the following to the proposed rules as section 1.235B.3.

3. The Commissioner may at his option reduce the types of information for which responses are requested from licensees and registrants residing and practicing out-of-state.

This provision will allow the Commissioner to study the matter and decide based upon specific facts in a given case whether individuals residing and practicing out-of-state may be totally or partially excused from responding to a particular survey.

e. Adoption of the survey form. The Minnesota Chiropractic Association maintained that since licensees and registrants are required to respond to the Department's request for information that the Department should promulgate the form as a rule. As proposed, 7 MCAR § 1.235C.1. provides that the "exact form and wording of the questions may vary depending upon the specific occupation surveyed."

Minn. Stat. § 144.052, subd. 1 directs the Department to promulgate rules regarding the "types" of forms used for collection. The statute does not require that the form itself be promulgated. This is reasonable, given the variety of occupations to be surveyed. Their characteristics will vary, thereby requiring a different form for each one. The Legislature recognized this and therefore only directed the Department to put into rule its policies as to how the form would be developed rather than the form itself.

f. Definition of the term "Boards" in 7 MCAR § 1.235A.2.a. The Board of Optometry asked whether the definition of "Boards" was proper. It is since it is identical to that contained in Minn. Stat. § 144.051, subd. 2.

3. Specific types of requested information.

The Minnesota Medical Association questioned the reasonableness of requesting information regarding the average number of hours worked per week (7 MCAR § 1.235B.1.e.(3)), approximate size of practice (7 MCAR § 1.235B.2.a.), and use of auxiliary personnel (7 MCAR § 1.235B.2.b.). 4/ The Board of Optometry joined the Medical Association in objecting to the queries regarding the size of practice. The Board also indicated that it has voluntarily gone along with the request for information in the past as it has seen the need for it from a health manpower planning perspective. Its objection was based primarily upon the classification of the data as public rather than private due to the possibility that the availability of such information may be abused at some time in the future. Although the Department has requested the information in the past on a voluntary basis, the Board did not point to any instances of abuse with respect to the information already on hand. The Medical Association also had a similar concern but likewise did not present any evidence of abuse.

The Department has already presented its justification for the types of information noted above in the Statement of Need and Reasonableness. 5/ Although a few additional comments will be made below in support of these items, it is important to review that standard that must be applied in determining whether or not the rule proposed is reasonable. 6/

4/ The Minnesota Medical Association also challenged the request for information regarding marital status. However, marital status is not included within 7 MCAR § 1.235B. as an item that will be asked on a mandatory basis of licensees and registrants. Accordingly, no response will be made herein to the objection relating to marital status since the objection is not relevant to the proposed rule.

5/ For the justification, see with respect to average number of hours worked per week page 7 of the Statement of Need and Reasonableness; for the approximate size of one's practice, page 9; and for the use of auxiliary personnel, page 9.

6/ The following discussion is based almost exclusively upon the Report of Hearing Examiner (William Seltzer) in the rulemaking proceeding of "In the Matter of the Proposed Adoption of Rules Governing the Identification, Labelling, Classification, Storage, Collection, Transportation and Disposal of Hazardous Wastes and of Amendments to Minnesota Regulations SW1, 2, 3, 4, 6 and 7," dated May 25, 1978.

First, a rule to be valid must be reasonable, that is, it must be "rational and based on consideration of the relevant factors," and does not have to be supported or based upon substantial evidence. National Citizens Committee For Broadcasting v. FCC, 555 F.2d 938, ___ (1977). The United States Supreme Court specifically agrees with this standard for review of agency rules. FCC v. National Citizens Committee For Broadcasting, 436 U.S. 775, 802, 803 (1978). Northwestern Bell Telephone Co. v. State, 253 N.W.2d 815 (Minn. 1977). St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission, 251 N.W.2d 350 (Minn. 1977). The reason for this is that rulemaking is a legislative function rather than a quasi-judicial proceeding as are contested cases. Thus, there is a difference between the kind of facts that may be relied on in a rulemaking hearing as opposed to an adjudication. The difference has been explained as follows:

> Two main elements in rulemaking are (1) facts, and (2) ideas about policies. The two are generally interwoven in such a degree that in some parts of the whole problem of what to do, they are inseparable. Even so, a main element in rulemaking is necessarily the policy choice that the administrator must make. Adoption of a rule may require some understanding of facts, but it always requires legislating. Courts must leave administrators free to legislate, within the limits of rationality. And legislating inevitably involves the addition of something to the facts in the rulemaking record.

K. Davis, Administrative Law of the Seventies, (Cumulative Supp. 1977) (emphasis in original).

The Minnesota Supreme Court has taken a position identical to Davis' and has discussed the difference between legislative facts and adjudicatory facts in St. Paul Area Chamber of Commerce v. Minnesota Public Service Comm'n., supra, where the Court said:

> [T]he substantial evidence test of § 15.0425 [is] applicable to commission decisions only when it is acting in a quasi-judicial manner, in a role similar to that of a trial judge sitting without a jury.
>
> . . . [H]owever, rate allocation is not a judicial or quasi-judicial function. Once revenue requirements have been determined it remains to decide how, and from whom, the additional revenue is to be obtained. It is at this point that many countervailing considerations come into play. The commission may then balance factors such as cost of service, ability to pay, tax consequences, and ability to pass on increases in order to achieve a fair and reasonable allocation of the increase among consumer classes. . . . It is clear that when the commission acts in this area it is operating in a legislative capacity, as the above cases have stated. The careful balancing of public policies and private needs is not a matter for the courts, unless statutory authority has been exceeded or discretion abused. . . . In ascertaining whether or not the statute has been contravened, the district court must give wide latitude to the commission in allowing it to consider many factors which might not ordinarily be considered by a court, as we have explained

above. This is so because, while the court is qualified to review agency findings when an agency acts in a quasi-judicial manner in factual matters, it is not so qualified to review legislative judgments when social policies must be weighed in the balance.

Id. at ____, 251 N.W.2d at 356-357. Northwestern Bell Telephone Co. v. State, supra. See also, Northwestern Bell Telephone Co. v. State, 299 Minn. 1, 216 N.W.2d 841 (1974) and Reserve Mining Co. v. Herbst, 256 N.W.2d 808 (Minn. 1977). 7/

It is against the foregoing discussion that the rules, and the specific types of information challenged at the hearing, must be judged. The only question that can be asked is whether the types of information are reasonable, that is, are they rationally related to their purpose as explained in Minn. Stat. § 144.05. As the Statement of Need and Reasonableness amply demonstrates, the rules meet the test of reasonableness. It is noteworthy, too, that none of the witnesses who questioned the types of information suggested that the requested information would not be helpful in making decisions regarding health manpower planning. In fact, the Board of Optometry and the Minnesota Chiropractic Association admitted that the information was needed and useful.

Those who objected to the inclusion of certain types of information did so on the grounds that providing the information would be burdensome or that once collected its use could be abused since it would be classified as public information. The latter concern has been addressed above. With respect to the claim that providing the data would be a burden, the witnesses never explained why they thought that to be the case. The objection must be read in light of the rule provisions which do not ask for the exact number of hours a person is currently working or for the exact size of one's practice. The key words are "average" number of hours and "approximate" number of patients treated. 7 MCAR § 1.235B.1.e.(3) and § 1.235B.2.a. respectively. Thus, the responding party is merely asked to give an estimate concerning the very things he/she is doing and within his/her own knowledge. It is inconceivable to think that the applicable licensees or registrants could not easily estimate how much time they are devoting to their practice and how many patients they are seeing.

7/ Although the procedures for rulemaking on the federal level differ from those of Minnesota, the federal courts recognize, in agreement with the Minnesota Supreme Court, that rulemaking is a legislative function involving policy decisions more so than decisions that can be based upon facts demonstrated by substantial evidence. Thus, the administrative agency has wide leeway in rulemaking within the bounds of reasonableness. See, e.g., Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973), and Professor Davis' discussion of the case in K. Davis, Administrative Law of the Seventies, 206 (Cumulative Supp. 1977); National Citizens Committee For Broadcasting v. FCC, 555 F.2d 938 (1977); Aff'd, 436 U.S. 775, 802, 803 (1978); Ethyl Corp. v. EPA, 541 F.2d 1, 8 E.R.C. 1785 (D.C. Cir. 1976); Amoco Oil Co. v. EPA, 501 F.2d 722, 6 E.R.C. 1481 (D.C. Cir. 1974); Industrial Union Department, AFL-CIO v. Hodgson, 499 F.2d 467 (D.C. Cir. 1974).

Finally, with respect to the range of employment of auxiliary personnel, the inquiry would be answered, of course, only by those who are using auxiliary personnel. They would know, without having to check any records, what the auxiliary they hired was assigned to do and for how many hours a week. Such questions could not possibly be overburdensome to which to respond.

4. Voluntary versus mandatory request for information.

Proposed 7 MCAR § 1.235C.2.a. and b. specify that the Commissioner may ask on a voluntary basis for items not included within section 1.235B. and may also include questions submitted by other parties if certain conditions are met. The Minnesota Medical, Dental, and Chiropractic Associations objected in one or more of the following ways, to wit: the provisions allow for the Department of Health to go on a fishing expedition, that it is overburdensome, and that having both mandatory and voluntary questions on one form will be confusing to the respondents. The Department considers the objections to be without merit. 8/

a. No "fishing expeditions." The rule does not authorize fishing expeditions. The only information which the Department could seek on a voluntary basis is that which is related to health manpower planning needs. The Department is very much aware that people do not like being told that they must respond to questions. In being sensitive to that concern, the Department took the approach of placing in 7 MCAR § 1.235B. only the most crucial items on which a maximum response rate was critical. Many other items could reasonably be placed within section 1.235B. However, the Department either will not ask those questions or ask them only on a voluntary basis. In addition, this provision will allow the Commissioner to ask for information on a one time basis or on a trial basis to aid in determining whether or not it should be added to section 1.235B.

An even greater protection against the Department going on a successful fishing expedition is the very practical one—responses will be on a voluntary basis. People simply will not respond if too much is asked for or if the questions are unreasonable. But the Department asserts that it will act in good faith and that the mere suggestion that a regulatory provision could be abused is insufficient to render the provision unreasonable.

b. The rule is not overburdensome. Much of what was stated immediately above could apply with equal force to this objection. In addition, the purpose behind 7 MCAR § 1.235B. was to help reduce the burden of responding to numerous questionnaires. Other agencies or organizations may have authority to collect or may desire health planning information and could send out their own requests for information. To the extent such requests can be reduced, all interests

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8/ See Statement of Need and Reasonableness at 10 to 12.

are better served. Furthermore, licensees and registrants will be informed as to exactly who is requesting the information in the case of information collection on behalf of agencies other than the Department. (The Minnesota Dental Association suggested that all information should be requested in the name of the Commissioner of Health. The Department feels, to the contrary, that the agency or organization which really wants the information should be identified. Thus, if the Minnesota Dental Association had questions placed on the survey, it would be identified as the requesting party.)

c. Voluntary and mandatory items on one form not confusing. The Department will do all it can to assure that its questionnaires will plainly distinguish between those questions to which a response is required and those to which a person may exercise the option of not responding. In addition, it must be recognized that as licensees and registrants the respondents have demonstrated a certain level of maturity and intellectual capacity by completing training in various fields of the health professions. To argue that such people will be easily confused by a form is unrealistic. Licensees and registrants deserve more credit than that.

5. Relationship between surveys and re-licensure or re-registration.

The Board of Nursing suggested that a statement be added to the questionnaire informing the respondents that their responses will have no bearing on the decision to renew their licensees or registrations. It was felt that such a statement was necessary since in many instances the questionnaires will be sent in the same envelope as the applications for re-licensure or re-registration.

The Department is willing to add such a statement. Accordingly, a sentence will be added to 7 MCAR § 1.235C.1. immediately following the amended first sentence (see paragraph 1.b. herein) as follows:

> Whenever a survey form is sent to licensees or registrants in the same envelope as their license or registration renewal application, a statement will be added to the form to the effect that the survey is independent of licensure or registration renewal and that responses to the survey will have no bearing on license or registration renewal.

6. Frequency of data collection.

The Board of Nursing recommended that the rules should address the question of frequency of collection because some questions need not be asked annually.

The charge in Minn. Stat. §§ 144.051 and 144.052 to promulgate rules governing the types of information collected and the types of forms to be used does not include the frequency of data collection. Thus, it is the Department's position that it is not mandated to specify in the rule how frequently the data will be collected. It is also considered that such a provision would unduly interfere with basically internal administrative and managerial decisions. Furthermore, and most crucially, such a provision would reduce the needed flexibility to analyze each occupational group and decide, based upon the most current information, when the surveys

should be sent and what mandatory as well as voluntary questions should be asked. (As a matter of fact, the Department is now shifting from annual to biennial manpower data collection and is considering ways of reducing response time such as asking certain questions only once (e.g., permanent license or registration number) and reprinting the previous survey responses.)

7. Timeliness of survey results.

Both the Board of Optometry and the Minnesota Chiropractic Association complained that they did not get the results of prior surveys in a timely fashion. The complaint has no bearing on these rules, is therefore irrelevant, and no response need be made. The Department will only note that the information as received is tabulated in various forms much of which is available before the 18 months to two years indicated by the Board and Association.

8. Additional submission.

As a final item, enclosed with this letter is a letter of November 1, 1979, to the Commissioner from Douglas A. Fenderson. The letter was submitted in support of the proposed rule and is hereby forwarded to you for your consideration and for inclusion in the hearing record.

Sincerely,

George R. Pettersen M D

GEORGE R. PETTERSEN, M.D.
Commissioner of Health

UNIVERSITY OF MINNESOTA

Continuing Medical Education
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November 1, 1979

George R. Pettersen, M.D.
Commissioner of Health
Minnesota State Department of Health
717 S.E. Delaware Street
Minneapolis, MN 55440

Dear Dr. Pettersen:

This letter responds to the Notice of Hearing on the proposed rule relating to the collection of information from Health-Related Manpower.

This proposed rule is of special interest and concern to me; of interest because I was a federal official in the Bureau of Health Manpower, (then) in the National Institutes of Health when the cooperative manpower planning needs were under study; and of concern, because in an open system such as ours, such manpower data are essential, both to public and private interest, in an informed process of planning for the numbers, kinds and distribution of health workers in our state. I therefore wish to support the proposed rule.

The license to practice a profession is a public grant of exclusive privilege within such a profession. This exclusive privilege is given on the belief that the public well-being is best served in this manner. Such a public grant of privilege, necessarily implies reciprocal public responsibilities of the profession.

Decisions to "regulate" the numbers and kinds of health workers are largely in the public domain. This fact is established by the "Report of the Interim Committee on Medical Education to the Minnesota Senate," April, 1969, the Comprehensive Manpower Act of 1971 (federal support to medical and other health professions) and other such documents. These public decisions resulted in major expansion and "primary care" emphasis at the University of Minnesota Medical School, as well as new medical schools at UMD and Mayo, since the 1969 report.

The public questions to be answered by the proposed collection of information relate to (in medicine at least), the numbers, specialties, and geographic emphasis, required to assure adequate and appropriate health care for all of our citizens. This general goal is also consistant with the private purposes of the licensed professions as well.

The point of contention, in my view, is whether this particular rule is required to provide the information needed to achieve the mutually acceptable goal. This is a technical question, to be decided on its technical merits. I believe the "minimum data set" has been the subject of careful study, and represents an appropriate basis for continuing informed inquiry regarding the manpower requirements for our citizens.

I therefore support the proposed rule.

Sincerely,

Douglas A. Fenderson, Ph.D.
Director

DAF/cjs

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

In the Matter of a Proposed Rule Relating to the Collection of Information from Health-Related Manpower (7 MCAR § 1.235)

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 5, 1979, before Harry Seymour Crump, a Hearing Examiner of the 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 Commissioner of Health (hereinafter "Commissioner") on December 19, 1979; and

WHEREAS, the Commissioner has now determined to adopt the rule pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Commissioner has submitted the rule to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rule is not substantially different from that proposed at the public hearing and that the Commissioner has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Commissioner has the responsibility of submitting the complete hearing record and the rule as adopted by him to the Attorney General and to publish it in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 17th day of April, 1980.

DUANE R. HARVES
Chief Hearing Examiner

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 rule relating to the Collection of Information from Health-Related Manpower, 7 MCAR § 1.235, 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, without exception, been followed.

Dated: ~~March~~ April 23, 1980

RICHARD A. WEXLER
Assistant Attorney General

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of a Proposed
Rule Relating to the Collection
of Information from Health-
Related Manpower

AFFIDAVIT
OF CONSULTATION

MARY K. VOLK, being first duly sworn upon oath, deposes and says as follows:

1. My name is Mary K. Volk. I am employed by the Minnesota Department of Health in the Division of Manpower, Section of Health Manpower Information, and have been assigned as one of my responsibilities the implementation of the health manpower data collection system authorized pursuant to Minn. Laws 1978, ch. 759, including the promulgation of the rule authorized thereunder;

2. Minn. Stat. § 144.052, subd. 1 authorizes the Commissioner of Health to promulgate rules regarding the types of information to be collected from persons licensed or registered by the Commissioner of Health or the ten health-related licensing boards (hereinafter "boards") for the purpose of establishing an adequate information resource at the state level and in making decisions pertaining to health manpower, as well as rules regarding the forms used for collection of the information. Prior to promulgating the rules, however, the Comissioner must first consult with the ten boards. Consultation in fulfillment of this requirement took place on the dates and in the manner indicated as follows:

a. By memorandum dated March 27, 1978, a copy of which is attached as Exhibit A and made a part hereof, I informed each of the boards through their executive secretaries that the bill authorizing these rules had been passed by the Legislature. The purpose of the memorandum was to establish a mutually convenient time with the executive secretaries for scheduling a meeting to discuss an initial draft of rules and to obtain additional ideas regarding the rules. Many executive secretaries indicated a time that they would prefer to meet. In addition, Dale Forseth, the executive secretary for the Board of Dentistry, sent me a memorandum which is attached as Exhibit B and made a part hereof.

b. On April 7, 1978, I sent a memorandum to all of the executive secretaries of the boards and attached thereto a copy of the initial draft of the proposed rule. A copy of the memorandum is attached as Exhibit C and made a part hereof. The executive secretaries were requested to submit their comments to me or meet with me on April 20, 1978, to discuss the rule. The rule review meeting was attended by a majority of the executive secretaries of the health-related licensing boards.

c. By memorandum of July 10, 1978, a copy of which is attached as Exhibit D and made a part hereof, I sent copies of a revised draft of the proposed rule to the executive secretaries of the boards. I requested them, pursuant to Minn. Stat. § 144.052, subd. 1, to present this second revised draft to their respective boards for comment, with such comment, if any, to be submitted to me by September 1, 1978. Oral comments were received from the Board of Dentistry. The Boards of Pharmacy, Psychology, Nursing, and Medical Examiners submitted written statements which are attached as Exhibits E, F, G and H respectively and made a part hereof. As with all comments received, they were reviewed and many of the suggestions incorporated into subsequent drafts of the rules.

d. By memorandum dated May 16, 1979, a copy of which is attached as Exhibit I and made a part hereof, I sent copies of a third revised draft of the proposed rule, together with copies of a draft of the Statement of Need and Reasonableness, to the executive secretaries of the boards, and requested comment on both documents. Comments were received from the Board of Nursing only, a copy of which is attached as Exhibit J.

FURTHER AFFIANT SAYETH NOT.

Mary K. Volk
MARY K. VOLK

Subscribed and sworn to before me
this 3rd day of October, 1979.

Madeline Harris

MADELINE HARRIS
NOTARY PUBLIC - MINNESOTA
CHISAGO COUNTY
My Commission Expires Sept. 27, 1985

Exhibit A

March 27, 1978

TO:
- Delano Dunn - Podiatry
- Collin Eid - Hospital Administrators
- Dale Torseth - Dentistry
- Peggy Hartung - Psychology
- Dave Holmstrom - Pharmacy
- Kathy Lamp - Newly Credentialed Groups
- Gene Larson - Mortuary Science
- Leo Meyer - Optometry
- Mary Nelson - Veterinary Medicine
- Phil Newberg - Nursing Home Administrators
- Art Poore - Medical Examiners
- E. Puckrupp - Chiropractic Examiners
- Joyce Schowalter - Nursing

FROM: Mary Volk, Health Manpower Information System

RE: Developing rules regarding manpower information collection

H.F. 1035/S.F. 1750, the bill authorizing the Commissioner of Health to collect health manpower information, passed out of both the house and senate this past week and is awaiting the governor's signature. The language in the bill requires the Commissioner to promulgate rules regarding:

(1) The types of information collected, and
(2) The forms used for collection.

These rules are to be promulgated after consulting with the health-related licensing boards.

I am beginning to draft the rules and want to determine a date and time in mid-April when we can all meet to discuss my draft, and your ideas on (1) and (2). If you would indicate possible meeting times on the attached sheet, and leave the sheet with Pam on the 3rd floor this week, I will schedule a meeting convenient to the majority.

Thank you.

MV:mp
Attachment

Health

Mary Volk,
Division of Manpower

Development of (HHIS) Rules

Meeting Options:	A. M.	P. M.
April 14, Friday	[] 8:30 - 10:30	[] 2:30 - 4:30
April 17, Monday	[] 8:30 - 10:30	[] 2:30 - 4:30
April 18, Tuesday	[] 8:30 - 10:30	[] 2:30 - 4:30
April 19, Wednesday	[] 8:30 - 10:30	
April 20, Thursday	[] 8:30 - 10:30	[] 2:30 - 4:30
April 21, Friday	[] 8:30 - 10:30	[] 2:30 - 4:30

Other date and time suggestions

_____ _____ _____

STATE OF MINNESOTA

Exhibit B

DEPARTMENT Board of Dentistry

Office Memorandum

TO : Mary Volk
Health Manpower Information System

DATE: March 31, 1978

FROM : Dale Forseth

PHONE: 296-5313

SUBJECT: Rules for Manpower Information Collection

As you indicated in your letter the "rules are to be promulgated after consulting with the health-related licensing boards." It is apparent that you are attempting to draft rules after consultation with the executive secretaries of the boards, but not with the boards themselves. In doing so, you would be asking the executive secretaries to establish policy whereas Chapter 214 only authorizes the executive secretary to carry out policies that have been established by the boards.

Therefore, it is my suggestion that you make available to each executive secretary a copy of your draft for his use in discussing the matter with his board at the first available board meeting. In the case of the Board of Dentistry, the next Board meeting is scheduled for April 22, 1978 and I would like a copy of the draft available for distribution at least one week prior to this meeting.

Until I have had a chance to discuss data collection with the Board of Dentistry, I will not be able to make any recommendations.

DJF/ajn

Exhibit C

April 7, 1978

TO:	Delano Dunn	- Podiatry
	Collin Eid	- Hospital Administrators
	Dale Forseth	- Dentistry
	Peggy Hartung	- Psychology
	Dave Holmstrom	- Pharmacy
	Kathy Lamp	- Newly Credentialed Groups
	Gene Larson	- Mortuary Science
	Leo Meyer	- Optometry
	Mary Nelson	- Veterinary Medicine
	Phil Newberg	- Nursing Home Administrators
	Art Poore	- Medical Examiners
	E. Puckrupp	- Chiropractic Examiners
	Joyce Schowalter	- Nursing

FROM: Mary Volk, Health Manpower Information System

RE: Meeting on manpower data collection rules.

From the information I've received thus far, it appears that Thursday, April 20th, at 2:30 P.M. is the most convenient meeting option. The meeting should not take the allotted 2 hours, and will occur in Room 206.

Thank you.

MV:mp

Exhibit D

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

July 10, 1978

TO:

Delano Dunn	- Podiatry
Collin Eid	- Hospital Administrators
Dale Forseth	- Dentistry
Peggy Hartung	- Psychology
Dave Holmstrom	- Pharmacy
Kathy Lamp	- Newly Credentialed Groups
Gene Larson	- Mortuary Science
Leo Meyer	- Optometry
Mary Nelson	- Veterinary Medicine
Phil Newberg	- Nursing Home Administrators
Art Poore	- Medical Examiners
E. Puckrupp	- Chiropractic Examiners
Joyce Schowalter	- Nursing

FROM: Mary Volk, Health Manpower Information System

RE: Comment from the Boards regarding the rules on health manpower data collection

Attached is a copy of a revised draft of the rules we first discussed April 20, 1978. I would appreciate your using this revised draft to obtain comment on the rules from your Boards.

If you plan to put this matter on Board meeting agendas this summer and wish me to attend, please contact me. I am requesting that comment from the Boards, as required under Minn. Law Chap. 759, § 2, subd. 1, be conveyed to me by September 1, 1978.

Thank you.

MV:mp
Attachment

an equal opportunity employer

STATE OF MINNESOTA

Exhibit E

DEPARTMENT Board of Pharmacy

Office Memorandum

TO : Mary Volk
Health Manpower Information System #440
717 SE Delaware St.
Mpls., MN 55440

DATE: August 3, 1978

FROM : David E. Holmstrom
Executive Secretary

SUBJECT: Comment on Proposed Rules for Health Manpower Data Collection

I have had an opportunity to review the proposed rules relating to the collection of Health Manpower Information and have several concerns regarding them.

Under MHD 235B 1 you indicate that "the following types of information shall be collected from licensees or registrants in each occupation surveyed:" you then footnote that sentence at the bottom of the page and essentially relist substantial portions of the information items being required above. I question whether this redundancy is necessary.

In MHD 235 B 1 b, d, e, i, j, k, l and m it appears that the information proposed to be gathered goes substantially beyond that authorized for gathering under Chapter 759 of the laws of 1978. As I read the enabling statute the information which is authorized to be gathered is limited to licensure status, name, address, birth date, sex, professional activity status, and educational background. No mention has been made of geographic location of birth, marital status, race, geographic location of current employment, employment setting, employer by type, area of professional concentration or current licensure in other states. I have severe doubts as to your authority to mandate the providing of this additional information.

Section B 2 also appears to be outside the scope of the statutorily authorized information. Even should it be found to be authorized under some statutory interpretation I question the criteria which will be used to decide the occupations for which such information is appropriate and more basic than that is the question whether this information is appropriate for any occupation based on the need to obtain information for manpower planning purposes.

While the concerns expressed above are not trivial in nature my major concern involves section B 5 wherein you attempt, by rule, to allow any other party desiring to do so authority to piggyback their desire for information on the specifically authorized questionaire of the commissioner. I feel that this is clearly an ultravires act on the part of the commissioner. I would very strongly object to the inclusion of this provision in these proposed rules.

If you wish to discuss any of the points I have raised in this response please feel free to contact me.

DEH:pe

ADMIN 1000

STATE OF MINNESOTA

Exhibit F

DEPARTMENT BOARD OF PSYCHOLOGY

Office Memorandum

TO : Mary Volk

DATE: 8/9/78

FROM : H. Hartung H. Hartung

SUBJECT: Health Manpower Data Collection Rules

Our Board chairperson reviewed the proposed rules. Her first comment was regarding the term "manpower". Our Board has previously registered its opposition to this term. Even though this term is used in the statute, it would seem that an alternate term could be used in rule and on forms which are developed for usage in collecting data.

Our chairperson would also question the inclusion of marital status on the questionnaire. This is not specified in the law. She questions what this item has to do with the provision of services.

It is her analysis that B,5 extends the powers of the Commissioner of Health beyond the scope of the statute. The statute does not empower the Commissioner to act as an intermediary for collection of data for third parties.

Exhibit G



PROPOSED RULES OF THE COMMISSIONER OF HEALTH
Relating to the Collection of
Information Pertaining to Health Manpower

MHD 235

A. GENERAL

1. Authority and Purpose

Minnesota Rule MHD 235 has been developed as required by Minn. Laws 1978, ch. 759. The rule pertains to:

a. The types of information relating to numbers, distribution, and characteristics of health-related manpower which the Commissioner deems necessary to collect as specified in this rule from individuals licensed or registered by the Commissioner or the Boards, for the purpose of establishing an adequate state data base for making informed and reasonable decisions pertaining to health manpower; and

b. The forms which shall be used to collect the information.

2. Definitions

For the purposes of this rule, the words, terms, and phrases listed below shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

see B.I.L.

Educ. or employment?

a. "Area of professional concentration" means the professional specialties or major professional field of a licensee or registrant.

b. "Boards" means the health-related licensing Boards as defined in Minn. Stat. 214.01, subd. 2.

c. "Commissioner" means the Commissioner of Health.

d. "Health manpower" means those natural persons licensed or registered

(individuals)

JUL 1978
BOARD
OF NURSING

by the Commissioner or Boards.

e. "Licensed" means regulation of an occupation as defined in Minn. Stat. 214.001 (d).

f. "Licensure or registration status" means the active or inactive status of a license or registration.

g. "Permanent license or registration number" means the number assigned to each licensee or registrant by a Board or the Commissioner upon initial licensure or registration and retained by the licensee or registrant over the period of his/her licensure or registration.

h. "Professional activity status" means the extent to which a licensee or registrant engages in or has the potential for engaging in activities related to the occupation for which he/she is licensed or registered.

See B.2.c.

i. "Professional title" means the title which designates the professional position held by a licensee or registrant in his/her employment setting.

j. "Registered" means regulation of an occupation as defined in Minn. Stat. 214.001 (c).

k. "Statewide licensing system" means the computer system, maintained at the Information Systems Division, Minnesota Department of Administration, designed to process applications for licensure and registration and maintain files of those licensed or registered by the State of Minnesota.

1978
BOARD
NURSING

B. TYPES OF INFORMATION

1. The following types of information shall be collected from licensees or registrants in each occupation surveyed;[1/]

a. Permanent license or registration number.

b. Geographic location of birth.

c. Sex

d. Marital status

e. Race or ethnicity

f. Geographic location of principal residence

g. Educational background which shall include such types of information as:

(1) Name and geographic location of school from which graduated with professional degree/credential required for licensure or registration, and year degree/credential received.

(2) Name and geographic location of school from which educational preparation received if a professional degree is not required for licensure or registration, and year preparation completed.

(3) Types of degrees received.

(4) Professional training/education beyond first degree/credential received.

h. Activity status in the occupation for which licensed or registered including such information as:

(1) Number of weeks employed in the occupation during the 12 months preceding data collection.

(2) Whether currently employed in the occupation.

(3) Average number of hours/(any) currently working per week.

1/ In addition to the types of information listed in this rule, name, (mailing) address, licensure or registration status (at the time of data collection), birth date, sex, professional activity status, and educational background as specified in Minn. Laws 1978, ch. 759, §2, subd. 1 shall be included in the information

distributed among categories of professional or occupational activities.

(4) If not currently employed in the occupation, status as a member of the potential labor force for the occupation.

i. Geographic location of current employment in the occupation.

j. Employment setting by type.

k. Employer by type.

l. Area of professional concentration.

m. ~~Current licensure or registration by other states.~~ State in which

JUL 1978
MN BOARD OF NURSING

2. The following types of information shall be collected only from those licensees or registrants in occupations for which the information is appropriate to the practice of the occupation:

a. The approximate size of the licensee's or registrant's currently active practice.

b. The extent of employment of auxiliary personnel.

c. Professional title.

3. Information customarily not subject to change over time shall be collected once from each licensee or registrant. These types of information include: permanent licensure or registration number; geographic location of birth; birthdate; race or ethnicity; sex; and basic educational background ~~as specified in MHD 235 B. 1, a (1) and (2)~~. Other information specified in MHD 235 ~~B. 1~~ and ~~B. 2~~ shall be collected on a periodic basis ~~not more often than specified~~ but not more often than the longest registration renewal period.

4. The exact form and wording of the questions covering the types of information specified in MHD 235 B. 1 and B. 2 will vary among occupations:

a. So that the questions will be specific and relevant to the characteristics of each occupation; and

b. ~~May change~~ in form and wording over time in order to clarify

5. In addition to the types of information specified in MHD 235 B. 1 and B. 2, in order that the duplicative questionnaires sent to licensees and registrants might be reduced, when resources permit, the form may also include questions to obtain information sought by the Board or other parties. The Commissioner shall, in the case of parties other than the Board, in his discretion determine whether or not the party's need for the information is legitimate and shall approve the specific questions to be asked on the form. In such instances, the form shall clearly identify the party requesting the information, the specific questions asked by the Board or party, whether or not it is mandatory for the licensee or registrant to supply the information and, if mandatory, the statutory citation making it mandatory.

MIN 1000

STATE OF MINNESOTA

Exhibit H

DEPARTMENT State Board of Medical Examiners

Office Memorandum

TO : Mary Volk

DATE: November 2, 1978

FROM : Arthur W. Poore, Executive Secretary

PHONE:

SUBJECT: Proposed rules regarding questionaire sent to licensed professionals. Enclosed is statement of the Board's position and concern regarding the proposed rules.

amily Physicians
Rodney N. Langseth, M.D.-ABFP
Max H. Berns, M.D.-ABFP
Kenneth L. Irons, M.D.-ABFP
Wm. E. Jacott, M.D.-ABFP
Ruth Setterlund, R.N., N.P.

Lakeside Medical Center
4621 E. Superior St.
Duluth, Minn. 55804
Phone: 218-525-1918

MEMORANDUM:

TO: Arthur W. Poore

FROM: William Jacott, M.D.

RE: Health Department questionnaire of licensed professionals in the State of Minnesota.

DATE: September 21, 1978.

As a follow-up to your conversation with the President of the Minnesota State Board of Medical Examiners, Father David McPhee, I am submitting to you this memorandum.

I have studied the information you have sent and find a number of problems with this Health Department questionnaire.

The law, as passed, indicates that the questionnaire shall be sent with the individual's annual license renewal and must be completed by the licensed individual. It indicates the main reason for this is to obtain information regarding the health manpower situation in the State of Minnesota. It also states that the types of information to be collected include licensure or registration status, name, address, birth date, sex, professional activity status and educational background. It then says other information needed in order to make decisions pertinent to health manpower. This is what the law says and this is what should be followed in such a questionnaire.

First of all, I am concerned about the significant number of people who hold Minnesota licenses and are not residents of the State of Minnesota. To send a questionnaire to these people tells us nothing about the health manpower in the State of Minnesota.

There are a number of areas in the proposed rules under the section called TYPES OF INFORMATION which, in my opinion, are not appropriate and are not mandated by the law as it was written. These areas include the following types of information.

1. Marital status.
2. Race or ethnicity.
3. Average number of hours currently working per week.
4. Current licensure or registration by other states.
5. The approximate size of the licensee's current active practice.
6. The extent of employment of auxiliary personnel.

TO: Arthur W. Poore
FROM: William Jacott M.D.
RE: HEALTH DEPARTMENT QUESTIONNAIRE OF LICENSED PROFESSIONALS IN THE STATE OF MINNESOTA
DATE: September 21. 1978.
PAGE: Two.

The major concern regarding these rules is in item # 5 under TYPES OF INFORMATION and this area says " the form may also include questions to obtain information sought by parties other than the commissioner." This opens an entire area of questioning wherein under the law anybody can include a questionnaire with an individual's annual license renewal or registration on any subject under the sun. This means all types of individuals wanting to question professional people can send it with the annual registration and it will appear to be a mandated process to fill out that questionnair It would not take long until we. as physicians and other professionals. were receiving a dozen or so questionnaires every year which seem to be mandated by law. I think this section definitely is objectionable and should not be included in the rules to be promulgated by the Health Department.

I hope that you can disseminate my comments to the other members of the Board of Examiners and the members of the Attorney General's staff assigned to our Board and that we can have some input into this rule making process.

STATE OF MINNESOTA

Exhibit I

DEPARTMENT

Office Memorandum

TO : Executive Secretaries, Health-related Licensing Boards.
Rosalie Boots, Harriette Hartung, Glen Nelson
Dr. Brockman, David Holmstrom, Phillip Newberg, Joyce Schowalter
Dale Forseth, Leo Meyer, Arthur Poore

DATE: May 16, 1979

FROM : Mary Volk MVM
Health Manpower Information System, MDH

PHONE: 296-5393

SUBJECT: Health Manpower data collection rules

Attached are (1) a draft of the rules developed for the health manpower data collection to occur under Minn. Stat. 144.051-144.052; and (2) a justification developed for the rule.

There was comment on the first draft of the rules, and comments you may have on this draft and/or the justification will be appreciated.

I still anticipate the rules can be promulgated in time for the 1980 data collection to take place under statutory authority. The 1980 collection, which I hope can be achieved with either an attached or enclosed questionnaire, will involve chiropractors, physicians, registered nurses, licensed practical nurses, nursing home administrators, podiatrists, and veterinarians.

Tables produced from the data collected in the surveys of 1977-1978 will be distributed to each of you shortly.

STATE OF MINNESOTA

Exhibit J

DEPARTMENT

Office Memorandum

TO : Executive Secretaries, Health-related Licensing Boards.
Rosalie Boots, Harriette Hartung, Glen Nelson
Dr. Brockman, David Holmstrom, Phillip Newberg, Joyce Schowalter
Dale Forseth, Leo Meyer, Arthur Poore

DATE: May 16, 1979

FROM : Mary Volk MMV
Health Manpower Information System, MDH

PHONE: 296-5393

SUBJECT: Health Manpower data collection rules

MAY 1979
MN BOARD OF NURSING

Attached are (1) a draft of the rules developed for the health manpower data collection to occur under Minn. Stat. 144.051-144.052; and (2) a justification developed for the rule.

There was comment on the first draft of the rules, and comments you may have on this draft and/or the justification will be appreciated.

I still anticipate the rules can be promulgated in time for the 1980 data collection to take place under statutory authority. The 1980 collection, which I hope can be achieved with either an attached or enclosed questionnaire, will involve chiropractors, physicians, registered nurses, licensed practical nurses, nursing home administrators, podiatrists, and veterinarians.

Tables produced from the data collected in the surveys of 1977-1978 will be distributed to each of you shortly.

Mary —
Thanks for sending this draft; I have made suggestions on p. 3-6, with editorial. The substantive changes on p. 6 I believe are necessary for clarification of the procedure —
Thanks —
JJG
7/12/79

Minnesota Department of Health

Proposed Rules Relating to the Collection of
Information Pertaining to Health Manpower

7 MCAR § 1.235

A. GENERAL

1. Authority and Purpose

7 MCAR 1.235 has been developed as required by Minn. Stat. §§ 144.051 and 144.052 (1978). The rule pertains to:

a. The types of information relating to numbers, distribution, and characteristics of health-related manpower which the Commissioner of Health deems necessary to collect as specified in this rule from individuals licensed or registered by the Commissioner or the Boards for the purpose of establishing an adequate information resource at the state level for making informed and reasonable decisions pertaining to health manpower; and

b. The forms which shall be used to collect the information.

2. Definitions

For the purposes of this rule, the words, terms, and phrases listed below shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

a. "Area of occupational specialty" means the specialty, clinical, teaching, or practice area emphasized in the activities the licensee or registrant performs in the health-related occupation for which he or she is licensed or registered.

b. "Boards" means the health-related licensing Boards as

defined in Minn. Stat. § 214.01, subd. 2.

c. "Commissioner" means the Commissioner of Health.

d. "Individual" means a natural person.

e. "Licensed" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3 (d).

f. "Licensure or registration status" means the status of the individual license or registration as active or inactive under the regulatory authority of the Commissioner or the Boards. An active status means the individual is duly authorized to engage in the practice of activities for which he or she is licensed or registered. An inactive licensure or registration status means that the license or registration is not in effect.

g. "Occupation" means the health-related occupation for which an individual is licensed or registered by the Commissioner or a Board.

h. "Permanent license or registration number" means the number assigned to each licensee or registrant by the Commissioner or a Board upon initial licensure or registration and retained by the licensee or registrant over the period of his/her licensure or registration. The permanent number may differ from a number the individual may receive upon periodic renewal of his/her license or registration.

i. "Professional activity status" means the licensee's or registrant's participation or potential participation in the practice of activities in the occupation for which he/she is licensed or registered. The individual's activity status may be identified as either active or inactive. If active, the extent to which the licensee or registrant is

active is indicated by factors such as the duration over time of employment in the occupation, whether currently employed, and by the average number of hours employed per week. If inactive, the potential for participation in the occupational labor force is indicated by the licensee's or registrant's status as retired, employed in another occupation, disabled, or other employment statuses such as unemployed but seeking employment in the health-related occupation for which the individual is licensed or registered.

j. "Professional title" means the title which designates the professional position held by a licensee or registrant in his/her employment setting in the health-related occupation for which he/she is licensed or registered.

k. "Registered" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3 (c).

l. "Type of setting" means the physical environment which may be institutional, such as a hospital, or non-institutional, such as the patients' homes, in which the individual engages in the occupation for which he or she is licensed or registered.

B. TYPES OF INFORMATION

1. Individuals who are licensed or registered by the Commissioner or the Boards shall submit to the Commissioner, on forms provided by him/her, the following types of information.*

a. Permanent license or registration number.

b. Race or ethnicity.

---

*In addition to the types of information listed in this rule, name, (mailing)address, licensure or registration status (at the time of data collection), birth date, sex, ~~professional activity status, and educational background~~ shall be included in the required information, as specified in Minn. St[illegible] 144.052, subd. 2.

c. Geographic location of principal residence.

d. Educational background which shall include:

(1) Name and geographic location of school from which graduated with educational degree required for licensure or registration, and year degree was received.

(2) Name and geographic location of school from which educational preparation for the health-related occupation was received if a specific type of educational degree is not required for licensure or registration, and year preparation was completed.

(3) Types of educational degrees received. (for which occupations?)

(4) Educational training in the h.-r. occup. beyond first degree received.

e. Professional activity status in the occupation which shall include:

(1) Number of weeks employed in the occupation during the 12 months preceding data collection.

(2) Whether currently employed in the occupation.

(3) Average number of hours currently working per week, apportioned by categories of activities in the occupation.

(4) If not currently employed in the occupation, status as a member of the potential labor force for the occupation.

f. Geographic location of current employment in the occupation.

g. Type of setting of current employment in the occupation.

h. Category of current employer in the occupation.

i. Areas of occupational specialty.

j. Names of states in which current active licensure or registration is held. ~~by other states.~~

2. The following types of information shall be collected only from the licensees or registrants in occupations for which the information

is applicable given the practice characteristics of the occupation.

b. The approximate size of the licensee's or registrant's currently active practice.

c. The extent of employment of auxiliary personnel in the practice setting.

d. Professional title of licensee or registrant

C. METHOD FOR THE COLLECTION OF INFORMATION

1. The exact form and wording of the questions covering the types of information specified in 7 MCAR 1.235 § B. 1 and B. 2. will vary among the occupations surveyed:

a. so that the questions will be specific and relevant to the characteristics of each occupation; and

b. May change in form and wording over time so that a question can be classified or its emphasis modified.

2. The types of information shall be collected on forms designed by the Commissioner.

a. A statement of the statutory authority for the information collection shall be printed on the form.

3. When resources permit, the form may include questions in addition to the types of information specified in 7 MCAR 1.235 § B. 1 and B. 2. Examples of such additional types of information include but need not be limited to:

a. ~~Types of~~ information sought by the Commissioner for the purpose of making decisions pertaining to health manpower, but to be provided by the licensee or registrant on a voluntary basis;

b. ~~Types of~~ information sought by parties other than the Commissioner for the purposes of making decisions pertaining to health man-

power. In these instances: Parties may include but need not be limited to individuals, governmental agencies, and educational institutions.

(1) The Commissioner shall determine whether:

(a) The proposed additional questions are relevant to making decisions pertaining to health manpower;

(b) ~~Resources permit~~ the inclusion of the proposed additional questions on the form will be permitted based on an evaluation of resources, and consideration of whether or not the required

(c) ~~The~~ information collection would be delayed or otherwise inconvenienced by the inclusion of additional questions, ~~on the form.~~

(b) the involved licensing Board believes that additional costs or delays in the licensure renewal process will occur due to the inclusion of additional questions

(2) The form shall clearly identify the party requesting the information, the specific questions asked by the party, whether or not it is mandatory for the licensee or registrant to supply the information, and if mandatory, the citation to the mandating legal authority.

(3) All costs resulting from the addition of questions to the required form shall be borne by the requesting party, except if the requesting party is a health-related licensing Board, in which case the cost shall be borne by MOH.

Department of Natural Resources Minerals Division

Notice of Request for Proposals for an Ecological and Floristic Study of the Peatland Vegetation of Northern Minnesota

Estimated cost: $33,000

Contact person: Barbara Coffin, 296-4807

Submission deadline: May 17, 1978

William Nye
Commissioner

Minnesota Teachers Retirement Association

Notice of Availability of Actuarial Consultant Contract for the Period Beginning July 1, 1978 and Ending June 30, 1980

Contact Person: Harvey W. Schmidt, Minnesota Teachers Retirement Assn., 302 Capitol Square Building, St. Paul, Minnesota 55101, telephone (612) 296-2409.

Description: Provide actuarial consultant services to Association; prepare and submit actuarial valuations, actuarial surveys and reports as required by Minn. Stat. § 356.215; assist in the preparation of the certification of funds required from the state; consult with the Director of the Board and staff on any matters of actuarial nature; make any necessary special statistical studies in connection with proposed legislation; and perform any other services of an actuarial nature which the Board may deem desirable.

Estimated cost: Approximately $17,500.00.

Final submission date: May 29, 1978.

Board of Cosmetology

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Continuing Education of Senior Instructors and the Practice of Cosmetology in Nursing Homes

Notice is hereby given that the Minnesota State Board of Cosmetology is seeking information or opinions from sources outside the Board in preparing to propose the adoption of rules governing the continuing education of senior instructors and the practice of cosmetology in nursing homes and other possible amendments to the cosmetology rules. Any interested persons may submit information on these subjects in writing or orally to:

Cynthia Allen
Minnesota State Board of Cosmetology
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 296-9405

Any written material received by the Board shall become a part of the hearing record in the event rules governing these subjects are promulgated.

May 2, 1978

Department of Health Health Manpower Division

Notice of Intent to Solicit Outside Opinion Concerning Procedures for Determining Regulations of Human Services Occupations; Hospital Administrator Registration Program; Registration of Various Human Services Occupations; and Obtaining of Information from Licensed or Registered Health Manpower

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412 subd. 6 (Supp. 1977) that the Minnesota Commissioner of Health will propose the adoption of new rules and the amendment and revision of existing rules as indicated below.

All interested parties desiring to submit data, views, opinions, comments or other related information concerning the proposed adoption, amendment or revision of the rules noted below should write or telephone the persons indicated below at the Minnesota Department of Health, Division of Health Facilities, 717 Delaware Street S.E., Minneapolis, Minnesota 55440. Evidence submitted for consideration should be pertinent to the matter at hand. Written material

received by the Department of Health will become part of the hearing record.

1. Proposed amendments to the Rules Regarding Procedures for Determining Regulation of Human Services Occupations, 7 MCAR §§ 1.536 to 1.538 (Minn. Rules MHD 536-538), to: (a) define "human services occupations"; (b) make more explicit or define the factors specified in Minn. Stat. § 214.001 subd. 2 (1976) to be used in evaluating whether a human services occupational group should be regulated; and (c) establish criteria for choosing a national standardized test for each occupational group registered. Contact Colleen Coghlan; telephone (612) 296-5393.

2. Proposed amendments to and general revision of the rules relating to the Hospital Administrators Registration Program, 7 MCAR §§ 1.036-1.038 (Minn. Rules MHD 36-38). Contact Collin Eid; telephone (612) 296-5393.

3. Proposed new rules establishing a registration form of regulation, including but not limited to the scope of authorized practice, supervision required, continuing education, career progression, disciplinary procedures, and the development of administration and grading of examinations to verify the qualifications of applicants, pursuant to Minn. Stat. §§ 214.001, 214.13, and 214.14 (1976), for the following human service occupational groups: (a) chemical dependency specialists; (b) speech pathologists; (c) audiologists; (d) emergency medical technicians; (e) environmental health specialists; and (f) contact lens technicians. Contact Colleen Coghlan; telephone (612) 296-5393.

4. Proposed new rules regarding the types of information to be collected and the forms to be used for the collection of data on individuals licensed or registered by the Commissioner or health-related licensing boards. The information is to be collected pursuant to Laws of 1978, ch. 759, for the purpose of making decisions pertaining to health manpower. Contact Mary Volk; telephone (612) 296-5393.

Any materials submitted will 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 will be published in the *State Register* and given to all interested parties who have registered with the Secretary of State's Office in accordance with the provisions of the Administrative Procedure Act.

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

May 5, 1978

Warren R. Lawson, M.D.
Commissioner

Department of Public Welfare
Income Maintenance Division

Notice of Intent to Solicit Outside Opinion Concerning Proposed Amendment of DPW Rule 55, General Assistance

Notice is hereby given that the Minnesota Department of Public Welfare is considering proposed amendments to DPW Rule 55 (12 MCAR § 2.055), General Assistance. The General Assistance rule is designed to provide financial assistance and services to persons unable to provide for themselves, who have not refused suitable employment, and who are not otherwise provided for by Law; to strengthen and preserve the family unit; to aid those persons who can be helped to become self-supporting or to attain self-care; and to provide property tax relief by providing state financing for some welfare costs historically financed by county property tax levies.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Wally Goettl
Department of Public Welfare
Client Eligibility Unit
4th Floor, Centennial Office Building
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3340.

All statements of information and comment must be received by June 5, 1978. Any written material received by the Department shall become part of the hearing record.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of a Proposed
Rule Relating to the Collection
of Information from Health-
Related Manpower

AFFIDAVIT
OF MAILING

William Dickey, being first duly sworn, deposes and says:

That on the 1st day of October, 1979, at the City of Minneapolis, County of Hennepin, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the Certificate of the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations at the addresses listed on Exhibit B, attached and made a part hereof, as well as to all members of the Minnesota Legislature as of the date of mailing.

Wm R Dickey

Subscribed and sworn to before
me this 1 day of October, 1979.

Louise K. Kaniuk

LOUISE K. KANIUK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Feb. 2, 1984

Exhibit A

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of a Proposed Rule Relating to the Collection of Information from Health-Related Manpower

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Mary K. Volk, being first duly sworn upon oath, deposes and says:

1. That she is an employee of the Minnesota Commissioner of Health;

2. That on the 21st day of September, 1979, she 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 or amendments thereto pursuant to Minn. Stat. § 15.0412, subd. 4 (1978);

3. That on the 25th day of September, 1979, in response to the above request, the Secretary of State provided her with such a list, a photocopy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

Mary K. Volk

Subscribed and sworn to before me
this 25 day of September, 1979.

Madeline Harris

MADELINE HARRIS
NOTARY PUBLIC - MINNESOTA
CHISAGO COUNTY
My Commission Expires Sep. 17, 1985

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STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of a Proposed
Rule Relating to the Collection
of Information from Health-
Related Manpower

NOTICE OF HEARING

Notice is hereby given that a public hearing regarding the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on November 5, 1979, commencing at 9:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed rule 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 Harry S. Crump, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8111, either before the hearing or within five (5) working days after the close of the hearing or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner. 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 be-

behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

The statutory authority of the Commissioner to promulgate and adopt the above-captioned rule is contained in Minn. Stat. §§ 15.0412, subd. 3, 144.05, 144.051 and 144.052 (1973). If adopted, the proposed rule would enable the Commissioner of Health to collect information pertaining to the numbers, distribution and characteristics of individuals licensed or registered by the Commissioner or the health-related licensing boards which are the Board of Medical Examiners, the Board of Dentistry, the Board of Nursing, the Board of Pharmacy, the Board of Examiners of Nursing Home Administrators, the Board of Chiropractic Examiners, the Board of Optometry, the Board of Psychology, the Board of Veterinary Medicine, and the Board of Podiatry. The rule identifies, in addition to that already specified in Section 144.052, the specific types of information that will be collected from licensees and registrants. This information is necessary in order to establish an informational system which will constitute a resource for making decisions pertaining to health-related manpower. The rule also specifies the types of forms on which such information shall be collected from licensees and registrants and how parties other than the Commissioner may collect data for health-related manpower planning purposes through the system established by Minn. Stat. §§ 114.051 and 144.052 and this proposed rule.

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

The proposed rule is subject to change as a result of the rule hearing process. The Commissioner therefore strongly urges those who are potentially

affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. Additional copies will also be available in the hearing room on the day of the hearing.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1978) as amended by Minn. Laws 1979, ch. 59 § 3, as any individual:

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

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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

Notice: Any person may request notification of the date on which the

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

Dated: September 5, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

ss. George R. Pettersen, M. D.

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of a Proposed
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of Information from Health-
Related Manpower

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(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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

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

Dated: September 5, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petterson M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of a Proposed
Rule Relating to the Collection
of Information from Health-
Related Manpower

ORDER FOR HEARING

To effectively implement Minn. Stat. §§ 144.051 and 144.052 (1978), the Minnesota Commissioner of Health deems it necessary to consider adoption of the proposed rule captioned above pursuant to the authority vested in him by the above-referenced statutes.

NOW, THEREFORE, IT IS ORDERED this 5 day of September ____, 1979, that a public hearing on the proposed rule captioned above be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Monday, November 5, 1979, 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

COMMISSIONER OF HEALTH

George R. Petterson MD

GEORGE R. PETTERSEN, M.D.
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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 one and a half hours.

Dated: September 5, 1979.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Petersen M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner