

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #613.

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/2 DUE DATE 7/22

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 7/11 Date Sent Back to Agency 7/15

- -

1. Rules as Adopted ✓
2. Rules as Proposed as Published in SR + Mailed ✓
   " " " at Public Hearing ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓ 4.16.80
   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 ✓
    At least 30 days prior to hearing ✓ 3.17.80
11. Statement of Need and Evidence ✓
    Supplementary Statement of N. + E ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ designated "Post-hearing Submission"
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
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 _____
20. Petition by Public, where applicable N/A

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Joanne M. Ogata, do hereby declare that I have examined the proposed repeal of 7 MCAR § 5.1070c relating to the composition of faculty of professional nursing education programs and all related documents and that, based on such examinations and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: July 2, 1980

Joanne M. Ogata

JOANNE M. OGATA
Special Assistant
Attorney General

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

July 2, 1980

TELEPHONE
(612) 296-6196

Ms. Joanne Hinderaker
Mr. Jerry Anderson
Special Assistant Attorneys General
Administration-Finance Division
Room G25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

Dear Ms. Hinderaker and Mr. Anderson:

Enclosed for your review pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) please find an original and two copies each of the following documents:

1. Rules as repealed;
2. Rules as proposed;
3. Order for Hearing;
4. Notice of Hearing;
5. Statement of Number of Persons Expected to Attend and Length of Hearing;
6. Certificate (of delivering Secretary of State's List);
7. Affidavit of Receipt of the Secretary of State's List;
8. Affidavit of Mailing and Secretary of State's List;
9. Statement of Need and Reasonableness;
10. Supplementary Statement of Need and Reasonableness;
11. Certificate of Board of Nursing's Authorizing Resolution;
12. Post-Hearing Submission;

13. Report of the Hearing Examiner;

14. Certificate of Board of Nursing Repeal of Rule Resolution;

15. Order Repealing 7 MCAR § 5.1070C;

16. Report of the Chief Hearing Examiner;

17. Statement of Compliance with Manual of Rulemaking Procedure;

18. Notice of Submission to Attorney General;

19. Affidavit of Mailing Notice of Submission; and

20. Rule Hearing Register.

Please also find enclosed an additional copy of the Order Repealing 7 MCAR § 5.1070C as well as a tape recording of the hearing and public exhibits. Your prompt review of this matter will be appreciated.

Very truly yours,

Joanne

JOANNE M. OGATA
Special Assistant
Attorney General

136 University Park Plaza Building
2829 University Avenue Southeast
Minneapolis, Minnesota 55414
Telephone: (612) 341-7272

JMO:rlb

Enclosures

copy

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

BNUR-80-004-GB

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C. Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A. and 5.2050A. Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

ORDER REPEALING
7 MCAR § 5.1070C.

The above-entitled matter came on for hearing before the Minnesota Board of Nursing on the 16th day of April, 1980, at 9:00 AM in 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.

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

NOW, THEREFORE, IT IS ORDERED that 7 MCAR § 5.1070C. is repealed this 9th day of June, 1980, pursuant to a resolution of the Minnesota Board of Nursing duly adopted at a meeting of the said Board on the 30th day of May, 1980, which resolution adopted the Report of the Hearing Examiner, his Findings of Fact, Conclusions of Law and Recommendations as those of the Board's.

STATE OF MINNESOTA

BOARD OF NURSING

Joyce M. Schowalter

JOYCE M. SCHOWALTER
Executive Secretary

Rule as Adopted.

Repeal of Rule as Ordered by Board of Nursing on May 30, 1980

§ 5.1070 Composition and functions. The faculty shall formulate and implement the educational policies for the program according to the powers delegated to the faculty by the controlling body of the institution.

A. The director shall have adequate assistance in the administration of the program.

B. Members of the faculty are persons employed for instruction, guidance, research or administration.

~~C. The majority of faculty members shall be employed on a full-time basis.~~

C.~~D.~~ The faculty shall have the responsibility for development and implementation of the curriculum.

D.~~E.~~ Nursing courses shall be the responsibility of faculty members who are registered nurses employed by the program.

7 MCAR §§ 5.1060 and 5.2050 will not be repealed.

APPROVED AS TO FORM AND LEGALITY

JUL 11 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 14 1980

_____
Secretary of State

11:20 AM

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOANNE M. OGATA
Special Assistant
Attorney General

DATE: July 15, 1980

FROM : JERRY ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional & Practical Nursing Education Programs.

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

§ 5.1070 Composition and functions. The faculty shall formulate and implement the educational policies for the program according to the powers delegated to the faculty by the controlling body of the institution.

A. The director shall have adequate assistance in the administration of the program.

B. Members of the faculty are persons employed for instruction, guidance, research or administration.

~~C. The majority of faculty members shall be employed on a full-time basis.~~

C.~~D.~~ The faculty shall have the responsibility for development and implementation of the curriculum.

D.~~E.~~ Nursing courses shall be the responsibility of faculty members who are registered nurses employed by the program.

~~§ 5.1060 Controlling institution~~

~~A. The controlling institution shall be an educational institution which the Board deems able to provide an effective program leading to graduation and eligibility for Registered Nurse licensure and which shall include universities, senior colleges, or community/junior colleges, both public and private. Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

~~§ 5.2050 Controlling institution.~~

~~A. The controlling institution shall be an educational institution which the Board deems able to provide an effective Licensed Practical Nurse preparing program and which shall include but not be limited to comprehensive high schools, vocational technical schools, community/junior colleges, senior colleges and universities, both public and private. Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

Rules as Proposed

7 MCAR § 5.1070 Composition and functions. The faculty shall formulate and implement the educational policies for the program according to the powers delegated to the faculty by the controlling body of the institution.

A. The director shall have adequate assistance in the administration of the program.

B. Members of the faculty are persons employed for instruction, guidance, research or administration.

~~C. The majority of faculty members shall be employed on a full time basis.~~

C. ~~D.~~ The faculty shall have the responsibility for development and implementation of the curriculum.

D. ~~E.~~ Nursing courses shall be the responsibility of faculty members who are registered nurses employed by the program.

[The proposed amendments to 7 MCAR §§ 5.1060 A. and 5.2050 A. would repeal two sentences in the rules which prohibit the Board of Nursing from approving a hospital's professional or practical nursing education program if the hospital's program did not exist as of July 1, 1976. The agency is proposing that the last sentences of 7 MCAR §§ 5.1060 A. and 5.2050 A. be repealed so that the rules will read as follows:]

7 MCAR § 5.1060 Controlling institution.

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective program leading to graduation and eligibility for Registered Nurse licensure and which shall include universities, senior colleges, or community/junior colleges, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

7 MCAR § 5.2050 Controlling institution.

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective Licensed Practical Nurse preparing program and which shall include but not be limited to comprehensive high schools, vocational-technical schools, community/junior colleges, senior colleges and universities, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike-outs~~ indicate deletion proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language ~~outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

Rule as Proposed in part.

Repeal of Portions of 7 MCAR §§ 5.1060 and 5.2050
As Proposed in the Notice of Hearing Published in the
State Register March 17, 1980, and Mailed to
Interested Persons on March 11, 1980

§ 5.1060 Controlling institution

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective program leading to graduation and eligibility for Registered Nurse licensure and which shall include universities, senior colleges, or community/junior colleges, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

§ 5.2050 Controlling institution

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective Licensed Practical Nurse preparing program and which shall include but not be limited to comprehensive high schools, vocational-technical schools, community/junior colleges, senior colleges and universities, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

Repeal of Rules 7 MCAR §§ 5.1060A and 5.2050A
in Their Entirety as Proposed at Public Hearing on
April 16, 1980

~~§ 5.1060 Controlling institution~~

~~A. The controlling institution shall be an educational institution which the Board deems able to provide an effective program leading to graduation and eligibility for Registered Nurse licensure and which shall include universities, senior colleges, or community/junior colleges, both public and private. Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

~~§ 5.2050 Controlling institution~~

~~A. The controlling institution shall be an educational institution which the Board deems able to provide an effective Licensed Practical Nurse preparing program and which shall include but not be limited to comprehensive high schools, vocational-technical schools, community/junior colleges, senior colleges and universities, both public and private. Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

BNUR-80-004-GB

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

POST HEARING SUBMISSION

INTRODUCTION

On April 16, 1980, a public hearing was held commencing at 9:00 a.m. in Room 105 of the Minnesota Department of Health building, 717 Delaware Street Southeast, Minneapolis, Minnesota. The purpose of the hearing was to obtain public comment on the proposed repeal of 7 MCAR § 5.1070C and portions of 7 MCAR §§ 5.1060A and 5.2050A. Almost all of the oral and written comments received at the hearing from the public concerned the latter two rules.

In the Notice of Hearing, the Board of Nursing (hereinafter "Board") proposed that the last sentence of 7 MCAR §§ 5.1060A and 5.2050A be repealed. At the hearing on April 16, 1980, the Board offered an amendment to its original proposal which recommended that 7 MCAR §§ 5.1060A and 5.2050A be repealed in their entirety. Some persons at the hearing claimed that the Board's presentation at the hearing was a "substantial change" from the Notice of Hearing. Essentially, these persons had two arguments: 1) that the Notice of Hearing did not provide adequate notice of what the Board would be proposing at the rule hearing and 2) that the Board's amendment at the rule hearing was a substantial change from what was proposed in the Notice of Hearing. This Post-Hearing Submission is submitted in response to those assertions.

ARGUMENT

I.

THE NOTICE OF HEARING WAS PROPER AND LEGAL IN EVERY RESPECT

The Notice of Hearing is designed to inform the public of the subject and issues which will be addressed at the hearing. 9 MCAR § 2.102C. The Notice must also include the text of the proposed rules or a summary of the nature and extent of the rules. In this case, because of their brevity, the Board chose to reprint the text of the rules and the proposed deletions to them in the Notice of Hearing. The text of the rules was preceded by a statement expressing the Board's intent:

> The proposed amendments to 7 MCAR §§ 5.1060A and 5.2050A would repeal two sentences in the rules which prohibit the Board of Nursing from approving a hospital's professional or practical nursing education program if the hospital's program did not exist as of July 1, 1976.

The obvious corollary of that statement is if the Board repealed the rules it would no longer be prohibited from approving a hospital nursing education program created after July 1, 1976. Thus, the Board clearly met the requirements of notice contained in 9 MCAR § 2.102C.

Despite the fact that the Notice of Hearing contained the full text of the rules and their proposed deletions, some persons at the hearing claimed that the Notice of Hearing was inadequate because they thought the impact of deleting the last sentences in 7 MCAR §§ 5.1060A and 5.2050A would be to prohibit, rather than permit, all hospital-administered nursing education programs. This belief was apparently fostered by the fact that the term "hospital" is not found in the first sentence of either 7 MCAR §§ 5.1060A or 5.2050A.*/ Thus, some persons felt that hospitals would no longer be considered controlling institutions.

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*/ Those rules read as follows:

> 7 MCAR § 5.1060A. The controlling institution shall be an educational institution which the Board deems able to provide an effective program leading to graduation and eligibility for Registered Nurse licensure and which shall include universities, senior colleges, or community/junior colleges, both public and private. Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.
>
> 7 MCAR § 5.2050A. The controlling institution shall be an educational institution which the board deems able to provide an effective Licensed Practical Nurse preparing program and which shall include but not be limited to comprehensive high schools, vocational-technical schools, community/junior colleges, senior colleges and universities, both public and private. Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.

The misinterpretation of the effect of a repeal of the last sentences of 7 MCAR §§ 5.1060A and 5.2050A was based on a more general misinterpretation of those rules. They do not define "controlling institution." That term is defined in 7 MCAR §§ 5.1050 and 5.2040 which are appropriately entitled "DEFINITIONS." In both of these rules, controlling institution is defined simply as "the larger institution that operates a nursing program." "Program" is further defined in 7 MCAR § 5.1050I to include associate degree programs, baccalaureate degree programs and diploma programs. The latter are specifically defined as "a program under the control of the hospital which offers a curriculum leading to a diploma in nursing." Thus, if the rules in their entirety had been read by the persons who misinterpreted the proposed repeal, it should have been apparent that the Board did not intend to eliminate hospital-administered nursing education programs. Moreover, a careful reading of 7 MCAR § 5.2050 would have also indicated that the list of different institutions in that rule was not meant to be an exclusive list of which institutions could operate a nursing education program. That rule clearly states that the controlling institution "shall include but not be limited to comprehensive high schools, vocational-technical schools, community/junior colleges, senior colleges and universities, both public and private." (Emphasis added.)

In addition, pursuant to 9 MCAR § 2.105, the Board's Statement of Need and Reasonableness was filed with the Hearing Examiner 25 days prior to the hearing. The reason that the Statement must be filed 25 days prior to the hearing is to allow interested persons to read it and prepare their own testimony in favor or in opposition to the rules as proposed. Anyone who had read the Statement of Need and Reasonableness could not have mistaken what the Board's intent was in proposing the repeal of portions of 7 MCAR §§ 5.1060A and 5.2050A. The Statement clearly states that the Board "...believes the prohibition of new hospital-administered programs is not necessary to carry out board functions and duties" and that "...prospective nurses should be allowed to choose the educational program which suits them best from one of several in existence on an open market." As this Statement, which was essentially read verbatim at the hearing, was available 25 days prior to the hearing, there is no reason why anyone should have been surprised by the Board's presentation at the hearing.

II.

THE AMENDMENTS PROPOSED AT THE HEARING DO NOT CONSTITUTE A SUBSTANTIVE CHANGE THAT WAS NOT RAISED BY THE ORIGINAL NOTICE OF HEARING.

Because a few persons contacted the Board prior to the hearing about the effect of the proposed repeal, the Board offered an amendment at the hearing which would repeal 7 MCAR §§ 5.1060A and 5.2050A in their entirety. The Board's amendment was based on the belief that some persons were confused by the remaining portions of those rules since "hospitals" are not included in the sample listing of controlling institutions. Thus, the Board felt that the easiest way to avoid the confusion regarding its intent would be to repeal the rule in its entirety.

Some persons at the hearing suggested that the Board could also eliminate the confusion by inserting the term "hospital" in the list of educational institutions. The Board decided not to do this because if the last sentence of the two rules are repealed, the first sentences are superfluous. They are superfluous because, as previously noted, controlling institution is already defined in 7 MCAR §§ 5.1050 and 5.2040.

By deleting the entire rules, the Board would merely be clarifying its intent not to endorse or prohibit any type of controlling institution for nursing education programs. As stated in the Statement of Need and Reasonableness, "prospective nurses should be allowed to choose the educational program which suits them best from one of several in existence on an open market." Because the amendments do not change the intent or effect of the rule changes as proposed in the Notice of Hearing, they do not constitute "a substantial change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing." 9 MCAR § 2.111.

CONCLUSION

Thus, the Notice of Hearing which incorporated the full text of the rules complied with the requirements of 9 MCAR § 2.102C and was proper and legal in all respects. Because the amendment proposed at the hearing merely repeals redundant language without altering the effect of the original proposal it does not constitute a substantial change that was not raised by the original Notice of Hearing.

Dated: May 6, 1980

MINNESOTA BOARD OF NURSING

JOYCE M. SCHOWALTER
Executive Secretary

By Kimi T. Hara
KIMI T. HARA
Assistant Director

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

FOR THE

MINNESOTA BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C. Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A. and 5.2050A. Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

HE-BNUR-80-004-GB

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 16, 1980, before George A. Beck, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Board of Nursing (hereinafter "Board") on May 19, 1980; and

WHEREAS, the Board has now determined to repeal one of the rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Board has submitted the repealed 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 repeal of the rule is not substantially different from those proposed at the public hearing and that the Board has met all requirements of Minn. Stat. § 15.0412, subd. 4.

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

Dated this 19th day of June, 1980.

DUANE R. HARVES
Chief Hearing Examiner

BNUR-80-004-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070 C. Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060 A. and 5.2050 A. Relating to a Definition of a Controlling Institution of Professional and Practical Nursing Education Programs.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 9:30 a.m. on Wednesday, April 16, 1980, in Room 105 of the Minnesota Department of Health Building, 717 Delaware Street, Southeast, City of Minneapolis, County of Hennepin, State of Minnesota.

This Report is a part of a rule hearing procedure pursuant to Minn. Stat. §§ 15.0411 to 15.0417 and 15.052 to determine whether the proposed rule amendments should be adopted. A copy of this Report may be obtained from the Office of Hearing Examiners for the cost of reproduction.

Members of the agency panel appearing at the hearing included: Joyce M. Schowalter, Executive Secretary, Minnesota Board of Nursing; and Joanne M. Ogata, Special Assistant Attorney General, representing the Minnesota Board of Nursing.

Forty-eight persons signed the hearing register. Seventeen public witnesses spoke at the hearing. The Board submitted 10 written exhibits and 46 timely written comments were received from members of the public. No transcript of the hearing was prepared.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Board of Nursing shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules 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 Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Board will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

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

FINDINGS OF FACT

1. On February 14, 1980, the Department of Health filed the following documents with the Chief Hearing Examiner:

(a) The Order for Hearing.
(b) The Certificate of the Board of Nursing's Authorizing Resolution.
(c) The proposed Notice of Hearing, including the proposed rule amendments.
(d) The Statement of Number of Persons Expected to Attend and the Length of Hearing.

2. On March 17, 1980, the Notice of Hearing and the proposed rule amendments were published at 4 State Register 1491.

3. On March 11, 1980, a Notice of Hearing was mailed by the Board to all persons and associations who had registered their names with the Secretary of State to receive such notice, as well as to a supplementary mailing list and to all members of the Minnesota Legislature.

4. On March 20, 1980, the Board filed the following documents with the Hearing Examiner:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) An Affidavit of Mailing of the Notice of Hearing.
(e) The Statement of Need and Reasonableness.

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

5. The record remained open through May 6, 1980, for the receipt of written comments and statements.

6. The Board cites as statutory authority for the proposed rule amendments a portion of Minn. Stat. § 148.191, subd. 2, which reads as follows:

> The board is authorized to adopt and, from time to time, revise rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of 148.171 to 148.299. The board shall prescribe by rule curricula and standards for schools and courses preparing persons for licensure under sections 148.171 to 148.299. It shall conduct or provide for surveys of such schools and courses as such times as it may deem necessary. It shall approve such schools and courses as meet the requirements of sections 148.171 to 148.299 and board rules.

Proposed Repeal of 7 MCAR § 5.1070 C.

7. This repeal would eliminate the current requirement that a majority of faculty members in professional nursing education programs be employed on a full-time basis. The Board has stated that 10 years experience with this rule has demonstrated that it unduly restricts the staffing of programs without providing any evidence that it ensures the competence of persons licensed to practice nursing. One rural nursing program at Northland Community College in Thief River Falls has not been able to comply with this staffing requirement, and is, therefore, currently only provisionally approved. Its graduates have performed well on licensure examination, however. The Board also suggested that repeal of the rule would enable nursing programs to offer courses during extended times of the day and on weekends. Flexibility would also be provided to deal with fluctuation in student enrollment. (Board Ex. F, pp. 2-4)

8. A number of comments were received in support of the proposed repeal, including that of the Minnesota Medical Association (Public Ex. SS) and the Joint Committee of Nursing Service and Nursing Education (Public Ex. NN), which saw the benefit of maximizing faculty utilization. (See also, Public Exs. E, LL) Two comments spoke against the rule (Public Exs. T, BB), one of which suggested that the repeal could threaten the quality of programs at the schools. The Board has demonstrated the need for and reasonableness of this proposed repeal.

Proposed Repeal of Portions of 7 MCAR §§ 5.1060 A. and 5.2050 A.

9. The proposed rules in question define, for purposes of registered nurse licensure and licensed practical nurse licensure respectively, which institutions the Board deems able to provide an effective nursing education program. As the rules currently stand, each specifically prohibits the Board from approving a nursing education program administered by a general hospital if that program was not in existence on July 1, 1976. These prohibitions were first enacted by the Board in 1975, based upon the belief that if nursing education programs were confined to educational institutions, career mobility for nurses would be facilitated. At the time the prohibition was enacted, there were eight hospital-based diploma programs in the State of Minnesota. That number has declined to four at the present time. (Public Ex. I)

10. In its Statement of Need, the Board states that the type of institution offering the courses has little, if anything, to do with the quality of the program and that therefore the prospective nurses should be allowed to choose the educational program which suits them best. The Board believes that the repeal is justified since the current rule is a restriction on the public without being vital to the program approval process. The Board also notes, however, that it has not received any formal complaints regarding these rules, nor has it received any inquiries from hospitals which desire to have a nurse preparation program. (Board Ex. F, p. 5) The Board also states that the so-called "nursing shortage" is a common topic of discussion and that "one could argue" that increasing the number of graduates might relieve this "shortage". The Board also states, however, that, "To date there is no evidence to suggest that the perceived shortage is related to the number of nurses who graduate from approved nursing education programs each year." According to the figures cited by the Board, the number of graduates from professional nursing programs has increased annually from 1960 to 1976, and has stabilized at approximately 1,800. (Board Ex. F, p. 5)

11. The mailing and the publication of the Notice of Hearing in this matter created some confusion among those receiving it as to the Board's intent in regard to these two proposed repeals. Since the repeal of the last sentence in each subsection would remove any reference to general hospitals from the rules, some persons mistakenly assumed that this would prohibit existing hospital-based programs. (See, Public Exs. B, G, J and Y) As the Board explained at the hearing and in its supplementary Statement of Need and Reasonableness (Board Ex. H), its purpose in intent was to remove all restrictions on what type of institution may develop a nursing education program. The Board believes that if the proposed repeals are accomplished, a hospital would

be permitted to develop new educational programs leading to eligibility for professional or practical nurse licensure. In order to clarify its intent, the Board proposed at the hearing that Section 5.1060 A. and Section 5.2050 A. be repealed in their entirety. (Board Ex. G) The Board states that this is possible since the term "controlling institution" is already defined in other rules; namely, 7 MCAR §§ 5.1050 D. and 5.2040 D.

12. A few commentors suggested that the Board's proposed deletion of the entire rule subsections at the hearing was a substantial change from what they were proposing in the Notice of Hearing as mailed and published in the State Register. (See, e.g., Public Ex. T) The proposed deletion of the entire rule subsection does not change the effect of what the Board is seeking to accomplish in this rule hearing proceeding. The new proposal has fundamentally the same result as that originally proposed, and it cannot be said that those persons reading the Notice of Hearing and deciding not to participate in this rule hearing proceeding would have participated had they known of the repeal of the entire subsections in question. The problem, if one exists, is one of notice to those persons who misunderstood the Board's intent after reading the original Notice of Hearing which contained the proposed rule repeal in full. Technically, the Board's Notice of Hearing is in compliance with Chapter 15 and the Rules of the Office of Hearing Examiners. The Notice contained the rule subsection showing the proposed repeal and also added the explanation that the amendments would "repeal two sentences in the rules which prohibit the Board of Nursing from approving a hospital's professional or practical nursing education program if the hospital's program did not exist as of July 1, 1976." The question of whether or not further explanation was desirable for a change of this magnitude is discussed later.

13. The proposed repeal attracted a large amount of comment, both for and against the repeal. Those nurses, associations and hospitals in favor of the repeal generally stated that general hospitals produce quality nurses and conduct quality programs. The Gopher State Nurses Association (Public Ex. F), the Minnesota Hospital Association (Public Ex. I), the Minnesota Consortium of Diploma Programs in Nursing (Public Ex. L), the Minnesota Association of Health Care Facilities (Public Ex. V), and the Minnesota Medical Association (MMA) (Public Ex. SS) all commented in favor of the Board's proposed repeal. The MMA stated that this prohibition was unnecessary and that there was a need for clinically trained nurses. (See also, Public Exs. B, C, J, N, O, Q, S, W, Y, FF, GG, JJ, KK, OO, PP, QQ, and RR) A number of the comments stated that they believe that the repeal would help the nursing shortage in Minnesota. Shortages were cited at Duluth (Public Ex. DD) and Grand Rapids (Public Ex. II). One comment stated that the colleges cannot produce enough nurses (Public Ex. LL), and another stated the belief that more schools "must help" the shortage. (Public Ex. OO; see also, Public Ex. N) A number of those commenting in favor of the repeal felt, however, that instead of repealing the proposed subsections or a portion thereof, they ought to be amended to specifically say that hospitals can operate nursing programs. (Public Exs. F, I, J, L, N, O, and P) The Board declined to do this because it believes that if the last sentence of the two rules are repealed, the first sentences become

superfluous because of the existing definitions of controlling institution at 7 MCAR §§ 5.1050 and 5.2040. (Board Ex. J)

14. A similarly large number of nurses, associations and institutions spoke against this proposed repeal. They included the Minnesota Nurses Association (Public Ex. TT) which cited the trend to degreed nurses and the Minnesota Association of Colleges of Nursing. (Public Ex. M) They argued essentially that nurses receive a broader and better education at an educational institution as opposed to a hospital which serves the needs of patients rather than students. They suggested that the increasing complexity of health care delivery systems requires that nursing education be based at an institution of higher learning. (See, Public Exs. A, D, E, H, T, U, Z, BB, CC, EE, HH, and MM) One commentor also suggested that hospital-based diploma schools increase hospital costs since student tuition does not pay for the program. (Public Ex. LL)

15. Those against the repeal were also very concerned with the problems of career mobility, the subject which concerned the Board when it originally promulgated the rule in 1975. The problem is that credits from hospital-based programs do not transfer to college programs, and the result is that nurses wishing to obtain a higher degree must often repeat courses to do so. As was stated by the Minnesota Nurses Association, this repetition involves the loss of time for nurses and can cost a large amount of money. (Public Ex. TT; see also, Public Exs. A, K, M, R, EE, HH, and LL)

16. A large number of comments also stated that there is no evidence that an increase in hospital-based educational programs would relieve the nursing shortage. One comment pointed out that this was demonstrated by of the fact that hospital programs have been closing. (Public Ex. NN) The Minnesota Nurses Association and others stated that the shortage is not related to the number of graduates since that number is increasing, but is a result of many factors especially the number of trained nurses who are simply not working at the present time. (Public Exs. TT, U, LL; see also, Public Exs. A, M, and BB)

17. At least two comments (Public Exs. M, TT) specifically raised the issue of whether or not the Board had justified the proposed repeal in this rule hearing proceeding. Chapter 15 requires the Board to make an affirmative presentation of facts showing the need for and reasonableness of the repeal of a rule, the same as it must do so for the promulgation of a new rule. Neither the Board's Statement of Need nor its oral presentation at the hearing would constitute an adequate presentation in support of the change proposed. The Board points out that it has received no inquiries from hospitals desiring to initiate programs and, in fact, half of the programs have voluntarily closed. The Board also admits that there is no evidence to show that encouraging hospital-based programs would help any perceived "nursing shortage". The Board apparently does not contend that the career mobility problem is any less that it was in 1975. It is unlikely that Minn. Stat. § 15.0412, subd. 4, as it currently stands, permits an agency to rely upon facts presented by others during a rule hearing proceeding where it has failed to make an adequate affirmative presentation. An amendment to Chapter 15 may permit this subsequent to August 1, 1980. (See, Minn. Laws 1980, Ch. 615, § 6, subd. 4(c)) At any

rate, the comments in this rule hearing record which favor repeal, when compared to those taking the opposite position, cannot be said to adequately demonstrate the need for increasing hospital-based programs beyond that presently allowed by the rule as it stands. While the comments do demonstrate that hospital-based programs do produce good nurses, who are sought out for employment, it would appear that the suggestion that the repeal would help the nursing shortage is closer to speculation than being based upon facts or rational argument. No one contended that the career mobility problem was now solved or that there any demonstrated specific demand for more hospital-based programs.

18. The change being proposed by the Board is a fundamental one in the area of nursing education. One thing which the rule hearing record does make clear is that different philosophical positions exist within the nursing profession as to the proper direction for nursing education. While the Board's announced position is that its rules should simply not deal with the question of who is able to operate a nursing education program, the fact is that the proposed repeal is an important policy decision. Apparently, this question was added to this rule hearing procedure which had been originally planned only for the deletion of the first rule discussed above. (Public Ex. G) Although the Notice in this matter was technically proper, it may not have provided as full an explanation of the effect of the proposed repeal as would be desirable for a question of this importance.

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

CONCLUSIONS

1. That the Board gave proper notice of the promulgation of the proposed repeals.

2. That the Board has statutory authority to adopt the proposed repeals.

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

4. That the Board has demonstrated the need for and reasonableness of its proposed repeal of 7 MCAR § 5.1070 C., but not of its proposed repeal of Section 5.1060 A. and 7 MCAR § 5.2050 A. not repealed

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

RECOMMENDATION

It is recommended that the Board adopt its proposed repeal of 7 MCAR§ 5.1070 C. and that it deal with the question of hospital-based nursing programs in a later rule proceeding.

Dated: May 19 , 1980.

George A. Beck

GEORGE A. BECK
State Hearing Examiner

Board Exhibit No. 74
File No. BNUR-80-004-GB
SM Date 4/16/80

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070 C. Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

SUPPLEMENTARY STATEMENT OF NEED AND REASONABLENESS

On April 16, 1980, a public hearing is scheduled for 9:00 AM in Room 105 of the Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, for the purpose of obtaining public comment on the proposed repeal of 7 MCAR § 5.1070 C. and portions of 7 MCAR §§ 5.1060A and 5.2050A.

On March 17, 1980, a Notice of Hearing was published in the State Register. This Notice of Hearing was also mailed on March 11, 1980, to: (1) persons who have requested that their names be placed on file with the Secretary of State for the purpose of receiving notices of hearing, (2) persons who are members of the Minnesota Legislature, and (3) persons who have requested that their names be placed on file with the Board of Nursing for the purpose of receiving notices of hearing.

After the Notice of Hearing was published in the State Register some persons contacted the Board of Nursing to inquire what the Board's intent was in proposing the repeal of portions of 7 MCAR §§ 5.1060A and 5.2050A. Specifically, these persons inquired whether the effect of the repeal would be to prohibit all hospital-administered nursing education programs.

This Supplementary Statement of Need and Reasonableness is submitted to hopefully clarify the confusion surrounding the proposed repeal of portions of 7 MCAR §§ 5.1060A and 5.2050A and to support the Board's position at the April 16, 1980 hearing that these rules should be repealed in their entirety. The purpose and desired goal of the proposed repeal of portions of the above-referenced rules was to remove all restrictions on what type of institution may develop a nursing education program. Under the rules as they currently exist, the Board is prohibited from approving a nursing education program administered by a general hospital if the program was not in existence as of July 1, 1976. It was the Board's intent that if the proposed repeals were accomplished, hospitals would be permitted to develop new educational programs leading to eligibility for professional or practical nurse licensure. As stated in the Statement of Need and Reasonableness dated March 20, 1980:

> The Board believes that the quality of education programs can best be controlled by curriculum and faculty requirements. Since the type of institution offering the courses has little, if anything, to do with the quality of the program (if curriculum and faculty requirements are uniform), prospective nurses should be allowed to choose the education program which suits them best from one of several in existence on an open market.

In sum, the Board neither seeks to define which institutions may develop an educational program nor seeks to prohibit any particular type of institution from developing an educational program. Because the proposed repeal of portions of 7 MCAR §§ 5.1060A and 5.2050A apparently created some confusion regarding what the Board actually intended, the Board is now proposing that both 7 MCAR §§ 5.1060A and 5.2050A be repealed in their entirety. The proposed repeal of 7 MCAR §§ 5.1060A and 5.2050A in their entirety is reasonable since the rules as amended are repetitious of other rules. The term "controlling institution" is already defined in 7 MCAR §§ 5.1050D and 5.2040D as "the larger institution that operates a nursing ~~home.~~ program." Thus, the first sentences of 7 MCAR §§ 5.1060A and 5.2050A are not necessary since they merely reiterate that definition.

Dated: April _____, 1980

STATE OF MINNESOTA

BOARD OF NURSING

_____

JOYCE M. SCHOWALTER
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070 C. Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

STATEMENT OF NEED AND REASONABLENESS

The Minnesota Board of Nursing (hereinafter "Board"), pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), hereby affirmatively presents facts establishing the need for and reasonableness of repealing the above-captioned rules. Terms used throughout this statement will have the definitions given them in 7 MCAR §§ 5.1050 and 5.2040.

I.

STATUTORY AUTHORITY FOR REPEAL OF 7 MCAR § 5.1070 C. AND PORTIONS OF 7 MCAR §§ 5.1060A and 5.2050A WHICH RELATE TO NURSING EDUCATION PROGRAMS.

Pursuant to Minn. Stat. §§ 148.211 and 148.291 (1978), only persons who have completed or are in their last term of a Board-approved educational program are eligible for licensure as either a professional or a practical nurse. The Board's statutory authority for adopting, amending, or repealing rules relating to nursing education programs is contained in Minn. Stat. § 148.191 (1978). That statute states, in relevant part, that:

> The board is authorized to adopt and, from time to time, revise rules not inconsistent with the law, as may be necessary to enable it to carry into effect the provisions of sections 148.171 to 148.299. The board shall prescribe by rule curricula and standards for schools and courses preparing persons for licensure under sections 148.171 to 148.299. It shall conduct or provide for surveys of such schools and courses at such times as it may deem necessary. It shall approve such schools and courses as meet the requirements of sections 148.171 to 148.299 and board rules.

II.

NEED FOR AND REASONABLENESS OF REPEAL OF 7 MCAR § 5.1070 C.

Currently, 7 MCAR § 5.1070 C. requires that all Board-approved programs which are preparing persons for licensure as professional nurses, commonly referred to as registered nurses, must employ a majority of their faculty on a full-time basis. This rule was promulgated in 1968 on the assumption that a majority of full-time faculty members was important to the production of graduates able to obtain licensure and thereafter to practice professional nursing, as defined in Minn. Stat. § 148.171(3) (1978), safely. However, over 10 years experience with this rule has demonstrated that it unduly restricts the staffing of programs without providing any assurance that the rule is essential to accomplishing the purpose of program approval, which is to ensure the competence of persons licensed to practice nursing.

The rule has proven to be particularly restrictive with respect to the staffing of faculty at rural schools. For example, Northland Community College (hereinafter "Northland"), Thief River Falls, Minnesota, is currently on provisional approval pursuant to 7 MCAR § 5.1054 because it has not been able to comply with the staffing requirements of 7 MCAR § 5.1070 C. Northland is a member of the Agassiz Region Nursing Education Consortium and serves the northeastern part of the state, specifically the populations in and around Thief River Falls, Bemidji, Crookston and East Grand Forks, Minnesota. Northland accepts students who have already obtained licensure as licensed practical nurses but who seek further study in order to meet the qualifications for registered nurse licensure. Students may complete the professional nursing program at Northland in one year, obtain an associate degree, and apply for licensure as a registered nurse.

Northland's nursing program maintains a home base in Thief River Falls and has two extended campuses in Crookston and Bemidji. The curriculum is designed so that students living in the vicinity of either Crookston or Bemidji are required to travel to the Northland campus in Thief River Falls only one day each week. The remainder of the week students receive clinical instruction at one of the three cities: Crookston, Bemidji, or Thief River Falls. This plan is facilitated by staffing the nursing faculty with a full-time director located in Thief River Falls and three part-time instructors, one located in each of the three communities.

Since its inception three years ago, the Board has monitored the progress of Northland's nursing program. The Board's statistics, printed in the following table, reveal that Northland graduates have scored within one to three percent of the average national passing rate for nursing applicants with an associate degree on the licensure examination administered by the Board and used by every other state.

LICENSURE EXAMINATION ACHIEVEMENT

DATE EXAM WRITTEN	NUMBER NORTHLAND CANDIDATES	PERCENTAGE OF GRADUATES PASSING ON FIRST WRITING				
		ASSOCIATE DEGREE PROGS.			ALL RN- PREPARING PROGS.	
		NORTHLAND	MINN.	U.S.	MINNESOTA	U.S.
July 77	26	81	89	84	89	86
July 78	20	80	87	82	89	85
July 79	19	84*	87*	N.A.	88*	N.A.

* These figures only reflect candidates writing the examination for Minnesota licensure. The figures for the preceding two years include graduates from Minnesota programs who wrote the same examination for licensure in other states.

Although Northland is currently the only Minnesota nursing education program which uses distant-extended campuses in the manner described, it is anticipated that similar programs may be created to meet the needs of rural students. Repeal of 7 MCAR § 5.1070 C. would provide more flexibility for directors of nursing education programs to utilize part-time instructors to staff courses on extended campuses.

Repeal of 7 MCAR § 5.1070 C. would also enable nursing programs to offer courses during extended times of day with the use of part-time faculty. A number of the larger programs located in the Metropolitan area, Rochester, Duluth, and St. Cloud have experienced difficulty in placing all of their students in clinical learning experiences during week-day and day-time hours. If the schools hope to take advantage of clinical learning on weekends and during evenings and reduce the student-faculty ratio during clinical learning, they may find it necessary to increase the proportion of faculty members employed part-time.

In sum, repeal of 7 MCAR § 5.1070 C. would provide programs the flexibility of adding part-time instructors whenever needed. Student enrollment varies from year to year as do attrition rates. The ability to increase the number

of part-time faculty would allow programs to accommodate for this fluctuation in student enrollment. In addition, unplanned faculty illness, personal emergencies or opportunities for self-improvement may also necessitate the employment of part-time teachers. Repeal of this rule will permit the director of the program to determine the staffing that will most effectively implement the curriculum. Since there is no evidence that a majority of full-time faculty members is essential to the production of safe, qualified nurses, it is reasonable to assume that a faculty selected by the director, who is not needlessly hampered by state agency restrictions, could succeed in meeting all of the remaining rules for approval and produce safe practitioners even though that faculty has less than a majority of full-time faculty members.

III.

NEED FOR AND REASONABLENESS OF REPEAL OF PORTIONS OF 7 MCAR §§ 5.1060A and 5.2050A.

Currently, 7 MCAR §§ 5.1060 and 5.2050 define which institutions the Board deems able to provide an effective nursing education program leading to eligibility for professional or practical nurse licensure. Both rules specifically prohibit the Board from approving a nursing education program administered by a general hospital if the program was not in existence as of July 1, 1976. The Board has recently reexamined these rules and it now believes that the prohibition of new hospital-administered programs is not necessary to carry out Board functions and duties.

The sentences in 7 MCAR §§ 5.1060A and 5.2050A which prohibit hospital-administered educational programs were promulgated into rules in 1975. At that time the Board was concerned that the variety of different educational programs might be restricting upward career mobility. The Board sought to minimize the differences in the types of programs offered so that if a practical nurse sought to obtain licensure as a registered nurse, she/he could receive some credit for her/his practical nursing education. Thus, the Board promulgated 7 MCAR §§ 5.1060A and 5.2050A with the hope that if nursing education programs were confined to educational institutions such as community colleges and universities there would be more overlap in the types of courses offered in the various programs, thereby facilitating career mobility.

Reexamination of 7 MCAR §§ 5.1060A and 5.2050A was part of the Board's recent efforts to reevaluate all of its rules. It is the Board's belief that rules which are not essential to the Board's function of ensuring the safety and competency of nursing practice in the State of Minnesota should be repealed. To date, the Board has not received any formal complaints regarding the rules nor has it received any inquiries from hospitals which desire to have a nurse-preparing program. In fact, half of the eight hospital programs in existence have voluntarily closed since then. Nevertheless, the Board believes these two sentences should be repealed since they impose restrictions on the public without being vital to the program approval process conducted by the Board.

The Board believes that the quality of education programs can best be controlled by curriculum and faculty requirements. Since the type of institution offering the courses has little, if anything, to do with the quality of the program (if curriculum and faculty requirements are uniform), prospective nurses should be allowed to choose the educational program which suits them best from one of several in existence on an open market.

The Board also feels it would be prudent to repeal these sentences in order to clarify any possible misunderstanding as to the Board's intent in promulgating the rules in 1975.

A common topic of discussion by legislators, nurses, employees and planners at this time is the so-called "nursing shortage." To date there is no evidence to suggest that the perceived shortage is related to the number of nurses who graduate from approved nursing education programs each year.*/ Nevertheless, one could argue that increasing the number of graduates might relieve the "shortage." One method of increasing the number of graduates is by opening a new program. One could further argue that the sentences in the current

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*/ In fact, figures show that the number of graduates from professional nursing programs has increased annually between 1960 (1,062) and 1976 (1,967) and has now stabilized at about 1,800. The annual number of graduates from practical nursing programs has increased steadily between 1960 (600) and 1978 (1,830) and showed a slight decrease in 1979 (1,768).

rules would prohibit general hospitals who desired to start a new program from doing so, thereby inhibiting attempts at a solution of a perceived problem--"the nursing shortage." Since such an effect was not intended when the rules were promulgated in 1975, the Board believes it is necesary to repeal the sentences in order to clarify any misunderstandings.

Dated: March 20, 1980

BEFORE THE MINNESOTA

BOARD OF NURSING

JOYCE M. SCHOWALTER
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

AFFIDAVIT OF MAILING

Priscilla Jean Zeug, being first duly sworn, deposes and says:

That on the 11 day of March, 1980, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the Certificate of the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations at the addresses listed on Exhibit B, attached and made a part hereof, as well as to all members of the Minnesota Legislature as of the date of mailing.

Priscilla Jean Zeug

Subscribed and sworn to before me this 11th day of March, 1980.

Alice D. Hummer

ALICE D. HUMMER
Notary Public, Ramsey Co. Minn.
My Commission Expires
Nov. 18, 1981

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

CERTIFICATE

I hereby certify that the 347 general labels and 2 page list for the Minnesota Board of Nursing, all of which are attached and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 10:00 o'clock a.m., this 6th day of March, 1980, have requested, pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules and amendments thereto on the subject captioned above.

SECRETARY OF STATE

JOAN ANDERSON GROWE

Joan Anderson Growe

By Kathy Hyelin

Board Exhibit No. D
File No. BNUR-80-004-GB
Date 4/16/80

RECEIVED
MAR 20 1980
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

BEFORE THE MINNESOTA
BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Marilyn Wolner, being first duly sworn upon oath, deposes and says:

1. The She is an employee of the Minnesota Board of Nursing.

2. That on the 3 day of March, 1980, 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 6 day of March, 1980, 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.

Marilyn Wolner

Subscribed and sworn to before me
this 6th day of March, 1980.

Alice D. Hummer

ALICE D. HUMMER
Notary Public, Ramsey Co. Minn.
My Commission Expires
Nov. 18, 1981

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

NOTICE OF HEARING

A public hearing concerning the proposed repeal of 7 MCAR § 5.1070C and a portion of 7 MCAR §§ 5.1060A and 5.2050A will be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on April 16, 1980, commencing at 9:00 AM. The proposed repeal may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed repeal you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. 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 to George A. Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-8108, either before the hearing or within five working days after the close of the hearing. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of

such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417, and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

Twenty-five (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 all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. 9

The agency's authority to repeal 7 MCAR § 5.1070C and portions of 7 MCAR §§ 5.1060A and 5.2050A is contained in Minn. Stat. § 148.191 (1978). 4

The proposed repeal of 7 MCAR § 5.1070C would eliminate the present requirement that a majority of faculty members in professional nursing education programs be employed full-time. The agency is proposing that 7 MCAR § 5.1070C be repealed and 7 MCAR § 5.1070 D and E be renumbered as C and D respectively, so that 7 MCAR § 5.1070 would read as follows:

> § 5.1070 Composition and functions. The faculty shall formulate and implement the educational policies for the program according to the powers delegated to the faculty by the controlling body of the institution. 3
>
> A. The director shall have adequate assistance in the administration of the program.
>
> B. Members of the faculty are persons employed for instruction, guidance, research or administration.
>
> ~~C. The majority of faculty members shall be employed on a full-time basis.~~

C.~~D.~~ The faculty shall have the responsibility for development and implementation of the curriculum.

D.~~E.~~ Nursing courses shall be the responsibility of faculty members who are registered nurses employed by the program.

The proposed amendments to 7 MCAR §§ 5.1060A and 5.2050A would repeal two sentences in the rules which prohibit the Board of Nursing from approving a hospital's professional or practical nursing education program if the hospital's program did not exist as of July 1, 1976. The agency is proposing that the last sentences of 7 MCAR §§ 5.1060A and 5.2050A be repealed so that the rules will read as follows:

§ 5.1060 Controlling institution

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective program leading to graduation and eligibility for Registered Nurse licensure and which shall include universities, senior colleges, or community/junior colleges, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

§ 5.2050 Controlling institution.

A. The controlling institution shall be an educational institution which the Board deems able to provide an effective Licensed Practical Nurse preparing program and which shall include but not be limited to comprehensive high schools, vocational-technical schools, community/junior colleges, senior colleges and universities, both public and private. ~~Only those general hospitals which have existing programs as of July 1, 1976 shall constitute a controlling institution within these regulations.~~

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.

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, (Supp. 1979) 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, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

Dated: February 21, 1980

STATE OF MINNESOTA

BOARD OF NURSING

Joyce M. Schowalter

JOYCE M. SCHOWALTER, R.N.
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

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-five.

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

Dated: February 21, 1980

STATE OF MINNESOTA

BOARD OF NURSING

Joyce M. Schowalter

JOYCE M. SCHOWALTER, R.N.
Executive Secretary

CERTIFICATE OF BOARD OF NURSING'S

AUTHORIZING RESOLUTION

I, Joyce M. Schowalter, R.N., do hereby certify that I am the Executive Secretary of the Minnesota State Board of Nursing, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 8th day of February, 1980, that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that Joyce M. Schowalter, R.N., Executive Secretary of the Minnesota Board of Nursing, be and she hereby is granted the authority and directed to call a hearing for the purpose of repealing rule 7 MCAR § 5.1070C pertaining to faculty of professional nursing education programs and a portion of 7 MCAR §§ 5.1060A and 5.2050A pertaining to controlling institutions of professional and practical nursing education programs, as well as perform any and all acts incidental thereto, including but without being limited thereto, signing an order for hearing and notice of hearing as well as requesting the appointment of a hearing examiner and complying with all applicable provisions of the Minnesota Administrative Procedure Act and the rules of the Office of Hearing Examiners.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of February, 1980.

STATE OF MINNESOTA

BOARD OF NURSING

Joyce M. Schowalter

JOYCE M. SCHOWALTER, R.N.
Executive Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of the Proposed Repeal of 7 MCAR § 5.1070C Relating to the Composition of Faculty of Professional Nursing Education Programs and the Proposed Repeal of Portions of 7 MCAR §§ 5.1060A and 5.2050A Relating to the Definition of a Controlling Institution of Professional and Practical Nursing Education Programs

ORDER FOR HEARING

To effectively implement Minn. Stat. §§ 148.191, 148.251 and 148.292 (1978), the Minnesota State Board of Nursing deems it necessary to consider the repeal of 7 MCAR § 5.1070C and a portion of 7 MCAR §§ 5.1060A and 5.2050A captioned above pursuant to the authority vested in it by Minn. Stat. § 148.191 (1978).

NOW, THEREFORE, IT IS ORDERED this 21st day of February, 1980, that a public hearing on the proposed repeal of 7 MCAR § 5.1070C and a portion of 7 MCAR §§ 5.1060A and 5.2050A captioned above be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on April 16, 1980, commencing at 9:00 AM, 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.

Dated: February 21, 1980

STATE OF MINNESOTA

BOARD OF NURSING

Joyce M. Schowalter

JOYCE M. SCHOWALTER, R.N.
Executive Secretary

CERTIFICATE OF BOARD OF NURSING

REPEAL OF RULE RESOLUTION

I, Joyce M. Schowalter, do hereby certify that I am the Executive Secretary of the Minnesota Board of Nursing, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Board of Nursing called and held on the 29th day of May, 1980; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified:

> RESOLVED, that the repeal of 7 MCAR § 5.1070C. relating to the composition of faculty of professional nursing education programs which was considered at a public hearing held on the 16th day of April, 1980, is found to be reasonable, necessary and supported by the evidence contained in the record, and is hereby repealed, pursuant to authority vested in the Board of Nursing by Minn. Stat. § 148.191, subd. 2 (1978) and that Joyce M. Schowalter, Executive Secretary of the Board, be and hereby is authorized to sign an order repealing that rule.
>
> BE IT FURTHER RESOLVED that the Report of Hearing Examiner relating to this matter be and hereby is expressly adopted in its entirety by the Board as its own.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 9th day of June, 1980.

STATE OF MINNESOTA

BOARD OF NURSING

Joyce M. Schowalter

JOYCE M. SCHOWALTER
Executive Secretary