

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR § 1.327-328

FINDINGS OF FACT, CONCLUSIONS AND ORDER

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck at 9:30 a.m. on Wednesday, November 21, 1979, in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, City of Minneapolis, County of Hennepin, State of Minnesota. The Hearing Examiner executed a Report of the Hearing Examiner on December 21, 1979, and submitted the same to the Department of Health.

Based upon all the testimony, exhibits and written comments, and the Report of the Hearing Examiner, the Commissioner now makes the following:

FINDINGS OF FACT

1. The Commissioner adopts as his own the Findings of Fact contained in the Report of the Hearing Examiner of December 21, 1979, said report being fully incorporated into and made a part of these findings as if set forth by the Commissioner with the exception as referenced in finding 2., hereinbelow.

2. In Findings of Fact 9. of the Report of the Hearing Examiner, the second paragraph discusses the timing of the initial tuberculin test as ". . . 45 days prior to initial employment" and states that the amendment does not solve an objection that new employees are not available for testing until they report to school.

Since the amendments herein were initially proposed and published, the wording in Proposed Rule 7 MCAR § 1.327B, requires testing "within 45 days prior to potential first contact with students . . . ." (Emphasis added.) The use of the preposition "within" has been and is intended to permit employees to be tested for tuberculosis at any point from zero to 45 days prior to contact with students. Indeed to be tested 45 days prior to contact with students would not fulfill the requirements of the rule.

The meaning of this rule was specifically addressed in The Statement of Need for and Facts Establishing the Reasonableness of the Proposed Amendments, Exhibit 5 of the hearing record. This document states in part that, "[a] period longer than 45 days prior to employment would identify most of the employees with tuberculosis infections and disease, but could result in failing to identify those employees at highest risk of developing tuberculosis disease."

Although a substitute preposition has been sought to incorporate the concept of "within," a more clear word has not been found. "Within 45 days" simply means that which is purports to state--within a period from zero to 45 days prior to initial contact with students, new employees shall be tested. However, to emphasize and to clarify the meaning of the rule, the Commissioner finds it necessary to underscore the preposition "within" by having it italicized in the rules as finally adopted and printed.

CONCLUSIONS OF LAW

The Commissioner adopts as his own the Conclusions contained in the Report of the Hearing Examiner, dated December 21, 1979, said conclusioins being fully incorporated and made a part of the Commissioner's Conclusions as if set forth by the Commissioner.

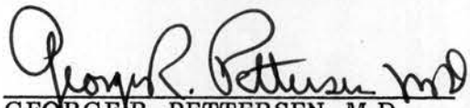
ORDER

The Amendments to Rules Relating to Testing School Employees for Tuberculosis identified as 7 MCAR § 1.327-328 are found to be reasonable, necessary and supported by the evidence contained in the records, and are hereby approved and adopted pursuant to the authority vested in me by Minn. Stat. § 123.69, subd. 1 (Supp. 1979), and Minn. Stat. §§ 144.05(a), (b), (c) and (f) (1978).

Dated: May 30, 1980

STATE OF MINNESOTA

COMMISSIONER OF HEALTH



GEORGE R. PETTERSEN, M.D.
Commissioner

RULES AS FINALLY ADOPTED

Proposed Rules to Implement Minn. Stat. § 123.69 (as amended)

7 MCAR § 1.327 ~~Annual tuberculin~~ Tuberculin testing for employees of school districts, private or parochial schools, day care centers, and nursery schools.

A. Definitions

For the purpose of this Rule, the following terms have the meanings given them:

1. ~~"Initial employment" means first employment in Minnesota school districts or re-employment in Minnesota school districts following a period of four or more months of non-employment in a Minnesota school district.~~ Employment means an agreement in which a person promises to provide services to a Minnesota school district or school in return for monetary compensation, which services include personal contact with students.

2. "Continuous employment" means yearly employment in Minnesota school districts with no more than a four-month interruption in employment.

B. Tuberculin skin testing

~~Unless an employee has previously shown a positive reaction to a standard intradermal tuberculin test as certified by a physician, the~~ All employees of ~~all~~ school districts, ~~and the employees of all~~ private ~~or~~ and parochial schools, day care centers, and nursery schools, unless certified by a physician to have had a positive reaction (10mm or greater of induration) to a standard intradermal tuberculin test, shall ~~be required to~~ have, within 45 days prior to ~~initial employment,~~ potential first contact with students, a standard intradermal tuberculin test ~~to show freedom from tuberculosis within one year~~ with purified protein derivative (PPD). ~~prior to employment, and annually thereafter.~~ If the tuberculin test is negative (less than 10mm of induration), the employee shall be considered free from tuberculosis. and need not repeat the standard intradermal tuberculin test during the period of continuous employment in schools or day care centers in Minnesota, ~~The State Board of Health may require more frequent testing if employees are exposed~~ unless exposure to ~~a known~~ an active tuberculosis case ~~or eases~~ occurs.

7 MCAR § 1.328 ~~Annual Examinations of all employees~~ Employees showing positive reactions. All employees showing positive reaction (10mm or greater of induration) to the standard intradermal tuberculin test shall have such additional examinations as are necessary to enable their physician to certify their freedom from tuberculosis~~.~~; ~~These examinations may include any or all of the following considerations: History, physical examination, chest x-ray, additional skin test, laboratory examination including smear and culture.~~ however, ~~Minimum~~ the minimum requirement shall be a report by a roentgenologist of a satisfactory negative ~~14 x 17 inch~~ full-sized chest x-ray taken within 60 days ~~of~~ prior to ~~employment~~ potential first contact with students ~~and annually thereafter for duration of employment~~. All employees showing positive reaction to the standard intradermal tuberculin test shall present annually, a report by a roentgenologist of a satisfactory negative full-sized chest x-ray until five (5) years have elapsed since a documented positive skin test, after which time the employee shall be considered free from tuberculosis during the period of continuous employment in schools or day care centers in Minnesota. All employees showing positive reaction to the intradermal tuberculin test who take a complete course of preventive therapy as directed by their physician, will be considered free from tuberculosis at the completion of the treatment program.

APPROVED AS TO FORM AND LEGALITY

AUG 0 4 1980 19___

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG – 5 1980
Joan Anderson Growe
Secretary of State
1:06 P.M.

Our File #616

ADMIN 1000 (Rev. 1 78)
SF-00[illegible]

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

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

DATE: August 7, 1980

Attn: TERRY P. O'BRIEN

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR secs. 1.327-.328

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.

JSA/bw
Encl.
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
Special Assistant
Attorney General

DATE: August 5, 1980

FROM : Terry P. O'Brien
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR §§ 1.327-.328

Pursuant to our telephone conversation of August 4, 1980, I would request on behalf of the Department of Health that you correct a typographical error and substitute a word in the filing of the above-referenced rules. More specifically, proposed 7 MCAR § 1.328 currently addresses tests as necessary to enable a physician to "certivy" freedom from TB. Inasmuch as the infinitive was to be to "certify," would you please make this change prior to filing the rules with the Secretary of State.

Further, the Department concurs in your recommendation that the article "the" be inserted between "however, minimum . . ." in the same section of the rule. We would ask that you file the rule with the Secretary of State so as to read, "however, the minimum requirement . . . ."

Thank you for your careful review of these rules and your recommendations.

TPO:sil

RECEIVED
AUG 7 1980
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PRINTED ON RECYCLED PAPER

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR §§ 1.327-328

STATEMENT OF NEED FOR AND FACTS ESTABLISHING THE REASONABLENESS OF THE PROPOSED AMENDMENTS

The Minnesota Commissioner of Health (hereinafter "Commissioner"), pursuant to Minn. Stat. § 15.041, subd. 4 (1978), hereby presents the need for the adoption of the above-referenced amendments and affirmatively presents facts establishing the reasonableness and justifying the adoption of the above-captioned amendments to the Commissioner's existing rules.

Inasmuch as the rules for screening school employees for tuberculosis (hereinafter "TB") have not been amended since their adoption in 1974, amendments to the currently existing rules are needed:

a. To reflect the 1979 legislative amendments;

b. To recognize statistical evidence concerning the incidents of TB among the population generally and with reference to the number of Minnesota school employees;

c. To incorporate the most recent scientific recommendations of scholars and institutions which address screening for TB.

Minn. Laws 1979, ch. 292 amended Minn. Stat. § 123.69 so as to require testing of school employees periodically instead of the previously required annual testing. The amendments contained in these rules are needed in part to reflect this legislative change.

Furthermore, Minn. Laws 1979, ch. 292 more clearly defines the rule-making authority of the Commissioner of Health to prescribe rules concerning the demonstration of freedom from TB by school employees or applicants for employment.

The amendments contained herein are necessary so as to update the rules in view of the incidence of TB as set forth in the Statement of Facts Establishing the Reasonableness of the Proposed Amendments.

Finally, the rules are needed to conform with the most recent recommendations of those scholarly investigations which have addressed TB screening, which authorities are cited herein. As the art and science of medical investigation, screening and diagnosis become more advanced and thorough, it is incumbent upon the Commissioner through his authority in Minn. Laws 1979, ch. 292 and Minn. Stat. § 144.05(a), (b), (c) and (f) (1978), to update rules affecting the public health in conformance with scientific and medical advances.

The facts establishing the reasonableness of the proposed amendments are attached and made a part hereof in the document entitled "JUSTIFICATION OF REVISION OF 7 MCAR § 1.327 AND 1.328 'TESTING SCHOOL EMPLOYEES FOR TUBERCULOSIS.'" In the attachment, a list of authorities relied upon by the Commissioner to support the amendments in the above-captioned rules is provided.

Dated: October 25, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

George R. Pettersen M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

JUSTIFICATION OF REVISION OF 7 MCAR §1.327 AND 1.328 "TESTING SCHOOL EMPLOYEES FOR TUBERCULOSIS"

The American Thoracic Society recommends: 1) all school employees should receive a tuberculin skin test before employment unless they have a documented positive skin test reaction, and 2) employees with a positive skin test reaction should receive a chest x-ray (1).

The tuberculosis new case rates for Minnesota and the United States have been declining (2). Few people now become infected with the tuberculosis bacteria (3). Tuberculosis prevention and control methods have changed to those more productive in identifying tuberculosis cases in low incidence areas (3, 4). Rules for screening school employees have not been amended since their adoption in 1974.

The proposed revisions of 7 MCAR §1.327 and 1.328 modify the requirement that school employees show freedom from tuberculosis annually. The changes reflect the low risk of acquiring new infections in Minnesota as well as, persons infected several years developing active tuberculosis disease. Authority for this revision is found in Minnesota Statutes 123.69.

Tuberculosis screening of school employees has been done to protect children from the disease. Employees were given a tuberculin skin test to see if they had become infected with the tuberculosis bacteria. Positive skin tests were interpreted to mean the employees were infected; in other words, they had tuberculosis bacteria living in their bodies. Persons who are infected with the tuberculosis bacteria may go on to develop tuberculosis disease that can be spread to others. Employees with negative skin tests were tested annually to see if they became infected in the preceding year. Employees with positive skin tests, infected persons, were given a chest x-ray to see if the infections had developed into tuberculosis disease. If the employees were found to have tuberculosis disease they were treated with anti-tuberculosis drugs. Infected persons whose x-rays were normal were given x-rays annually to see if the infection progressed into active disease in the preceding year.

Annual tuberculosis screening of all school employees is no longer necessary. Persons in areas such as Minnesota where there is very little tuberculosis are unlikely to acquire new tuberculosis infections (3). Therefore, if new employees are tuberculin skin tested to see if they are already infected and are found to be not infected no additional routine testing need be done of this group (1).

In persons that are infected (positive skin test) but do not have tuberculosis disease (normal x-ray and examination), disease is most likely to develop within the first five years after becoming infected (5). There is a low risk that infected persons may develop active disease at any point in their lives.

7 MCAR §1.327 TUBERCULIN TESTING FOR EMPLOYEES OF SCHOOL DISTRICTS, PRIVATE OR PAROCHIAL SCHOOLS, DAY CARE CENTERS, AND NURSERY SCHOOLS.

TITLE

"Annual" has been deleted from the title to correspond with changes in the statutes and rules. The 1979 amendment of Minnesota Statute 123.69 requires school employees to show periodic, as opposed to, annual freedom from tuberculosis.

SENTENCE 1

"(10 millimeters or greater of induration)" has been added to define positive reaction to the standard intradermal tuberculin test. The American Thoracic Society, which is the medical branch of the American Lung Association, recommends that a reaction of 10 millimeters or more of induration be interpreted as positive for past or present infection with the tuberculosis bacteria because reactions this large most likely represent specific sensitivity (6).

"Within 45 days" has been added to minimize the risk of failing to identify those employees with tuberculosis disease, as well as those that may have become infected before employment. A period longer than 45 days prior to employment would identify most of the employees with tuberculosis infections and disease, but could result in failing to identify those employees at highest risk of developing tuberculosis disease. Newly infected persons are the group most likely to develop tuberculosis disease (5, 7).

The average number of new tuberculosis infections per year in areas such as Minnesota that have little tuberculosis disease is estimated to be 1 person per 10,000 population (3). The Minnesota Department of Education lists in their fall of 1978 report, 53,223 full-time equivalent personnel in classroom and non-classroom positions. No data is available for the number of new employees of Minnesota school districts. The period of time between acquiring a tuberculosis infection and the body's response to the infection as measured by a positive tuberculin skin test ranges from 2 to 10 weeks (8). If all 53,223 employees are assumed to be new employees, no more than an average of 2 of these employees would have acquired a tuberculosis infection that would have been missed if the tuberculin test is administered 45 days prior to employment.

A period shorter than 45 days may present undue hardship for school employees since not only the skin test must be applied and read 48 to 72 hours later, but in the case of a positive skin test the employee must also have a chest x-ray and any additional examination their physician requires to certify their freedom from tuberculosis.

"With purified protein derivative (PPD)" has been added to coincide with the American Thoracic Society's recommendation that the standard intradermal tuberculin test with PPD is the test of choice when sensitivity and specificity are required (8).

"Annually thereafter" was deleted due to the change in the statute previously discussed and the very low risk of an uninfected employee acquiring a new infection (1, 3).

SENTENCE 2

"(Less than 10 millimeters of induration)" has been added to define a negative tuberculin test. The American Thoracic Society recommends that reactions that are 10 millimeters or more of induration be interpreted as positive because reactions less than that can result from infection with other mycobacteria (8).

"During the period of continuous annual employment in schools or day care centers in Minnesota" was added to reflect the low risk of acquiring an infection in Minnesota. The risk of becoming infected in other states or countries may be much greater. The Center for Disease Control found that Minnesota is consistently one of the 10 states with the lowest rate of tuberculosis disease (2).

7 MCAR §1.328 EMPLOYEES SHOWING POSITIVE REACTIONS

"Annual examinations" was deleted from the title to reflect the change in the statute which no longer requires annual examinations, as well as, changes in the rule to correspond to scientific knowledge that persons infected (positive skin test) five years or more are at low risk of developing tuberculosis disease (5).

SENTENCE 1

"(10 millimeters or greater of induration)" has been added to correspond with the American Thoracic Society recommendation that a reaction of 10 millimeters or greater to the standard intradermal tuberculin test be interpreted as positive (8).

The specific components of the examination listed in the existing rule have been deleted to coincide with the American Thoracic Society's recommendations for follow-up of a positive skin test (7). These components of the examinations are overly specific and would

be included in the rule in "such additional examinations as are necessary to enable their physician to certify their freedom from tuberculosis."

"14 X 17 inch" has been replaced by "full-sized" to define the actual intent of the x-ray. Full-size x-rays may have various external dimensions or measured in metric units.

"Annually thereafter for duration of employment" has been deleted to correspond to the change in the statute which no longer requires annual examinations, and scientific knowledge that infected persons are only at high risk of developing tuberculosis within the first five years after acquiring an infection.(5).

SENTENCE 2

A requirement for infected persons to have five years of annual chest x-rays has been added. The American Thoracic Society recommends that employees found to have a positive tuberculin skin test should receive an initial chest x-ray and may require periodic chest x-rays if they are at high risk of developing disease or exposing others (1). School employees recently infected are at high risk of developing disease and are frequently in situations where they may expose large numbers of persons. Persons who recently become infected with tuberculosis are at high risk of developing tuberculosis disease.(5, 7). The risk of tuberculosis infection progressing to tuberculosis disease is greatest in the first five years after the infection has been acquired (5, 7). Those infected persons who have remained well the first five years after becoming infected have a low risk of developing disease at some time during their lives (5). The risk of developing tuberculosis disease increases with age, with the highest rate found in those over 65 years of age (2, 5). Routine periodic x-rays of persons who are no longer at high risk of tuberculosis disease is no longer recommended by the American Thoracic Society (9).

The Minnesota Department of Health in documentation for an amendment to the rules on ionizing radiation cited numerous scientific studies that found all ionizing radiation to be potentially hazardous (10). The American College of Radiology recommends that exposure to ionizing radiation should only occur when the potential benefit outweighs the potential hazard, and that all unnecessary exposure be avoided (11).

The benefit to be gained by annual x-ray examination of persons who are at low risk of developing tuberculosis disease does not seem to justify the potential risk from exposure to ionizing radiation (1, 9, 10).

SENTENCE 3

An addition excluding employees who complete a course of preventive therapy from additional evaluation has been added to reflect current scientific knowledge on the prevention of tuberculosis disease. The American Thoracic Society recommends preventive therapy as effective in preventing tuberculosis (7); they also recommend that persons completing an adequate course of preventive therapy should be exempt from receiving periodic chest x-rays (1).

References

1. American Thoracic Society: Screening for Pulmonary Tuberculosis in Institutions. Am Rev Respir Dis 115: 901-906, 1977

2. Center for Disease Control: Tuberculosis Statistics, States and Cities, Annual Summary 1976. Issued September 1978

3. American Thoracic Society: Tuberculosis Control Programs for Low Incidence Areas. AM Rev Respir Dis 112: 480-481, 1975

4. American Thoracic Society: Guidelines for the investigation and management of tuberculosis contacts. Am Rev Respir Dis 114: 459-463, 1976

5. Stead, W.W., Bates J.: Tuberculosis, in Thorn G.W., Adams R. D., Braunwald E., Isselbacher K. J., Petersdorf R. G., (eds): Harrison's Principles of Internal Medicine. 8th ed. New York, McGraw Hill Book Co. 1977, pp 900-912

6. American Thoracic Society: Diagnostic Standards and Classification of Tuberculosis and other Mycobacterial Diseases. New York: American Lung Association, 1974

7. American Thoracic Society: Preventive Therapy of Tuberculosis Infection. Am Rev Respir Dis 110: 371-374, 1974

8. American Thoracic Society: The Tuberculin Skin Test. Am Rev Respir Dis 104: 769-775, 1971

9. American Thoracic Society: Discharge of Tuberculosis Patients from Medical Surveillance. Am Rev Respir Dis 113: 709-710, 1976

10. Radiation Control: Documentation for amendment to regulation MHD 181 relating to ionizing radiation. Minnesota Department of Health, Hearing transcript for Amendment to Regulation MHD 181, October 24, 1975

11. American College of Radiology: X-ray examinations...a guide to good practice. Washington Government Printing Office, 1971

③ Our File # 6160

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/15 DUE DATE 8/4

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 8/4 Date Sent Back to Agency 8/7

- -

1. Rules as Adopted ✓
2. Rules as Proposed A) ✓
   B) ✓ attached to Hankey to Beck letter, 11.29.79.
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 11.21.79
   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 ? not identified as related to this particular rule.
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓ 10.17.79
10. Publication in State Register ✓ copy not submitted but see HEP 2
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
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 ✓ incorporated in #13 - F. of F.
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 N/A
20. Petition by Public, where applicable N/A

HLTH-80-013-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR § 1.327-328.

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, November 21, 1979, in Room 105, 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 and given the force of law. 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: Dr. Richard Johnson, Allain Hankey and Terry P. O'Brien, Special Assistant Attorney General.

Four persons signed the hearing register. Three public witnesses appeared and spoke at the hearing. The Department submitted five written exhibits. Five written comments were received from the public.

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 Commissioner of Health shall, if he 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 Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Commissioner 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 October 1, 1979, the Department of Health filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule.
(b) An Order for Hearing.

(c) A proposed Notice of Hearing.
(d) A Statement of the number of persons expected to attend and the length of the hearing.

2. On October 15, 1979, a Notice of Hearing and a copy of the proposed rule amendments were published at 4 State Register 577.

3. On October 17, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State to receive such notice.

4. On October 25, 1979, the Department 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 and the list.
(d) The Certificate of the Secretary of State.
(e) The Affidavit of Mailing.
(f) The Statement of Need and Reasonableness.

5. The record remained open through November 30, 1979, for the receipt of written comments and statements.

6. The Department cites Minn. Stat. § 144.05(a), (b), (c) and (f) as authority for these proposed rule amendments. The statute provides, in part, that:

> The state board of health acting through its secretary shall have general authority as the state's official health agency and shall be responsible for the development and maintenance of an organized system of programs and services for protecting, maintaining, and improving the health of the citizens. This authority shall include but not be limited to the following:
>
> (a) Conduct and studies and investigations, collect and analyze health and vital data, and identify and describe health problems;
>
> (b) Plan, facilitate, coordinate, provide, and support the organization of services for the prevention and control of illness and disease and the limitation of disabilities resulting therefrom;
>
> (c) Establish and enforce health standards for the protection and the promotion of the public's health such as quality of health services; reporting of disease, regulation of health facilities, environmental health hazards and manpower;
>
> . . .
>
> (f) Coordinate and integrate local, state and federal programs and services affecting the public's health; . . .

In addition, Minn. Laws 1979, Ch. 292 reads as follows:

> Section 1. Minnesota Statutes 1978, Section 123.69, Subdivision 1, is amended to read:
>
> 123.69 School employees, tuberculosis
>
> Subdivision 1. Tests prior to employment. The employees of all school districts, as defined in section 120.02, and the employees of all private or parochial schools, day care centers and nursery schools shall, prior to employment and periodically thereafter as prescribed by the commissioner of health by rule, show freedom from tuberculosis in accordance with rules promulgated by the commissioner of health. The school district, private or parochial school, day care center or nursery school

shall assume the payment of the cost of the services necessary for the diagnosis and report but the obligation shall be limited to the actual examination and diagnosis and shall not include travel or incidental expenses. The physical examinations, chest x-rays or tuberculin tests shall not be required of any employee who files with the school board or with the person or persons legally responsible for the private or parochial school, day care center or nursery school an affidavit setting forth that he depends exclusively upon prayer or spiritual means for healing, that he is to the best of his knowledge and belief in good health, and that he claims exemption from health examination on those grounds. An employee who is in compliance with the requirements of this section for a school district, private or parochial school, day care center or nursery school in this state shall be deemed to be in compliance with this section for any other school district, private or parochial school, day care center or nursery school.

8. The subject of this rule proceeding is the amendment of two existing health rules. The need to adopt these amendments arises because of statutory changes contained in Minn. Laws 1979, Ch. 292, along with the need to recognize statistical evidence concerning the incidents of Tuberculosis (TB) among the population generally and with reference to Minnesota school employees specifically. They are also needed to incorporate the most recent scientific recommendations of scholars and institutions concerning screening for TB.

7 MCAR § 1.327

9. The first significant change to this section involves amendment of language which required annual testing to language requiring testing only when a person is first employed or exposed to an active TB case. This change reflects the amendment of Minn. Stat. § 123.69 (1978) by Minn. Laws 1979, Ch. 292, to permit periodic instead of annual testing. One comment for Dr. R. R. Puumala of Cloquet opposed any relaxation of testing. (Ex. B) The Department's presentation established the decline in TB cases in recent years and the low risk of acquiring the infection in Minnesota schools. The Department states that annual testing is simply no longer needed. (Ex. 5) A letter from State Representative Gaylin Den Ouden supported deletion of the annual TB testing for employees and specifically for school bus drivers. (Ex. C) The Department's presentation and the statutory amendment establish the need for and reasonableness of this amendment.

A second change requires that an employee be tested 45 days prior to initial employment, but not thereafter if continuously employed. This provision was criticized by school nurses from several schools (Ex. E) and a representative from the State Department of Education. They pointed out that initial employment may be in July prior to a school year or at least at the time of a teacher workshop and that it would be impractical to have people tested 45 days prior to initial employment. In response, the Department agreed to redefine "Employment" as follows:

> Employment means an agreement in which a person promises to provide services to a Minnesota school district or school in return for monetary compensation, which services include personal contact with students.

(Ex. 6) The amendment does not, however solve the objection of the school nurses that new employees often are not available until they report to the

school to begin work. (Ex. E) The agency states that the 45-day period is necessary, due to the time delay from the time of infection to the point at which a skin test can identify an infection. The 45-day period will enable those potential employees who are infected to be identified prior to contact with students. (Ex. 5) This amendment would, however, solve a question raised by Delphin Nelson of Independent School District No. 622 as to whether or not volunteers are included within this rule. With the new amendment, this change is needed and reasonable.

This section was also amended to require a standard intradermal tuberculin test with purified protein derivative (PPD) as the test to be administered before contact with students. Independent School District No. 622 objected to any amendment which would require them to retest current employees who were inoculated by the air jet injection method in the past. (Ex. D) The agency replied that although the air jet injection could not be used in the future, there would be no retroactive effect. The amendment is needed and reasonable.

The remaining language changes to this section and post-hearing amendments by the Department were not the subject of comment and were shown to be needed and reasonable by the Department's Statement of Need and Reasonableness. (Ex. 5)

7 MCAR § 1.328

10. In 7 MCAR § 1.328, the appropriate changes in language have again been made to reflect the change in the statute which no longer requires annual examinations. If an employee shows a positive reaction, the amended language requires at a minimum that a report by a roentgenologist of a staisfactory negative full-sized chest x-ray be taken within 60 days prior to employment. The amendment also adds a requirement for infected persons to have five years of annual chest x-rays until five years have elapsed since a documented positive test. After that time, the employee will be considered free from TB.

The amendment also adds an exclusion for employees who complete a course of preventive therapy from additional evaluation in order to reflect current scientific knowledge on the prevention of tuberculosis disease.

In its post-hearing submission, the agency again suggested a change in language from "employment" to "potential first contact with students". (Ex. 6)

No verbal or written comments were specifically directed at this amendment. The proposed amendments and subsequent changes to Section 1.328 have been shown to be needed and reasonable.

11. General support for both amendments was expressed by the Commissioner of Health of the City of Minneapolis. (Ex. A)

12. The post-hearing amendments suggested by the Department do not appear to constitute a substantial change.

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

CONCLUSIONS

1. That the Department of Health gave proper notice of the promulgation of the proposed rule amendments.

2. That the Department of Health has statutory authority to promulgate the proposed rule amendments.

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

4. That the Department of Health has demonstrated the need for and the reasonableness of the proposed rule amendments by an affirmative presentation of facts in the record.

5. That the finding of need and reasonableness in regard to any particular rule amendment should not preclude or discourage the Department from modifying the language based upon a further examination of the public comments, provided that no substantial change is made, and provided that the rule finally adopted is based upon facts appearing in the record.

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

RECOMMENDATION

It is recommended that the proposed rule amendments be adopted with attention to the Findings of Fact set out herein.

Dated: December 21, 1979.

George A. Beck

GEORGE A. BECK
State Hearing Examiner

Proposed Rules to Implement Minn. Stat. § 123.69 (as amended)

7 MCAR § 1.327 ~~Annual tuberculin~~ Tuberculin testing for employees of school districts, private or parochial schools, day care centers, and nursery schools.

A. Definitions

For the purpose of this Rule, the following terms have the meanings given them:

1. "Initial employment" means first employment in Minnesota school districts or re-employment in Minnesota school districts following a period of four or more months of non-employment in a Minnesota school district.

2. "Continuous employment" means yearly employment in Minnesota school districts with no more than a four-month interruption in employment.

B. Tuberculin skin testing

~~Unless an employee has previously shown a positive reaction to a standard intradermal tuberculin test as certified by a physician, the~~ All employees of ~~all~~ school districts, ~~and the employees of all~~ private ~~or~~ and parochial schools, day care centers, and nursery schools, unless certified by a physician to have had a positive reaction (10mm or greater of induration) to a standard intradermal tuberculin test, shall ~~be required to~~ have, within 45 days prior to initial employment, a standard intradermal tuberculin test ~~to show freedom from tuberculosis within one year~~ with purified protein derivative (PPD). ~~prior to employment, and annually thereafter.~~ If the tuberculin test is negative (less than 10mm of induration), the employee shall be considered free from tuberculosis ~~.~~ during the period of continuous employment in schools or day care centers in Minnesota, ~~The State Board of Health may require more frequent testing if employees are exposed~~ unless exposure to ~~a known~~ an active tuberculosis case ~~or cases~~ occurs.

7 MCAR § 1.328 ~~Annual Examinations of all employees~~ Employees showing positive reactions. All employees showing positive reaction (10mm or greater of induration) to the standard intradermal tuberculin test shall have such additional examinations as are necessary to enable their physician to certify their freedom from tuberculosis.~~:~~ ~~These examinations may include any or all of the following considerations: History, physical examination, chest x-ray, additional skin test, laboratory examination including smear and culture.~~ however, ~~Mi.imum~~ minimum requirement shall be a report by a roentgenologist of a satisfactory negative ~~14 x 17 inch~~ full-sized chest x-ray taken within 60 days ~~of~~ prior to employment ~~and annually thereafter for duration of employment~~. All employees showing positive reaction to the standard intradermal tuberculin test shall present annually, a report by a roentgenologist of a satisfactory negative full-sized chest x-ray until five (5) years have elapsed since a documented positive skin test, after which time the employee shall be considered free from tuberculosis during the period of continuous employment in schools or day care centers in Minnesota. All employees showing positive reaction to the intradermal tuberculin test who take a complete course of preventive therapy as directed by their physician, will be considered free from tuberculosis at the completion of the treatment program.

Please file
C
TB Pub

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Terry
DEC 3 1979
Attorney Generals Office
Health Division
DEC 3 1979
Attorney Generals
Health Division

vember 29, 1979

r. George Beck
earing Examiner
oom 300
745 University Ave.
t. Paul, MN 55104

e: Proposed Rules 7 MCAR § 1.327 and 1.328

Dear Mr. Beck:

Some comments were made at the public hearing on the rules referenced above. As a panel member I would like to take this opportunity to submit proposed amendments to the rules in light of these comments.

We recognize on the basis of comments at the rules hearing that there may have been ambiguity in the rules as they were presented.

One comment was related to whether volunteers are considered employees. We have redefined employment to clarify this point. Employment has been defined to mean an agreement in which a person promises to provide services to the school for monetary compensation, which services include personal contact with students.

A question was raised at the hearing concerning the point from which the 45-day period in the proposed 7 MCAR §1.327 B is measured. So as to clarify this period, the phrase "initial employment" has been deleted and the phrase "potential first contact with students" has been substituted in its place. This clarification is consistent with the legislative and regulatory scheme of protecting students from potential tuberculosis infection. To require demonstration of freedom from tuberculosis within 45 days of a contract for employment without reference to contact with students could increase the period between demonstration of freedom from tuberculosis and contact with students by several months, thereby increasing the risk of failure to identify tuberculosis infections. Consistent with this rationale and in view of the definition of employment referenced above, the definition of initial employment has been deleted as unnecessary and possibly confusing.

p. 1

Since "initial employment" has been deleted, it is no longer clear that the standard intradermal tuberculin test is not required each year. In order to

clarify this point we have added to the phrase "the employee shall be considered free from tuberculosis" the phrase "and need not repeat the standard intradermal tuberculin test."

I am enclosing a draft of the rules with the non-substantive changes discussed in this letter. Of course, it's the Department's belief and opinion that these proposed amendments to the rules are merely to clarify ambiguity and are not substantive inasmuch as they do not extend operation of the rules to a new class, do not impose new requirements or go to a new subject matter. Indeed, were these amendments to be considered substantive, the Department would prefer to promulgate the rules as initially proposed without the changes or amendments discussed in this letter.

Sincerely,

Allain M. Hankey, Supervisor
Tuberculosis Control Program

Enclosure

AH:cdc

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Terry P. O'Brien, do hereby declare that I have examined the proposed rules relating to testing school employees for tuberculosis, 7 MCAR §§ 1.327-328 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 14, 1980

TERRY P. O'BRIEN
Special Assistant
Attorney General

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

FOR THE

MINNESOTA DEPARTMENT OF HEALTH

HLTH-80-013-GAB

In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR § 1.327-328

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 21, 1979, 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 Commissioner of Health (hereinafter "Commissioner") on December 21, 1979; and

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

WHEREAS, the Commissioner has submitted said rules 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 rules are not substantially different from those 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 rules as adopted by him 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

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR §§ 1.327-328.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Linda M. Dorsey, being first duly sworn upon oath, deposes and says:

1. The she is an employee of the Minnesota Commissioner of Health.

2. That on the 11th day of October, 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 12th day of October, 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.

Linda M. Dorsey

Subscribed and sworn to before me
this 15th day of October, 1979.

Frederick P. Finn

FREDERICK P. FINN
WASHINGTON COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES FEB. 22, 1984

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR §§ 1.327-328.

AFFIDAVIT OF MAILING

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

That on the 17 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.

William L. Dickey

Subscribed and sworn to before me this 22 day of October, 1979.

Frederick L. King

FREDERICK L. KING
WASHINGTON COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES FEB. 22, 1984

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EXAMINERS

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption
of Rules of _____ Division
Governing _____

I hereby certify that the attached 329 Labels & 9 sheets constitute the complete list of persons, associations, and other interested groups who as of 1:55 o'clock P. .M, this 12th day of October, 1979, have requested pursuant to M.S. 1978, 15.0412 _____, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Kathy Heim

STATE OF MINNESOTA
COUNTY OF HENNEPIN

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments
to Rules Relating to Testing School Employees
for Tuberculosis, 7 MCAR §§ 1.327-328.

NOTICE OF HEARING

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on November 21, 1979, commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed amendments to 7 MCAR §§ 1.327-328 captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to George Beck, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8108, either before the hearing or within five (5) 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 at the hearing. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners, 9 MCAR §§ 2.101-2.112.

A copy of the proposed amendments is attached. Also, copies of the proposed amendments are now available and at least one free copy may be obtained

by writing to Allain Hankey, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

NOTICE: The proposed amendments are subject to change as a result of the rule hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed amendments to participate in the rule hearing process.

The statutory authority of the Commissioner to promulgate and adopt these amendments is contained in Minn. Laws 1979, ch. 292 § 1 and Minn. Stat. § 144.05(a),(b), (c) and (f) (1978). 4

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 amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. 9

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, 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 6
>
> (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).

Promulgation of these proposed amendments will result in the expenditure of public monies by local government units.

Dated: September 28, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

for Allen Z. Fiper M.D.
GEORGE R. PETTERSEN, M.D.
Commissioner

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STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR §§ 1.327-328.

ORDER FOR HEARING

To effectively implement Minn. Laws 1979, ch. 292, § 1 and Minn. Stat. § 144.05(a), (b), (c) and (f) (1978), the Minnesota Commissioner of Health deems it necessary to consider adoption of the proposed amendments captioned above pursuant to the authority vested in him by the above-referenced statutes.

NOW, THEREFORE, IT IS ORDERED this 28 day of September, 1979, that a public hearing on the proposed rules captioned above be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on November 21, 1979, commencing at 9:30 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

for Ellen Z. Pfeifer M.D.

GEORGE R. PETTERSEN, M.D.
Commissioner

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Joanne E. Hinderaker
Attorney General's Office
Department of Administration

DATE: July 15, 1980

FROM : Terry P. O'Brien
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of Proposed Amendments to Rules Relating to Testing School Employees for Tuberculosis, 7 MCAR § 1.327-328

I am enclosing for your review three files containing the documents in support of the above-referenced amendments. The minor changes made in the rules were never controversial. Those few unfavorable comments which were received were due to the ambiguity of the rules as initially proposed.

If you have any questions, please do not hesitate to contact me. Thank you.

TPO:rlb

Enclosures

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